

BOARD OF ADJUSTMENT

August 1, 2023

MEMORIAL BUILDING

7:00 P.M.

Zoning Members present: Tanner Jacques, Rob Thorp, Luke Gorman, Cody Patten and Steve Dzubak

Also present: Audrius Kazenas, Sheridan Brown, Jeremiah Crosby, Janet Handl, Christine White, Judy Gurka, Pamela Laurie, Emily Cleaveland, Gene Hayes, Suzy Hayes, Wayne Smith, Steve Rutledge, Aileen Rutledge, Davina Szmyt, Henry Szmyt, Jocelyn Colena, Ken Meier, Jose Ossa, Scott Kuluh, Tim Julian, Shawn Tanguy

7:00 pm Tanner called the meeting to order asked Board members to introduce themselves. He then asked if there were comments or corrections of the July 11th minutes. Luke moved to accept the minutes as written Rob seconded Board approved unanimously. Luke moved to accept the minutes of the July 20th site visit as written Rob seconded Board approved unanimously.

7:05 pm Rob moved to reconsider the Special Exception request by Matthew Ruppel and Greg Aucoin to place a hot tub 27' from the lake and within the 35' setback from the east property boundary, Tanner seconded Board unanimously agreed. The property is located at 15 Sandy Beach Rd Tax Map 23, Lot 588-242. The Board moved through the 5 criteria for granting a Special Exception. The Board found each of the 5 criteria were met. Counsel for the Town notified the Board that if they were reconsidering the application the request is required to be re-noticed and could be heard at the following meeting. Steve moved to re-notice the Special Exception request of Matthew Ruppel and Greg Aucoin Luke seconded Board voted in favor to reconsider the request at 7:05 pm on September 5th.

7:15 pm Tanner re-opened the hearing for a Variance request by Ken Meier to construct a 24'x26' garage within the 35' setback from the property boundary. The property is located at 200 Oak Hill Rd West Tax Map 7, Lot 757-445. Rob asked Mr. Meier is he had asked Clayton Platt about moving the pipe to allow for a shift in the location of the garage. Mr. Meier responded that it isn't the pipe determining the location but the location of the entire field. Tanner questioned the location of the propane supply line and its location. Mr. Meier responded that the line runs up around to the back of the house.

Tanner asked if any abutters were present, Mr. and Mrs. Szmyt were recognized. Mr. Szmyt stated that he currently lives in Florida where his lot is ¼ acre and the houses are all 20' apart he has 40 neighbors and up here his neighbor is ¼ mile away. There are currently 21 springs on his property and drainage is an issue with all water running downhill. Keeping vegetation in place is important to control water. He and Mr. Meier have been working together on water mitigation.

Luke moved to close the hearing and go into deliberations; Rob seconded Board agree unanimously. Rob said that the lot is such that there are limited locations to place the garage. Tanner agreed and stated that there is currently extensive drainage work and ditching along the driveway to mitigate the water. Luke agreed that there are no other locations to place the structure. Tanner suggested making the garage 2' shorter would lessen the relief to 7', a condition could be placed to have a drainage plan. Steve voiced that the garage could be pulled forward but that would make it more difficult to enter the garage. And wouldn't lessen the water runoff only change the location.

The Board moved through the facts supporting the request, Board found each item was supported. Tanner asked if the Board felt any conditions should be placed, the only being agreed upon was adding gutters and downspouts to direct the water runoff away from the septic field and the neighboring property.

Steve moved to grant the Variance of 9' relief to the northeast side boundary line to construct a 26'x24' garage with the condition of placing gutters and downspouts away from the septic field and northeast property line. Rob seconded Board unanimously passed.

TOWN OF SPRINGFIELD ZONING BOARD OF ADJUSTMENT
P.O.BOX 22 2750 MAIN STREET NOTICE OF DECISION
SPRINGFIELD, NH 03284
PHONE: 603 763 4805

Re: Zoning Board of Adjustment Case:
Ken Meier

200 Oak Hill Rd West, MAP 7, LOT 757-445

HEARING DATE: July 11, 2023; August 1, 2023

You are hereby notified that the request for a Variance from Ken Meier to construct a 26' x 24' garage has been GRANTED pursuant to the plans and descriptions presented at the hearing. The proposed garage is to be no closer than twenty-six feet (9' of relief) to the northeast boundary line with the condition that the garage have gutters and down spouts to send water away from the leach field to the west and the northeast boundary line. The application met all five criteria required to grant the variance.

Tanner Jacques, Chairperson 8/2/23

Note: The Selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at the Springfield Town Office or at gencourt.state.nh.us. If you wish to appeal, you must act within thirty (30) days of the date on this notice. The necessary first step before any appeal may be taken to the court, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. This notice has been placed on file and made available for public inspection in the records of the Zoning Board of Adjustment.

RSA 677-33 I-a Specifies a time constraint on the term of the Variance granted. Please refer to that Statute for more detailed information.

Tanner opened the hearing for a Special Exception request from Jose Ossa-Concha to place a fabric shelter next to garage within the 35' setback on a pre-existing non-conforming lot. Property is located at 115 Woodcrest Tax Map 29, Lot 136-12.

The Board questioned the amount of relief the applicant is seeking and found none shown on the map of the property. Steve moved to not accept the application due to lack of information, Rob seconded Board unanimously agreed. Tanner verified with Jose that he understood measurements needed to be shown on the application along with the amount of relief he was requesting from both property lines and the road. Application would be resubmitted with additional data and could be reheard at future meeting.

7:30 pm Tanner re-opened the continuation of an application by Sue-Ann, Audrius Kazenas, and Select Shepherds, LLC for a Special Exception to use their property as a location from which to sell dogs and offer one-on-one and small group dog training classes. The property is located at 373 Hogg Hill Rd in the Rural Residential Zone. Tax Map #10 Lot 098-189

Tanner shared that the Board needs to move forward and would not be allowing public comment so that all questions the Board had could be directed to the applicant. Tanner asked Audrius what happens to the training during the winter months or during other inclement weather. Audris responded that no training occurs during those times as well as during “mud season”. When asked about the fencing around the property, Audrius responded that there is fencing around the lower area and to the right of the house. No dogs have gotten out since the fencing was installed.

Tanner shared that two letters had been received by the Board and he would read them into the minutes. The first letter was from Tom Cleaveland and the second from Judi Shank.

Dear Springfield Zoning Board Members,

write regarding the application for a zoning variance by the owners of Select Shepherds. I believe in the right of an owner to use property for enjoyment or wealth creation, and hope for business development within the town. And so it is with reluctance that I join my neighbors in opposing this application.

I work in a field (software development) that requires long periods of sustained concentration. In company's owner cancelled the lease on our office. I have no option now but to work from home. I don't need a silent environment to be productive but it is important that I have a broadly peaceful environment. In my view that would be impossible if a large breeding and training operation for German Shepherds were nearby, due to noise.

I understand that the applicants have presented data indicating that sound volume would not be a problem. But there is also the character of the noise to consider. For example, if the source were a couple arguing or a baby crying for an extended time it would be troubling regardless of the volume. Barking dogs fall in that category.

I am also concerned that the applicants have, in my view, consistently refused to engage the concerns of their neighbors over noise, and instead responded with denial and also implied threats of litigation. The applicants' ongoing lawsuit against the town and their personal lawsuit against multiple town officers make me skeptical that neighborhood concerns would be received with any sympathy.

Given these considerations I hope the board will affirm their 2016 decision and deny this latest application.

I thank the members for their dispassionate consideration.

*Tom Cleaveland
256 Hogg Hill Rd.*

To the members of the Zoning Board of Springfield NH

I, Judi Shank, live at 457 Hogg Hill in Springfield. This town has been dealing with Select Shepherds ever since we moved into the area in 2006, 17 years. Every time they have come before this board attempting to get approval for their business, they have been denied. And each time they have hired an attorney and sued the town. The amount of time and money they have caused this town is terrible. Never mind the amount of frustration, annoyance, that has been caused for their neighbors. Two families have moved from Hogg Hill because of the Dogs. One built in another part of town, and one moved out of town.

If you go to Select Shepherds website, they list their business as being in Grantham. So why are they trying to do their breeding in Springfield? If they were ever actually in Grantham, why did they move to Springfield?

At the last meeting it was stated by Mr. Kazenas that when someone is interested in a dog they bring that dog to Grantham. I know that that has not been the case as I have followed them up Hogg Hill as they are leading a car to their residence. I was even told at one time that they meet people in Grantham and lead them to their residence to look at the litters. I know, sometimes things change. I have also had people stop at my house to ask me where the house is that sells the German Shepherds. (I am 3 houses up from theirs,)

At the last meeting Mr. Kazenas talked about the one-on one and small group training that he does. He wants to move that from Grantham to their residence. When asked frequency he said only 1 a week. If they want to grow their business, I don't see that to be a feasible schedule. And if the Board makes it a requirement of an approval, who is going to monitor and guarantee that it stays that way.

To my knowledge there is no fencing around their property. What is in place to stop a dog from getting loose and taking off. Especially during "Off-Leash" training. And yes it has happened in the past.

It was stated that they planned on having only 2 litters a year. They want a certificate from the Town, that they meet all the Town regulations so that they can be recognized by the state as a breeder who sells 25 dogs a year. I don't believe that 2 litters can get them that number. When looking at numbers of dogs, please remember that puppies under 6 months don't count as dogs. Once a litter is born, the dog count is still 1 no matter how many puppies are born.

I have asked before, and never received an answer, what are they doing with all the dog feces? Are they double bagging it and taking it to the dump? Or are they spreading it out in the remainder of the property? What is the environmental impact on the neighborhood and the surrounding watershed as the rain water runs from Hogg Hill down to Stoney Brook and into the Swamp, or Baptist Bond, or the stream that is fed by the run off?

I am sorry to say that I do not trust the Kazenas' to keep their word. They have become much more fluent in how to tell their story. At the very first meeting that I attended, they didn't even know how many dogs they had on their property at that time. Now they know what the board wants to hear,

You have a hard decision to make. Whatever it is you will affect the lives of Springfield residents. Will you support the majority of Hogg Hill Residents or support a couple who want to run a business that this town has rejected at least 3 times?

Best Regards

*Judi Shank
457 Hogg Hill Rd
Springfield, NH 03284
nanajudi03751@gmail.com*

Board questioned Audrius about the dog feces and what is done with it. Audrius responded that it is collected and deposited into a composting area. Sheridan shared that activity is similar to what happens in Sled Dog locations.

Gene Hayes stated that it sounded to him like the Board had already made a decision while everyone in the room has been against this from the beginning. He wanted to know what Tanner would think if someone suddenly started a kennel at Twin Lake Villa? How would that make him feel?

Tanner stated that the Board had not made a decision and had not discussed the application in any form other than at public meetings.

Emily Cleaveland interrupted saying that she had new information to share and wanted to do such. Tanner stopped her stating the Board needed to move forward and at this time additional public comments would not be taken but she would be allowed to speak in a bit.

He then questioned Mr. Kazenas if building a structure had ever been thought of, the lot is of an adequate size to support one and would allow for controlling of outside influences when doing early training as well as safeguard any dogs getting loose. Mr. Kazenas stated that a building had not been thought of due to the size of the operation and the expense of building a structure would have. Sheridan Brown voiced that a building such as Dog Star has is not something his client wants to have. Mr. Kazenas stated that if he were to build a permanent structure the business would need to increase to cover the increase in expenses which would increase the amount of traffic on the road. Tanner asked if the amount paid for use of the facility in Grantham could be redirected to the cost of a structure on the property. Sheridan added that the current size of the operation is considered a Hobby due to the size and not the activity, staying small scale has always been the aim of the Kazenas'.

Rob brought up that it's not so much the noise level he sees the issue is but instead the type of noise giving the example of nails on a chalkboard bothersome to some and other not as much.

Sheridan suggested that if a number was set then they would have something to work with. The Board agreed that they are not able to do that as setting a noise limit is something for the Town to set not the Board.

Tanner requested a recess to meet with Town Counsel at 8:08pm and returned to the meeting at 8:22pm

Discussion of the installation of an Acustifence. After which Sheridan handed out a flier listing possible conditions for the Board to consider.

Tanner recognized Emily Cleaveland who stated she lived 1/3 mile from the subject property. She told the Board she spends a lot of her time in her garden stating that the recording was done on June 2nd and played a recording from her phone using a speaker she brought with her. Once the recording finished Audrius shared that he was not home on that day and the dogs would not have been outside at which time Emily stated the recording was not from this year. Tanner calmed the audience by stating the Board was not concerned with when the recording was done.

At 8:40pm Steve moved to close the hearing and move to deliberations, seconded by Cody Board agreed unanimously.

Board moved through the 5 criteria needed to grant a Special Exception. Tanner read each of the criteria followed by the statement from the applicant in response to the criteria.

- A. The proposed use would not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the character or appearance of the neighborhood because:
A professional sound analysis of the proposed use reveals that the existing use is compliance with even the strictest noise limits implemented in the State of Maine. This would not change under the proposed use.

Comments by Board members:

Luke:

Rob: the noise as it currently is changes the character of the neighborhood

Steve: noise in a factory setting is easy to control because you can measure for the maximum and the minimum noise and those are constant and easy to monitor and then control. Noise such as dog barking is very different in that it varies and changes due to many factors. What happens if a delivery driver shows up, or wildlife or animal appears on the property? The number of dogs and the dogs themselves change over time, including the dogs that are coming to the property for training. All of those change the noise. The neighborhood is zoned rural residential and is full of homes right now. If you compare the neighborhood with no dog kennels, breeding, or training, to a neighborhood with no dog kennels, breeding, or training, to a neighborhood with what is proposed in the application before us and ask if it is detrimental to the character of the neighborhood, then I think the answer is yes, it is detrimental and changes the character. We heard that from people in the audience tonight. While noise in an outdoor setting is very difficult due to inconsistency in the neighborhood. Monitoring and the use of an Acustifence could help but can't guarantee because of too many variables. This rolls into E of the 5 criteria.

Cody: no way to control noise in an outdoor setting.

Vote taken by Board.

Na: Luke

Na: Rob

Na: Steve

Na: Cody

Ya: Tanner

- B. The proposed use will not be injurious, noxious, or offensive, and thus detrimental to the neighborhood because.

This Special Exception criterion mirrors the standards set in Article 6.10 of the Town's Zoning Ordinance (Obnoxious Use), under which applicants' recreational keeping of dogs has resulted in no notices of noise, odor, aesthetic, or similar violations in more than eighteen (18) years. Still this application includes the applicants' most extensive proposal yet for noise monitoring and mitigation, beginning with the completed (sic) professional analysis of sound levels from the applicants' existing use.

The applicants' proposal to, at their expense, further retain and make their noise expert available to the ZBA and Planning Board, and to develop and implement the continuous noise monitoring and mitigation steps detailed about at pp. 12-13 will ensure that the proposed use does not result in detrimental noise impacts upon the neighborhood. No visual or other potential impacts have been alleged to date, and the applicants are

confident there are none for the reason described throughout Attachment B of their application.

Comments by the Board:

Tanner: doesn't feel any of the listed items are an issue

Rob: agrees and adds that offensive is subjective and we heard from people that consider it offensive.

Luke: agrees.

Steve: agrees.

Cody: agrees.

Vote taken by the Board:

Ya: Luke

Ya: Rob

Ya: Steve

Ya: Cody

Ya: Tanner

- C. The proposed use will not be contrary to the public health, safety, or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, or similar adverse causes because:

The proposed use will not create undue traffic congestion because it would involve a small number of visitors. There is no undue risk to life or property because the applicants' dogs are highly trained and kept under the direct control of their experienced handlers, while others' dogs attending training classes will be kept leashed or under direct control of their handlers. There are no unhealthful emissions or waste disposal because the applicants are ethical and humane breeders and keepers of dogs who are already subject to inspection by the American Kennel Club. Additionally, approval of this application would enable the applicants' licensing as a Pet Vendor, making their kennel also subject to unannounced inspections by the NH Ag. Dept.

Comments by Board members:

Board members all agreed that there would be no increase in traffic, risk to life or property.

Vote taken by the Board:

Ya: Luke

Ya: Rob

Ya: Steve

Ya: Cody

Ya: Tanner

- D. The location and size of the proposed use, the nature and intensity of the operations involved, the size of the site in relation to the proposed use and location of the site with respect to the existing or future street giving access to it shall be such that it will be in harmony with the orderly development of the District because:

The Springfield Zoning Ordinance provides that "Other uses, including but not limited to business, commercial, industrial... may be permitted by the Board of Adjustment." Mixed use is contemplated by the Ordinance, and the proposed use will have no different impacts from the applicants' existing recreational keeping of dogs, agricultural uses allowed as-of-right, and commercial uses already taking place in the Rural Residential District. The small portion of the applicant's Property that would be the site of the proposed uses is mostly surrounded by a forested buffer. See *Appendices E-F*(survey and satellite image).

Comments by Board members:

Board members all agree that the proposal meets this one.

Vote taken by Board:

Ya: Luke
Ya: Rob
Ya: Steve
Ya: Cody
Ya: Tanner

- E. The operations in connection with the proposed use will not be more objectionable to nearby properties by reason of noise, fumes, odor, or vibration, than would be the operation of any permitted uses in the district which are not subject to Special Exception procedures.

During past consideration of applicants' requests for a special exception, the primary-if not exclusive-concern has been potential noise. The sound analysis completed by Scott Bodwell, P.E., show that the applicant's existing use of the Property is compliant even with the strict noise limits set by the Maine DEP Noise rule. Agricultural uses are permitted as of right in the Rural Residential District, as are the recreational ownership of teams of dogs and recreational shooting. Each of these uses are permitted without special exception procedures and would, in many cases, have noise impacts exceeding those of the applicants' proposed use, which merely adds a sale and training component to the applicants' existing recreational keeping of dogs. These proposed uses would not produce additional noise or other impacts beyond the existing allowable uses.

Still, as detailed above, the applicants are committed to developing, implementing, and adhering to a noise monitoring and mitigation plan developed in consultation with the Town's ZBA, Planning Board, and the applicants' noise expert as a condition of approval.

Comments by the Board:

Rob: there is obviously an issue where the neighbors are concerned. Without an acceptable noise level number from the Town the Board can't assign one.

Tanner: appreciates the concerns expressed by the neighbors, and that noise is difficult because it is subjective. When one dog starts to bark others will join in and bark as well. Summarized also that the dogs go out at 10 and are brought in at 8 which is a 10 hour window which is a long time and

very hard to control the noise or to place a acceptable number on the noise level. Having an indoor facility would be one way to increase noise control.

Steve: As I stated earlier, the big issue is the noise. Considering the application for breeding and training of dogs before the board and the proposed mitigation which includes monitoring and Acoustifence, as well as the proposed restrictions put forward tonight by the applicant's attorney, I do not think there is a way to sufficiently mitigate the noise and barking. The dogs cannot be kept inside all the time. They have to be outside at some point. There are too many variables to account for, the noise will always be an issue.

Luke: repeated that because the Town doesn't have an acceptable noise level number the Board can't assign a number that is acceptable to this situation.

Cody: agrees with everything that has already been stated.

Vote taken by the Board:

Na: Luke

Na: Rob

Na: Steve

Na: Cody

Na: Tanner

Tanner reviewed the votes:

A majority vote of Na

B majority vote of Ya

C majority vote of Ya

D majority vote of Ya

E majority vote of Na

Due to A and E receiving Na votes the application for a Special Exception is denied.

Luke moved to deny the application for the above reason Steve seconded Board agreed unanimously.

Meeting adjourned at 9:15pm

Respectfully submitted,

Tamara Butcher

TOWN OF SPRINGFIELD ZONING BOARD OF ADJUSTMENT
P.O.BOX 22 2750 MAIN STREET NOTICE OF DECISION

SPRINGFIELD, NH 03284

PHONE: 603 763 4805

Re: Zoning Board of Adjustment Case:

Sue-Ann, Audrius Kazenas, and Select Shepherds, LLC

373 Hogg Hill Rd, MAP 10, LOT 098-189

HEARING DATE: April 4, 2023; May 2, 2023; June 6, 2023, July 11, 2023, August 1, 2023

You are hereby notified that the request for a Special Exception from Sue-Ann, Audrius Kazenas, and Select Shepherds, LLC to use their property to as a location from which to sell dogs and offer one on one and small group dog training classes has been DENIED pursuant to the plans and descriptions presented at the hearing by an affirmative vote of all five members of the board. The application failed to meet all 5 criteria required for a special exception, specifically criteria A and E as defined in Section X1, 11:42 of the Springfield Zoning Ordinance.

In the course of the hearing, the board came to find that the duration of time the dogs are outside requires an indoor facility to control not only the noise but the variations of noise (barking, yelping, etc). There are other pet dogs living in the area. However, based on the testimony of abutting property owners and others in the neighborhood regarding noise they already experience from this property, the noise from individual dogs on abutting properties differs in quality and quantity from the noise that is already occurring on the applicant's property. The specific kinds of noise inherent in the applicant's proposed activities (dog training sessions, the consistent presence on the property of large numbers of dogs (including 1-2 litters of puppies per year, which are obviously not trained, groups of dogs outside for long periods of time, etc.), much of which is already occurring, is likely to affect the neighborhood in a way that is different from the ordinary noise from pets scattered around the area. The disturbance appears to be related to the variations in noise and the startling effect of noise that starts and stops rather than simply because of the decibel levels. The board feels that noise abatement (Acoustifence) or noise monitoring will not be able to manage the different sounds emitted from the operation. In addition, the proposed training on property with untrained or unknown dogs offers similar concerns in regards to noise and the safety of the community should a dog get loose. The board believes that without an indoor facility to house the animals and offer an enclosed space to train the dogs, the business cannot exist in its proposed form.

Tanner Jacques, Chairman 8/3/23

Note: The Selectmen, any party to the action, or any person directly affected has a right to appeal this decision. See New Hampshire Revised Statutes Annotated, Chapter 677, available at the Springfield Town Office or at gencourt.state.nh.us. If you wish to appeal, you must act within thirty (30) days of the date on this notice. The necessary first step before any appeal may be taken to the court, is to apply to the Board of Adjustment for a rehearing. The motion for rehearing must set forth all the grounds on which you will base your appeal. This notice has been placed on file and made available for public inspection in the records of the Zoning Board of Adjustment.