

**APPROVED**  
**TOWN OF PELHAM**  
**ZONING BOARD OF ADJUSTMENT MEETING**  
**March 14, 2016**

The Chairman David Hennessey called the meeting to order at approximately 7:00 pm.

The Secretary Bill Kearney called roll:

**PRESENT:** David Hennessey, Bill Kearney, Peter McNamara, Chris LaFrance,  
Planning Director Jeff Gowan.

**ABSENT:** Svetlana Paliy, Alternate Darlene Culbert, Alternate Lance Ouellette,  
Alternate Pauline Guay, Alternate Kevin O'Sullivan

**PLEDGE OF ALLEGIANCE**

**HEARINGS**

**Case #ZO2016-00003**

**Map 4 Lot 9-144-19**

**PIERCE, Carolyn - 10 William Drive - Seeking a Special Exception concerning Article XII, Section 307-76(III) to permit the operation of a dog grooming business in an existing garage.**

Given there were four Board members present and applicants have a right to have a full (5 member) Board hear their case, Mr. Hennessey asked the applicant Ms. Carolyn Pierce if she would like to proceed with the hearing or continue the case to the next Board meeting. He explained a case for Special Exception was a matter of meeting the Zoning criteria. A majority vote is required for an approval; therefore a vote of 2-2 would deny the request. Ms. Pierce told the Board she would like to proceed with the hearing.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Ms. Pierce explained that she had become certified to groom dogs and decided to work at it into retirement. She noted a lot of people groomed dogs out of their home. She told the Board her garage already had water because the previous owner ran a hair salon above the garage. Ms. Pierce discussed her request. She noted it would be a small, part-time business contained entirely in the garage with no employees. The garage structure would not be changed. She didn't believe parking would be an issue given her driveway was 130ft in length.

Per Zoning, Mr. Hennessey pointed out that dog grooming had to meet the criteria for a General Home Occupation; one reason was the septic system. Ms. Pierce understood. She said she had the septic system inspected, which passed 'with flying colors'. The septic design has been received by the State. She noted there would only be grey water going into the system, no solid waste. Ms. Pierce reiterated she would be working on her own and would be happy to groom a small number of dogs each week. He didn't feel the septic system would be affected.

Mr. Kearney asked if there would be any dog boarding. Ms. Pierce answered no; grooming included a wash, blow dry and cut.

Mr. McNamara asked if the business would be run within the attached garage. Ms. Pierce answered yes, because the previous owner ran a hair salon and there was already water available. She noted the detached garage didn't have water. Mr. McNamara questioned how many dogs would be groomed. Ms. Pierce was unsure. Through her training found it took 2-3 hours per dog, therefore she didn't feel there would be more than 2-3 per day. She understood there would be competition given there were already a few dog grooming businesses in Town. Mr. McNamara inquired how close the nearest neighbors were located. Ms. Pierce believed there were mainly 2-acre lots in the neighborhood with the nearest neighbor being 150ft-200ft away. Mr. McNamara questioned if there were any trees or screening between homes. Ms. Pierce answered yes. Mr. McNamara wanted to know the square footage of the garage. Ms. Pierce replied the garage was 600SF.

Mr. LaFrance asked if there would be any employees. Ms. Pierce answered no. Mr. Hennessey pointed out under a General Home Occupation the applicant would be entitled to have a 3SF sign. Ms. Pierce understood. She said she might display an unlit sign on the garage so customers would know they arrived at the right place.

Mr. McNamara asked if all work would be done inside the garage. Ms. Pierce answered yes. Mr. McNamara questioned if there would be any storage (of supplies or materials) inside or outside of the garage. Ms. Pierce replied storage would be contained within the garage.

#### PUBLIC INPUT

Mr. Ron Burch, 13 Gordon Avenue questioned if there was a 'grandfathered' clause within the approval process to go from a hair salon to a dog grooming business. Mr. Hennessey answered no; the request for Special Exception for a business occupation was considered de novo. Mr. Burch confirmed that each new property owner would need to reapply. Mr. Hennessey answered yes. Mr. Burch wanted to know if there were any regulations that required ongoing inspections to ensure the business wouldn't affect the ground water or leaching systems. Mr. Hennessey replied dog grooming was listed as a General Home Occupation because of the concern regarding the septic system. He said certification was required for the septic is in good working order. Mr. Gowan reminded the Board that a General Home Occupation approval was also required to have limited Site Plan review with the Planning Board and have separate notice to abutters. He suggested to Ms. Pierce, if the request was approved, that a modest sign be placed at her mailbox, versus being displayed on her garage.

Mr. Burch wanted to know if there would be any post inspections conducted by either the Town or State to ensure there was no environmental dangers to the neighbors. Mr. Hennessey answered no. Mr. Burch questioned how neighbors would know if something was put into the water. Mr. Hennessey asked how far away Mr. Burch was located from the applicant's property. Mr. Burch believed he was approximately 200ft-300ft away; the applicant's back yard was quasi-visible from his property. Ms. Pierce noted Mr. Burch was located above her property on a different street. Mr. Burch agreed he was a distance away, but wanted some assurance. Mr. Hennessey pointed out that the applicant would be drinking from the ground water. He said everyone in Town should periodically have their water tested.

Mr. Burch was concerned with an expansion of the proposed business. Ms. Pierce replied the space she would use didn't allow for a high volume of customers. Mr. Hennessey explained the General Home Occupation rules were specific and if there was an expansion beyond what was allowed, there would be a problem. Mr. Gowan noted if the Special Exception was granted, the applicant was allowed to have a maximum of two on-site non-resident employees. However, there would be additional review and testimony at the Planning Board level that would be binding beyond the Special Exception.

Mr. Burch voiced concern about the water consumption, particularly during drier seasons impacting the water supply. Mr. Hennessey asked if the area had experienced issues with the water supply in the area. Mr. Burch said they hadn't in the last several years but they had received warnings from the State during dry seasons. Mr. Hennessey reviewed the criteria specific to waste water and noted that the applicant had followed such. Mr. Burch explained he was concerned with the grey water, given that his well currently had a high level of arsenic. He pointed out there were other location options for the applicant, such as commercial space within the Town that was zoned for business. On a practical level, Mr. McNamara pointed out if anything happened to the water the applicant would be the first one affected. For self-interest, he didn't feel the applicant would do anything to compromise their water. He called attention to the fact that the Special Exception specifically allowed for a home occupation in this instance. He said if an applicant met the criteria, the Board didn't have discretion, it was the law that they must grant the Special Exception. Mr. Burch replied the world was filled with good intentions, but things weren't always monitored, and without some controlling authority they had to go on good faith that an applicant wouldn't put themselves in peril. Mr. McNamara replied there were no guarantees in the world, and if the Special Exception was approved it would also have review by the Planning Board. Mr. Burch replied there may be some guarantee if there wasn't a dog grooming business in the back yard.

Mr. Kearney asked for an explanation of the dog grooming process and products used. Ms. Pierce replied shampoo was just like people used. She said she would bath the dogs and give them a haircut. She will dispose of the dog hair. She understood Mr. Burch's concerns, but at the same time didn't know how her water would affect his water, given that her septic was located in her front yard and he was located approximately 300ft. behind her up a large hill. Mr. Kearney questioned if any chemicals would be used in the shampoo or flea bath. Ms. Pierce replied she would mainly use shampoo and would strive to use organic products. Mr. Burch told the Board his house was probably no more than 35ft. above Ms. Pierce's house and his well was 305ft. deep. He couldn't answer how the elevation of the well system worked and reiterated his concern regarding the water.

Mr. LaFrance commented that the first person that would be harmed by a wrong doing would be the applicant. With regard to the septic system, he felt there could be more of an argument with running a sprinkler system compared to bathing three dogs in a day. He didn't see any harm with the request.

Mr. McNamara told the Board he reviewed the approval conditions and believed they had all been met. Mr. Kearney agreed that the request seemed to be a gentle use. He didn't hear testimony that would make him feel all the criteria had not been met.

Mr. Hennessey reiterated under Special Exception the Board voted either 'yes' or 'no' that an application met the criteria.

**BALLOT VOTE**  
**#ZO2016-00003:**

Mr. Hennessey – Yes  
 Mr. Kearney – Yes  
 Mr. McNamara – Yes  
 Mr. LaFrance - Yes

**VOTE:** (4-0-0) The motion carried.

**SPECIAL EXCEPTION GRANTED**

**Case #ZO2016-00004**

**Map 7 Lot 4-2-3**

**MARSHALL, John - 30 Lane Road - Seeking a Special Exception concerning Article XII, Section 307-76 (III) to permit a general home occupation to expand dog breeding.**

Given there were four Board members present and applicants have a right to have a full (5 member) Board hear their case, Mr. Hennessey asked the applicant Mr. John Marshall if he would like to proceed with the hearing or continue the case to the next Board meeting. He explained a case for Special Exception was a matter of meeting the Zoning criteria. A majority vote is required for an approval; therefore a vote of 2-2 would deny the request. Mr. Marshall questioned if he could appeal a denial. Mr. Hennessey replied an appeal could not be made on the basis of having four seated Board members. Mr. Marshall told the Board he was fine proceeding with four members hearing his case.

Mr. Kearney read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Marshall told the Board he was seeking a home occupation for his dog kennel. He said he was a dog breeder and in the location for seventeen years. He received two complaints for barking dogs, but not within the last few years. Mr. Hennessey understood he had been breeding dogs, but not called on it until now. Mr. Marshall explained he had been breeding dogs and per State law was allowed to sell up to fifty puppies per year without a commercial license. He was currently at a standstill and needed the commercial license to sell over fifty puppies per year. He needed permission from the Town prior to receiving the State license through the Department of Agriculture. He noted if the State issued him a license there would be monthly inspections of his kennel.

Mr. Hennessey questioned if the applicant fell under the minor or general home occupation. Mr. McNamara saw that the application was for a general home occupation. Mr. Gowan stated when reviewing the information in 2008, he believed at that time it fell under minor home occupation. The applicant recently came in to discuss expanding the operation, based on the information, it was the Zoning Administrator's (Jenn Hovey) opinion the operation fell under general home occupation, which would also require limited site plan review with the Planning Board.

Mr. LaFrance questioned if having the operation in a detached garage met the criteria. Mr. Hennessey didn't believe it had to be attached. Mr. Gowan noted an accessory home occupation didn't need to be attached. In the case of an accessory dwelling unit, it would have to be attached.

Mr. McNamara read aloud the criteria that indicates the business shall not consume more than 49% of the gross residential living space including accessory structures and shall not change the residential character of the property. Mr. LaFrance asked for the square footage within the garage being used for breeding. Mr. Marshall believed it was 1,000SF. He noted his garage alone was a two-story 24ftx42ft structure and separate from his house.

Mr. Kearney questioned how many dogs Mr. Marshall owned. Mr. Marshall replied he currently owned eleven dogs. He explained other breeders brought their puppies to him to sell. Mr. Kearney wanted to know how many dogs in total (personal and business) were at the property all at one time. Mr. Marshall replied his own dogs were always at his home. He couldn't answer how many puppies were on site because it fluctuated (from as few as 4 up to 15). He explained he only bred Boxers and didn't always have puppies around to sell.

Mr. McNamara wanted to know how often the State conducted inspections. Mr. Marshall said they didn't come down yet because he didn't have a commercial license; however if he received the license the State would conduct frequent unannounced inspections (possibly every two weeks). Mr. McNamara

questioned how much the business would expand beyond selling fifty puppies. Mr. Marshall replied it may expand to sixty-five; but he first needed the Town's approval. Mr. McNamara asked how close neighbors were located. Mr. Marshall believed the closest neighbor was 200ft. Mr. McNamara asked what surrounded the garage and if the area was wooded. Mr. Marshall stated he had an outdoor chain link fence up against a stockade fence 50ftx100ft for double protection. Specifically, Mr. McNamara wanted to know if there was any screening between Mr. Marshall and his neighbors. Mr. Marshall answered yes; there were large pine trees. Mr. McNamara understood there had been a complaint about barking. Mr. Marshall said the complaint was made approximately three years ago. He said there hasn't been a problem since then.

## PUBLIC INPUT

Jill and Scott Atkinson, 26 Lane Road came forward speak in opposition. Mr. Atkinson read aloud (and submitted for the record) a prepared statement outlining the concern for allowing more dogs at the location. She said they were currently not allowed to sleep with their windows open due to the noise. Dogs are let outside between 4am-5am and allowed to bark for extended periods of time, which is disruptive to their sleep and to their children's sleep. Even with their windows shut, there are times they're able to hear the noise of the dogs housed in the garage. Ms. Atkinson said they enjoy using their back yard and/or porch for personal use and entertaining friends. During these times (if the dogs are outside) the dogs bark at them simply for being outside, to the point that visiting company makes comments. The noise is excessive. Ms. Atkinson said the pen for the dogs may be conveniently situated out of the applicant's view; however, due to the way her house is situated and the fact that her land is higher than the applicant, every window on the back of their house overlooks directly into the dog pen. She told the Board that the existing dog breeding and sales currently causes excessive traffic in the neighborhood. They were concern with how an expansion would affect them further in the future, not only as homeowners and neighbors, but also if they decided to sell their home.

Mr. Hennessey noted the applicant was applying for a general home occupation. He questioned if the applicant should instead be seeking a variance. He referenced the criteria for general home occupation. He questioned if the expansion kept with the residential character of the neighborhood. Mr. Atkinson believed the answer was yes, from the standpoint that it was relatively clear there was a storefront on the property. He said there was a sign and two vehicles that had clear lettering, phone numbers and web addresses. With the presence of the signage and customers visiting the site gave it the representation that there was a business on the property. Mr. McNamara referenced criteria #6, and heard testimony from abutters that they had line of sight into the applicant's back yard and dog pen.

Karen and Ken Fournier, 1000 Mammoth Road resided approximately fifteen years next to the applicant. Ms. Fournier noted there was 40ft. from the end of their house to the dog pen. She told the Board that the dogs barked all the time and she had contacted the Dog Officer on several occasions. She said her son's bedroom was on the back corner of the house and couldn't open the window because of the dogs barking; he runs a fan so he can sleep. She said they were unable to watch television in their family room with the windows open because of the noise from the dogs barking. Ms. Fournier noted they had brought the situation to the applicant's attention, the noise stops for a day or two and then goes back to the noise. She said they were unable to enjoy their swimming pool because of the barking. She said they may only have ten dogs, but when they have puppies there's more. She believed allowing an expansion would make the situation worse. She said no one would want to purchase her home given the number of dogs located next door. Ms. Fournier told the Board she was a dog lover, but when there was an overabundance of animals housed in a garage and being sold, it sounded to her that they weren't being taken care of.

Mr. Marshall told the Board he had 10-11 adult dogs that he let outside approximately every three hours to relieve themselves. In the summer the dogs stay outside for longer periods of time (2 hours). He noted it was the nature of a dog to bark at things such as squirrels, birds etc. He constructed the fence to try to

reduce those instances. Mr. Marshall was unaware of recent complaints to the Dog Officer. From what he understood the officer was unable to look into complaints if people didn't leave their name or address.

Mr. Hennessey questioned if the request should be a special exception or variance. He asked the Board if they wanted to conduct a site walk. Mr. LaFrance couldn't recall the Board ever doing a site walk for a special exception. In this circumstance, he felt it might be a good idea. Mr. McNamara called attention to the fact that the applicant would have to prove all the conditions to be granted a special exception. He said if any of the conditions weren't met, the Board couldn't grant the special exception. He didn't have a particular objection to a site walk, but felt testimony was clear that several conditions were questionable. Mr. Hennessey reiterated that the criteria was either met or it was not. He believed the matter in front of the Board was problematic under special exception for general occupation; however under variance there was a different set of criteria to meet. He suggested that the applicant speak with the Zoning Enforcement Officer. The Board discussed if they would schedule a site walk and decided against such. There was question whether the applicant should submit under variance. Mr. Hennessey stated if the special exception was denied, the applicant could submit a request for variance.

**BALLOT VOTE**                      Mr. Hennessey – No  
**#ZO2016-00004:**                  Mr. Kearney – No  
    Mr. McNamara – No  
    Mr. LaFrance - No

**VOTE:**                                (4-0-0) The motion failed.

### **SPECIAL EXCEPTION DENIED**

Mr. Gowan suggested the applicant come to the Planning Department to discuss his case and existing business.

#### **Case #ZO2016-00005**

##### **Map 41 Lot 10-279**

**BARLO SIGNS - 28 Bridge Street - Seeking a Variance concerning Article XI, Sections 307-69S, 307-69 S2 & 307-69O – Permit the installation of (1) one internally illuminated ground sign, 20ft tall, 70.2 SF, with a front setback of zero and a side setback of 12ft. Ground sign contains an electronic sign which will display full color messages and graphics.**

Given there were four Board members present and applicants have a right to have a full (5 member) Board hear their case, Mr. Hennessey asked the applicant Paul Martin of Barlo Signs and the owner of the property Christopher Matte (Ace Cigarettes) if they would like to proceed with the hearing or continue the case to the next Board meeting. He explained a case for Special Exception was a matter of meeting the Zoning criteria. A majority vote is required for an approval; therefore a vote of 2-2 would deny the request. Mr. Martin told the Board he would like to continue the hearing to the next meeting.

The case was date specified to the April 11, 2016 meeting.

#### **Case #ZO2016-00006**

##### **Map 35 Lot 10-352-3**

**MUSTO, Dominic - 17 Cara Lane - Seeking a Special Exception concerning Article XII, Section 307-74 to permit an accessory dwelling unit.**

No one was present to speak to, or represent the case. The Board continued the case to the April 11, 2016 meeting.

**DATE SPECIFIED / CONTINUED CASE(S) – April 11, 2016**

Case #ZO2016-00005 - Map 41 Lot 10-279 - BARLO SIGNS - 28 Bridge Street

Case #ZO2016-00006 - Map 35 Lot 10-352-3 - MUSTO, Dominic - 17 Cara Lane

**MINUTES REVIEW**

**February 29, 2016:**

**MOTION:** (Kearney/LaFrance) To approve the February 29, 2016 meeting minutes as amended.

**VOTE:** (4-0-0) The motion carried.

**ADJOURNMENT**

**MOTION:** (LaFrance/McNamara) To adjourn the meeting.

**VOTE:** (4-0-0) The motion carried.

The meeting was adjourned at approximately 8:06pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary