



Zoning Board of Adjustment Meeting
Monday, December 3, 2018 7:00 PM
City Hall Council Chambers

MINUTES
Approved 3/4/2019

Call to Order by the Chair

Mr. Hurd called the meeting to order at 7:00 PM and asked for a roll call.

I. Attendance/Roll Call

Present & Participating: Richard Collins, Michael Hurd, Carolyn Towle, Abigail Kier, Tracy Pope

Absent: Patrick Howe, James Petrin,

City Staff: Vickie Davis, Interim City Planner

II. Minutes of Previous Meeting –

A. November 5, 2018

Motion: To accept the minutes from the November 5th meeting as read

Made by: Mrs. Towle **Second:** Mrs. Kier

Vote: Unanimous in favor

III. Old Business

A. (ZO 2018-00012) Christopher Anastaspoulos, 269 Pleasant Street – Application for a Special Exception to permit a dog boarding and training business as a Home Occupation at **269 Pleasant Street**. Tax Map 143, Lot 44. Zoning District: R1 (cont. from 11/5/2018)

Mr. Hurd read the public notice. (It was not necessary to read the abutters' roll as this was a continuation.)

Planner's Report

Ms. Davis had nothing to add.

Applicant's Presentation

Mr. Anastaspoulos said, "This is more for training family dogs out of my home, but because they would be there for a minimum of two weeks we have to call it boarding and training." He said this was all he was asking for – the ability to train two customer dogs along with his personal dogs – no more than three dogs on site.

Mr. Anastaspoulos had shown the board members his leashes, collars and the ½ mile radius he has during the first week of training at the site visit conducted on November 23rd. He had provided extensive additional written information to the board in their meeting packets,

including state statutes and the city's ordinance. He said there is no local ordinance applicable to the keeping of three dogs for any residential property. There is no fence ordinance for the keeping of three dogs. He offered to answer any questions the board had.

Mr. Hurd said he had attended the site visit. He said Mr. Anastopoulos showed them the training room where the dogs would be with a porch from which Mr. Anastopoulos said he would build a stairway to the yard and the fenced-in area (the gates have not yet been installed as there was an error in size – they are to be spring-locking gates).

Mr. Hurd said that abutter, Gary Merchant, was in attendance at the site visit, as were board members Mr. Collins and Mrs. Pope and interim planner, Vickie Davis.

Abutters

Abutter Gary Merchant said all the safety precautions that had been discussed had been installed except for the gates. He said without the gates, the fence was meaningless. He said there were two issues that the board had previously raised – nuisance and safety. He felt the safety issue had been addressed. Mr. Merchant felt the nuisance issue was “problematic”. He said the applicant has stated previously that he needs four dogs to make this business financially viable. Mr. Merchant asked if the number of dogs would escalate. He asked the board how this would be enforced.

Mr. Merchant said that the applicant is still offering “doggy daycare” on his website.

Mr. Merchant said, “Given he has shown a lack of deference to the zoning board and the fact that he has run a business for a long period of time without a zoning board approval and he continues to have dogs there as well ... So my concern is this – how do we ensure the public safety by having the gates installed and two, how do we ensure that there will not be an escalation in the business practice beyond two dogs?”

Mr. Hurd said the board has made it clear there can only be two dogs. He said if neighbors see more than two dogs in the yard, they can call the Planning and Development Department, who will be responsible for enforcement. He explained the enforcement process as he understood it. He assured Mr. Merchant that the city would be responsible for the cost of enforcement and that it would be the city that would take the applicant to court if need be – not the abutters. Mr. Hurd could not comment on how long enforcement actions would take.

Mr. Merchant asked the board not to approve the application until the gates had been installed. Mr. Merchant stated that there “had been a history of defiance to this board and to the city about operating a business without a permit.” He expressed concern that resolution (of a violation) takes time and asked the board to remember that it is the neighbors who must live with the nuisance while issues are resolved.

Bonnie Miles, abutter, referring back to an earlier issue with the applicant's chickens, said she was concerned that the applicant would not keep just two dogs. She said she felt an earlier comment made by the applicant about seeing her in court was “a bit of a threat”. Mr. Hurd said this was a matter between her and the applicant and not the board's concern. She said, “Alright – but we'd consider the character of the person and that was my ...” Mr. Hurd

interrupted Mrs. Miles and said, “Our decision tonight is, is this an acceptable home occupation.” Mrs. Miles said she thought a massage, a hairdresser, a taxperson, “a quiet type of business...with this many houses so close together this type of business should not be anywhere in the city limits. Outside is one thing, but not inside. It has nothing to do with this gentleman here.”

Mrs. Miles said she had concerns about the process. She said it seemed like “someone misunderstood something somewhere from the very beginning...and then it was reopened...”

Mr. Hurd said, “It was a whole new application. His appeal went through and the city decided to do a new application for the appeal. Again, that’s above my pay grade how they do that.” The board is considering only the information that has been presented with this application.

Edward Pelton said he didn’t think there was going to be a gate in the fence – that entry would be from inside the garage. He said he didn’t have “a lot of worries about it (referring to the business) – he’s either going to succeed or not succeed. I don’t have a problem with him having that next to my backyard.” He said they would take up any problems amongst themselves and follow the process if he is found to be in violation.

Ms. Davis said that if the board were to approve this application and made it contingent upon installation of the gate, the city would just go ahead and inspect and make sure they were in before a permit was issued.

Mrs. Pope confirmed with the applicant that the gates had already been ordered and that they would be spring-loaded to automatically close.

Mr. Anastasopoulos said it was his understanding that this was to be a new application, “so all previous business was previous business.” He explained his gates setup to Mr. Pelton. He repeated that there is no ordinance in Claremont requiring a fence for the keeping of three dogs. He said he had put up a fence “in good faith”. The gates have been ordered and will be installed.

He asked the board to define “nuisance”. He said, “If you look at the city ordinance and you look at the state RSA – you need to define nuisance as pooping and peeing on your lawn, a loose dog, a vicious dog, any dog barking over 30 minutes. These are nuisances. Safety is a loose dog that bites or is aggressive on a leash or even off-leash – it’s the vicious part.”

“‘Not an appropriate business’ – I am no different than your neighbor next to you with three dogs. There is zero ordinance. But you have the luxury of me being a dog-trainer. It has been known that I have been training dogs on my property since June. My abutters and my neighbors have had ample opportunity to go to the city, myself, or the police department with any nuisance or safety issues. There have been zero. And that needs to be noted. There still continues to be zero. I still train dogs on my property. I deal with local shelters. While I’m holding out collecting money from training dogs from clients – losing money every day. I want people to understand that I am still training dogs but not for profit. There

have been three dogs on my property, there have been zero issues from safety, zero conditions from nuisance – I’ve even gone as far as – and we can show it if we need to – I hope we don’t have to – but I’ve even gone as far as to tape the street for two solid days for the heavily traveled sidewalk that it’s been said in the past. I’ve got the kids numbered down and also as part of the packet, I’ve gone to the traffic advisory committee now twice and the kids are now staying across the street waiting for the bus to stop traffic like they should. So I have been proactive in that regards. So I don’t think there’s any safety issues, I’ve demonstrated the collars that all the dogs get put on; all the dogs are on leash – the only way the dog’s going to get loose if for some reason it slips my hand – but I tie them to my hand. I have the electronic collar. The methodologies can be debated but that is an additional safety issue and it’s huge. ... So, I don’t believe there’s any safety issue.”

Mr. Merchant said, “Regards to the ordinance – I believe the ordinance applies to people who are looking for staying within the confines of what we have within the zones. When you ask for an exemption to the ordinance, I don’t believe the issue about the requirements for the ordinance being applied to a business that’s looking for an exemption. So, he’s correct when he’s saying if I have 3 or 4 or 5 dogs I don’t have to comply with the ordinance because it doesn’t apply to me. However, when I’m asking for an exemption to an ordinance I think that exemption carries with it a certain level of requirements that this board can place upon the person. So, in some ways, yes, it’s exempt from the ordinance as a private citizen without a business – but once they ask for an exemption to it the ordinance if you will no longer applies.”

Mr. Anastopoulos asked to rebut, but Mr. Hurd said no on the grounds that both sides had had two chances. He closed the public hearing.

Mr. Hurd asked the board if they had anything further or if they were ready to make a motion.

Motion: I move that we approve the application ZO 2018-00012 to Christopher Anastopoulos for a Special Exception to permit a dog boarding and training business as a Home Occupation at 269 Pleasant Street, Tax Map 143, Lot 44, with the following conditions:

1. The gates be installed as part of the ordinance
2. No doggy daycare will be allowed
3. He will have two dogs plus his own at any given time
4. The proposed use shall be maintained in accordance with the information provided by the applicant in the Application for a Special Exception, ZBA Case No. ZO 2018-00012, and testimony during the public hearing for said case.
5. The Home Occupation shall have no more than two client dogs on-site at one time, except under limited, special circumstances.
6. The residential portion of the building shall be the primary residence of the owner of the Home Occupation.
7. The Home Occupation shall remain subordinate to the residential use and operated by the property owner.
8. There shall be no on-site retail sale of stock in trade on the premises, except as an accessory sale to the services provided.

9. The area utilized for the Home Occupation shall occupy no more than 20 percent of the residential building.

Mrs. Towle asked for clarification of the term “special circumstances”. It was agreed to strike the term.

5. The Home Occupation shall have no more than two client dogs on-site at one time. ~~except under limited, special circumstances.~~

(The language was changed after Mrs. Pope had made the motion, but before the motion was seconded.)

Motion made by: Mrs. Pope **Second:** Mr. Collins

Discussion on the motion

Mr. Hurd: “Appropriate location as far as burdening city services; his driveway’s not on the heavily-trafficked side. He’s indicated numerous times that clients will arrive via the Charles Street side. He will be allowed a small sign to go at the end of the driveway stating that. Detrimental to general welfare and public safety – I think everything is pretty much been very well addressed. There’s no adverse impact that I can see with this application. Traffic impact – we’re talking 4, 8 times maybe a month? 8 cars? I’m sure there’s more traffic with West Central Services – whatever that building is - that go up and down that street now because of that.”

Vote on the motion: Unanimous in favor

IV. New Business

- A. **(ZO 2018-00014) Jonathan Hood, 187 Old Church Road** – Application for a variance from sect. 22-209 (*R1 Yards*) of the City Zoning Ordinance to construct a porch in the front setback on property owned by **Aileen Gillett at 7 Little Lane**. Tax Map 143, Lot 66. Zoning District: R1.

Mr. Hurd read the public notice and asked for an abutters’ roll call.

Mrs. Kier disclosed that Robert and Kaitlyn Kier are her brother-in-law and sister-in-law. She said she had not met the landowner “other than a wave”.

Ms. Davis said the applicant is seeking a variance of the “Yards” section to encroach on the front setback. It’s a covered porch on the front and side of the house and a handicap ramp on the front of the house. The distance between the garage and the porch complies with the ordinance. Lot coverage is within the requirements.

Ms. Davis further read from the ordinance: *any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:*

- (a) *Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.*

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

Mr. Hurd asked if this ramp would be temporary or permanent as the board had viewed them differently in the past.

Ms. Davis said she spoke with the owner and the ramp is for her granddaughter who is permanently handicapped and in a wheelchair. The porch will be her playground, because the land is sloping. The owner is in her 60's and joked that she herself may need the ramp someday. The ADA access requires the floor of the porch be level with the bottom of the door step. The applicant provided a list of what Ms. Davis had just told the board and Ms. Davis offered to distribute it to the board.

Mr. Hurd asked how far off the house would the porch extend. Ms. Gillett stated that she had pictures that could help show the proposal.

Motion: That we accept the pictures

Made by: Mrs. Kier **Second:** Mrs. Pope

Vote: Unanimous in favor

Ms. Gillett said, "In the top picture there is 20 feet between the edge of the sidewalk to the front of the door. The setback goes an additional 5 feet in. The porch is going to be 8 feet deep. It's going to have a ramp off the front porch and then past that another 2-3 feet, I'm going to put in a wall after the porch is installed and level the line because it's on a hillside." (She indicated the slope on the photographs.) Ms. Gillett said she would use landscaping to soften the appearance of the ramp on the front of the house.

Ms. Gillett said the front stoop is falling apart already and needs to be replaced.

Ms. Gillett said her granddaughter is only 3 years old. Ms. Gillett is one of her primary caretakers. It is a condition they will have to contend with for the rest of her granddaughter's life. Her granddaughter is 35 lbs. now and lifting her into and out of the house is not practical. Ms. Gillett wants to provide a better way to get her granddaughter into and out of the house and a safe place to play.

Ms. Gillett said there will be two ramps for safety purposes – one from each of the two doors on the house. Ms. Gillett wants to be sure she always has a safe way to get her granddaughter out of the house.

Ms. Gillett said her neighbors are in favor of this project – they are excited that she is putting a porch on the house.

Ms. Gillett has hired Jonathan Hood as the contractor – he said he is working with the building inspector.

There was no public input. Mr. Hurd closed the public hearing.

Motion: To approve application ZO 2018-00014, Jonathan Hood, 187 Old Church Road – Application for a variance from sect. 22-209 (*R1 Yards*) of the City Zoning Ordinance to construct a porch in the front setback on property owned by Aileen Gillett at 7 Little Lane. Tax Map 143, Lot 66. Zoning District: R1.

Made by: Mrs. Kier **Second:** Mrs. Pope

Discussion on the motion:

Mr. Hurd appointed Mrs. Towle to sit in for Mr. Petrin.

Mr. Hurd said this was a case where common sense needed to prevail. The house can't be moved; it's been there for over 100 years. Other houses in the neighborhood have porches. The general welfare is not affected by this. It is within the spirit of the ordinance.

Mrs. Kier and Mrs. Pope said it was not contrary to the public interest.

Mr. Collins said it wouldn't affect anyone's taxes.

Vote on the motion: Unanimous in favor

V. Communications

There were no communications.

VI. Other Business

There was no other business.

VII. Adjournment

Motion: To adjourn the meeting

Made by: Mrs. Kier **Second:** Mrs. Pope

Vote: Unanimous in favor

The meeting adjourned at 7:42 PM.

Respectfully submitted,
deForest Bearse