

**Ashland Zoning Board of Adjustment Meeting
Minutes (Draft)
April 2, 2015**

ZBA Members Present:

Eli Badger, Elaine Allard, Michelle Fistek, Sue MacLeod, Patsy Tucker (alternate)

Others Present:

Mark Puffer, Attorney for Ashland ZBA; Steven Whitley, Attorney for Ashland Planning Board
Dr. Donald Lester (applicant), Attorney Daniel Muller

Frank McBournie, D. Scott Bell (abutters), Attorney Chris Boldt

Members of the Public:

Approximately 70 people

The meeting was called to order at 7:06 pm by Chairman Eli Badger in the Ashland Elementary School Library. **A motion was made (Tucker) and seconded (Allard), and approved (5-0) to recess the meeting and reconvene in the Elementary School Cafeteria.** The meeting reconvened at 7:14 in the Cafeteria. Roll call of the ZBA Board was taken. Chair Badger appointed alternate Patsy Tucker as a voting member for the meeting.

**Continued Hearing from March 9, 2015: Dr. D. Lester, DVM,
request for a variance and special exception for property located
at 83 Depot Street (TML: 018-002-002) in the Rural Residential Zone.**

**(1) VARIANCE FOR RELAXATION OF FRONT SETBACK FROM 35 FEET TO 15 FEET
(ZONING ORDINANCE, SECTION 2.3C)**

Attorney Daniel Muller for Client Dr. Lester – Opening Remarks

His client is here on a remand from the Superior Court relative to an appeal by the abutters and pursuant to an agreement between the Town and the abutters. Dr. Lester has filed applications for a special exception and a variance. Attorney Muller questioned whether from a legal perspective the ZBA has subject matter jurisdiction over either one or both of the matters.

In December 2013, the ZBA granted a variance to relax the front setback. The minutes of that meeting reflect no conditions, but the written decision states a condition that a noise abatement plan be presented to the Planning Board. The filed appeal raised no challenge regarding the variance; therefore the Superior Court lacked jurisdiction to look at the variance or dispose of it, and the variance is final and binding. We do not believe the ZBA has jurisdiction to consider the variance for setback because (1) it became final and binding on January 2014, (2) there is a lack of a timely challenge and (3) the issue was not raised in the appeal.

The special exception has one similar issue and one distinct issue. If there is no timely filing for rehearing (as per pleadings filed by town), then the court has no subject matter jurisdiction or power to adjudicate. The special exception for a veterinary hospital was granted in 1993. The local ordinance has nothing regarding needing an additional special exception to expand a use allowed by special exception in the first instance. The ordinance talks about a use granted by special exception becoming a permitted use once the conditions are satisfied and the ordinance provision liberally allows nonconforming uses to expand as business needs warrant as long as it does not become more nonconforming and complies with the zoning ordinance. The ordinance requirement for an expansion of a special exception imposes a far more restrictive doctrine on uses allowed by special exception contrary to the laws of the state.

The 1993 decision granted a special exception for a veterinary hospital (and all that it includes) as a home occupation. However, the 1993 zoning ordinance classified animal hospitals/kennels as not allowed as home occupations. Dr. Lester has operated under the granted special exception as a veterinary hospital since 1993; he has a vested right to use that property as a veterinary hospital.

Attorney Muller -- Variance Criteria (for front setback)

Criteria 1 and 2 (public interest and spirit of the ordinance): A mere conflict with the ordinance or mere desire to enforce the zoning ordinance are not grounds for denying a variance. Does it alter the characteristic of the neighborhood or threaten public health, safety and welfare? The original building already encroaches into the front setback and the portion of the addition in the setback is far smaller than the portion of the existing building. Visually there is no particular difference. Further down the street there are other buildings closer to the setback. Given the size of the property, the location of the building in the center of the property does not create an overcrowding issue. Relative to the public health, safety, and welfare, the limited portion in the front setback does not block sight or create overcrowding. The zoning ordinance seems to afford the right to expand here; the expansion does not make the building more non-conforming.

Criteria 3 (substantial justice): The proposed addition allows the business to continue to grow (additional surgical, conference, kennel space). If the addition is pushed back, existing surgical and hospital areas would have to be modified at significant cost and impede flow of the business operation set-up. It is difficult to say that the addition would increase any issue; there had been no previous issue with the setback.

Criteria 4 (diminution of property values): The existing (non-conforming) structure predates the zoning ordinance and the addition does not encroach into the setback as much as the pre-existing structure. The structure has existed in this condition, the neighborhood has survived with the structure as it is, and there has been no indication that the property values have dropped in this time. There is no diminution in property values if the setback variance is granted.

Criteria 5 (unnecessary hardship): The 2.5 acre site with pre-existing non-conforming building already encroaches into the setback and has already been used for a veterinary hospital since 1993. Given the interior configuration, making a zoning-compliant addition would be costly to change things in the existing building and would make the operation much more difficult. The new configuration makes for the necessary flow for proper operation of the business. There is no feel of overcrowding; the closest residential structure is 150 feet from the building. The property is near both the commercial and industrial zoning districts. There is no fair and substantial relationship between the general purpose of the zoning ordinance and the application in this particular case. The proposed use is reasonable, with lesser encroachment for the addition to help this business that has been allowed since 1993.

Attorney Chris Boldt for Abutters Frank McBournie and D. Scott Bell – Opening Remarks

This variance is properly in front of the ZBA. Due to great deal of procedural lack of clarity in Dec 2013, filings made by my clients on their own and their prior attorney, conversations with applicant's prior attorney, and agreement of all attorneys involved, this entire thing is sent back as if Dec 4, 2013 votes had not occurred. Dr. Lester has chosen to go forward without proper permits involved (built the addition, changed the location of the outside kennels, added a driveway) at his own risk. The fact that he has done so should be in essence ignored by the board and not used as a factor of "it's there already, we need to let it stay there."

The ZBA vote to grant the variance required a noise plan, which was never submitted. We consider the noise plan to be a part of the application now before you – it needs to be engineered; it is the key issue for the Board's determination in the variance and special exception. If the noise is handled in conformity with the American Humane Society (to protect the animals, neighbors, and employees), there would not be issues of concerns for my clients.

What was granted in 1993 by special exception (referenced in the minutes) was a home occupation, with Dr. Lester living on site, and with an attached floor plan of the existing house showing nothing outside of it. Ashland's home occupation language says even if it doesn't fit it might be allowed by special exception, which would normally be a variance. The provision of the ordinance that says anything can happen by special exception may be beyond the scope of the zoning enabling act. Looking at what was actually approved, once Dr. Lester moves away, he is no longer a legitimate use under your ordinance. He should be asking for a variance for that use and his grandfather status does not exist.

Attorney Boldt noted that Attorney Muller had commented on his internet research confirming that many other locales had outside kennels/runs, although the zones were not indicated. Attorney Boldt also noted references in the December record of Ms. MacLeod's research of other facilities bordering or

in a residential zone, many of which did not have outside facilities. The town's noise ordinance includes reference to barking dogs as a nuisance. There have been numerous complaints from the abutters but also 2 cease and desist orders from the BOS regarding the barking dogs.

There are not legitimate vested rights. With Dr. Lester no longer living there, all the prior grounds for approval have gone away and he now needs a variance to allow the use and to expand.

Attorney Boldt – Variance Criteria (for front setback)

Criteria 1 and 2 (public interest and spirit of the ordinance): The first 2 criteria have been collapsed and are basically viewed by the same standard – do they unduly and in a marked degree conflict with the stated purposes of the ZBA? Will it change the neighborhood or the health, safety and welfare? My clients' health, safety and welfare is in question as a result of the barking dogs. The public interest includes my clients' interest to quiet enjoyment of their property that they pay taxes on and that they have improved with their money. This cannot be blindly ignored.

Criteria 3 and 4 (substantial justice and diminution of property values): These are not met by this application. Barking dogs is defined by your ordinance as a nuisance (with a 30-minute leeway). This includes the compilation of multiple dogs barking, in an outside area with open access, open portals for the sound to come out.

Criteria 5 (unnecessary hardship): The application noted minimum impact, with no substantial vegetation being removed. We disagree with this statement based on the clearing and grading for the new and unauthorized parking area, being used for horse trailers and oil tanker. The noise abatement list provided with the application was not previously provided to us, was not from an appropriate engineer, does not include the specifications that it references, allows for windows and doors to be open thereby eliminating any sound proofing, and the outside runs are not soundproofed.

Before they bought the property, the clients checked the town records and were told that no kennels were allowed; Dr Lester said there would be no issue with outside dogs. Their complaints have not been addressed.

If permission is granted to Dr. Lester, do so with appropriate protections for his [Boldt's] clients; industry standards for sound-proofing have been provided. The site plan regulations require a landscaping buffer and fence when there is a commercial use abutting a residential use. That would be a reasonable criteria to require. We would request that the fence be off the property line so existing vegetation is not destroyed. My clients view that their property value has decreased as a result of the noise. Is it reasonable to allow dogs to bark to the detriment of a residential abutter? The variance application references only indoor kennels and does not reference anything outside. We would like approval to require the elimination of any outside kennels or runs.

Abutter Comment: Jeanette Stewart stated that in the 20 years she has lived there, she has never heard any continual noise from the dogs, even though there are no trees or bushes between her property and Dr. Lester's property to soften the sound.

A motion was made (MacLeod) and seconded (Allard) to accept the application for a variance from the front setback as complete. The motion passed unanimously in the affirmative (5-0).

Additional Input

Anthony Randall (as surveyor of the property plan): Only one tree was cut down for the project and only a grassy area was disturbed for the new driveway.

Anthony Randall (as Ashland Chief of Police): Chief Randall reviewed the only 3 complaints in police files (4/6/2011; 7/25/2011; 9/4/2011) from the abutters (McBournie, Bell) about extended barking of dogs.

There were no additional comments at this time from the general public regarding the application for a variance of the front setback.

Dr. Lester (applicant) asked if the variance had been previously granted. Chair Badger and Attorney Puffer (ZBA) clarified that the variance for setback had been approved on 12/4/2013. The

matters of the variance and special exception were sent back to the ZBA by the Superior Court to start the process over. During deliberations over the issue of relaxing the front setback requirement, the ZBA will presume the ordinance is valid and proceed to consider whether the applicant has met his burden of proof with respect to the front setback variance criteria.

Attorney Muller (for the applicant): Attorney Boldt had an opportunity to get in on an agreement, but objected to getting involved in that agreement. Attorney Boldt's pleadings talked about site plan approval and the special exception dealing with the use and indicated that he didn't have an issue with the variance. Attorney Muller stated that the variance was never challenged or appealed, it was final, and the Superior Court had no jurisdiction. The issue of noise is appropriate to the issue of the use and will be dealt with at that time.

Attorney Boldt (for the abutters): The issue is the noise because that was a condition of the prior approval. There are two cease and desist orders (4/20/2011 and 6/8/2011) from the BOS, noting kenneling/boarding in violation of RSA 466:31,II(b) (noisy dogs) and constant barking. If the variance is granted, it should be with conditions that protect property values and impose conditions on the noise. The outside kennel area has been changed in location (to the back) and expanded. We are not asking for removal of the expansion if the noise is adequately contained within the building – enclose the outside kennels or remove them, and make the addition soundproof. We reserve our right to object on the grounds if that protection is not made with the variance.

Attorney Muller responded that noise is part of the special exception.

A motion was made (MacLeod) and seconded (Allard) to recess the meeting to confer with the ZBA Attorney Puffer. The motion passed unanimously in the affirmative (5-0).

Meeting recessed at about 8:28 and resumed at about 8:35.

Summary of Comments from the Public

Various questions and comments were made by the public (including Jeanette Stewart, Diane Hill, Jeff Malone, Laura Lamson, and Donna Rhodes). Responses from the ZBA included: reiteration of the Superior Court remanding the issues back to the ZBA, explanation of zoning/setback/variance, clarification that the front of the addition still sits in the front setback area, and explanation of the deliberation process on the variance criteria.

The public portion of the hearing was closed at 8:46 pm.

Deliberation on Criteria for a Variance

1. Granting the variance would not be contrary to the public interest.

The location of the new section is not contrary to the public interest, because it sits further back from the road than the original building.

The roll call vote was unanimous 5-0 for True.

2. If the variance were granted, the spirit of the ordinance would be observed.

The spirit of the ordinance is not affected, as the addition is still further back from where the original building is located.

The roll call vote was unanimous 5-0 for True.

3. Granting the variance would do substantial justice.

The interpretation of substantial justice is that a decision would not put out of balance one party's interest over another. This building's location would not overly benefit one party to the detriment of another party. Substantial justice is addressed.

The roll call vote was unanimous 5-0 for True.

4. If the variance were granted, the values of the surrounding properties would not be diminished.

If we allow this setback for the addition, the structure would enhance the neighborhood rather than not. The issue of the setback does not affect the value.

The roll call vote was unanimous 5-0 for True.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

Attorney Muller was asked to further explain what hardship exists (other than financial) for where the building is actually located on the land.

Attorney Muller – There has already existed a non-conforming building with a particular layout that has been used for a continuous purpose. You are allowed to consider the financial aspect. If you were to make the addition compliant, you would have to re-do the interior to get proper operational flow. Other buildings in the area are also closer to the road, so this reflects the character of the area.

Dr. Lester – If you moved the structure back, it would go into the septic system. If you moved it closer to the abutters, it would create conflict. If you moved it closer to the road, it would further encroach into the setback.

Attorney Boldt – Financial consideration is no longer part of the criteria (2010 statute changed). The approximate location of septic system is further back on the plan; the structure could be slid back without any impairment of the septic system as shown on the applicant's plan.

Attorney Muller countered that you can consider the financial aspect.

Mr. Badger and Mr. Randall reviewed the scaled plan relative to the location of the septic system and the size of the addition. Mr. Randall estimated that moving the addition back would interfere with the septic tank and possibly with the septic field.

The roll call vote was unanimous 5-0 for True.

ii. The proposed use is a reasonable one.

It is reasonable to move the setback to where the building is located.

The roll call vote was unanimous 5-0 for True.

Chair Badger stated that the variance for relaxation of the front setback has been granted. The parties have 30 days within which to appeal the decision.

(2) SPECIAL EXCEPTION (ZONING ORDINANCE, SECTION 6.3.1)

A motion was made (Allard) and seconded (Fistek) to accept the application for a special exception as complete. The motion passed unanimously in the affirmative (5-0).

Attorney Puffer noted that the ZBA can take into consideration all arguments heard previously (on the prior variance application) both with respect to jurisdictional issues and also on the merits of the proposed use.

Attorney Daniel Muller for Client Dr. Lester – Opening Remarks

The abutters' Attorney Boldt has suggested that this was considered a home occupation in 1993. But in the July 27, 1993, minutes Eli Badger comments that "the zoning law does not classify animal hospitals as home occupations." They knew then that they could not approve it as a home occupation. If you wanted to allow one of the expressly prohibited home occupations, you would have had to grant a variance. There may have been a condition that Dr. Lester would live there, but it is clear that boards cannot put conditions that limit approvals to particular persons – approvals go with the land, not with particular people.

Attorney Muller objected to one of the Board members doing personal research. If there is a reason that one cannot make a decision without relying on personal research, he would ask for disqualification. Board members can rely on their personal knowledge based on familiarity with the area, but it does not presuppose that you can go out and do research.

Attorney Muller still reserves his jurisdictional objections.

Attorney Muller – Special Exception Criteria

Criteria 1 (appropriate location for intended use): The same use has existed since 1993, with a vested right to use as a veterinary hospital. The building is approximately in center of the property (250 feet to one residence, 150 feet to the other residence), with a natural buffer between this and surrounding properties. The rural residential zone also permits agricultural and farming uses and the use of dogs that herd animals (exempt from the barking dog statute). Outdoor kennels were there when the abutters bought their property. There is no prohibition on residents having dogs within the neighborhood. A 4/13/2012 memo from an employee was shared with the Board as an example of “manufacturing a noise issue” by abutters. The volume of complaints does not reflect that there is a noise issue.

Dr. Lester wants to try to mitigate concerns -- he has moved more of the kennels indoors, he has used particular windows that direct noise downward, and is open to other reasonable suggestions. Complete silence is not reasonable. Humane Society standards for animal shelters are just Humane Society standards. Use of outdoor kennels is limited to certain situations. Dr. Lester is willing to put up a fence along the boundary and has already put a fence along the outdoor run. If there is truly a violation, there is a remedy (RSA) if the dogs bark more than 30 minutes. Dr. Lester is willing to give up the practice of housing stray dogs that are brought in by the police.

Criteria 2 (compatible with neighboring uses): The hospital has been there for 20 years, with only this one issue raised by the abutters.

Criteria 3 (diminution of property values): The same use has existed since 1993 and the outdoor kennels have existed since 1994. The size of the kennels have not changed. Property values have not gone down in this area.

Criteria 4 (nuisance or hazard to vehicles or pedestrians): For 20 years there have been no reported issues. The driveway has received a state permit (2014). The second driveway complies with zoning requirements of the town.

Criteria 5 (adequate and appropriate facilities are provided): The veterinary hospital has office space, examination rooms, surgical rooms, indoor kennel, and outdoor area for limited use. The expansion added indoor kennel, conference room, additional examination room. No new septic is required or proposed. While we don't think there is truly a noise issue, we are willing to mitigate some noise as in the plan provided with the applications.

Criteria 6 (proposed use complies with lot sizes, frontage & setback requirements): The only dimensional issue is the front setback which the board has granted.

Criteria 7 (roads capable of carrying additional traffic): There will be no effect on traffic on Depot Street, a state route which has no limitations on terms of its use. Parking is sufficient. The second driveway will allow horse trailers to not take up the rest of the customer parking. Fuel delivery is on that side and the driveway prevents them driving on the grass.

Attorney Muller, in response to a question regarding a noise abatement plan, indicated that there was a noise abatement plan in one of Attorney Wood's prior filings. It was part of the packet delivered March 11, 2015 (a letter dated Dec 18, 2013). Susan MacLeod noted that the copy of the Dec 18 attachment did not have the handwritten amendment that was initialed by Dr. Lester on Dec 18.

Mr. Badger said it was his understanding that when we started this we were starting from ground zero, the application as it was given to us Dec. 4, 2013.

Attorney Muller said that if there are reasonable requirements that people want to do with regard to noise abatement, we are open to hearing additional possibilities. If Dr Lester agreed to it once, I assume he would agree to it again. While we are starting over, if there is a reasonable proposal or something that was brought up beforehand that you want for noise mitigation, I'd be happy to speak to Dr. Lester about it and we could go from there.

Attorney Chris Boldt for Abutters Frank McBournie and D. Scott Bell – Opening Remarks

We are not expecting silence, but are expecting that barking dogs will not always be audible to my clients. If you believe Attorney Muller that there is not a problem, then you're saying your BOS had no basis for the cease and desist orders on 2 occasions. My clients disagree that they have instigated barking (as per Apr 13, 2012 statement from employee). You will have to find that those criteria have not

been met for this expansion as proposed, because there are outside kennels and the inside kennels have windows which open to the outside. We are not seeking to prevent the doctor's business, but seeking to prevent the doctor's business from interfering with the quiet use and enjoyment of the next door residents.

Attorney Boldt – Special Exception Criteria

Criteria 1 (appropriate location for intended use): It would be appropriate if the windows were soundproofed and if the outside kennel were either removed or completely enclosed. If they need that extra space all the time, then enclose the kennels; if they don't need it, they can remove it and walk a dog. Without those restrictions, it is not an appropriate location.

Criteria 2 (compatible with neighboring uses): Without the conditions, it is not compatible. With the conditions we've proposed, it is.

Criteria 3 (diminution of property values): The same reasons apply. With conditions that are different from the plan before you, it can be met and they can continue to grow the business without harming my clients.

Criteria 4 (nuisance or hazard to vehicles or pedestrians): There will be no nuisance -- that is your ordinance. Your ordinance defines nuisance as a barking dog, multiple dogs combined, more than 30 minutes.

Criteria 5 (adequate and appropriate facilities are provided): Remove the outside kennels or completely enclose them if the extra space is needed. Keep the windows closed and soundproofed. Then they can have that operation. Without those conditions, you are not providing adequate and appropriate facilities.

Criteria 6 (proposed use complies with lot sizes, frontage & setback requirements): The setback issues (variance granted) is not an issue.

Criteria 7 (roads capable of carrying additional traffic): Not an issue.

The outside kennels were added in 1994 after the original 1993 approval. The original application (1993) to the Planning Board had no reference to outside kennels and the diagram only shows the footprint of the building. In the minutes of July 27, 1993, representative Marion Merrill of Dr. Lester said he will live on the property as well as have an office. That representation was made to the Board and is entirely relied upon (even though it did not come into the conditions). In 2013, Chair Badger made recollection of those minutes -- nothing outside the footprint and going to be a home occupation. This is not something with grandfather rights of legitimacy.

We want the noise to stop; we do not want to close the business. You (the Board) have the ability to put in reasonable, rational conditions that will allow this business to grow but bring comfort to my clients and eliminate the outside noise – remove the outside kennels or completely enclose them, and have the windows on the kennel not able to open or otherwise soundproofed. Your zoning ordinance on special exceptions gives you the power to add additional conditions, specifically suitable site landscaping and screening to reduce noise (the baffle fence does nothing) and specific layout facilities can be required.

Questions from the ZBA

Are there recordings of the noise? – **Attorney Boldt's clients** responded that they do have recordings of the barking.

What was the outcome of the cease and desist order (kenneling and boarding)? – **Dr. Lester** replied that he complied with the cessation of boarding dogs.

How much have clients McBournie and Bell been bothered lately since the addition, as there are no records of additional police reports? – We [**the abutters**] hear barking dogs in the morning and evening. Dr. Lester's staff is conscious of it because of this situation, but it can still be heard through closed windows.

Public Comments and Questions

There were no comments from other abutters.

Additional questions from the public (including Diane Hill, Jeff Malone, Charles Fletcher) and other issues were addressed.

Are the previous special exceptions still valid? – **Attorney Boldt** said the 1993 special exception was limited to home occupancy; Dr. Lester has changed the use without coming back until 2013.

Attorney Muller stated his position that the 1993 special exception is still valid, additional special exceptions are not needed, and that the parties are here on zoning, rather than planning issues.

Have there been any complaints from the apartment tenants? – **Police Chief Randall** said that complaints about barking dogs have only come from the abutters as stated earlier and that there have been no other complaints from anyone in the neighborhood regarding any other types of noise, including traffic on the streets or I-93.

What is a kennel? – **Dr. Lester** explained that when he expanded, he included an indoor area for dogs (e.g., dogs coming out of surgery into recovery or for observation). The discussion also distinguished between a dog run versus dog housing – a dog run (with chain link enclosure) is what is outdoors, typical of a veterinary hospital. Dr. Lester stated that he is conscious of noise problems, has tried to mitigate it and that is why he added the indoor space, so a particularly noisy dog goes indoors and he has directed his staff to do so.

How can the abutters' attorney determine what are reasonable alternatives? Does completely enclosing the outdoor runs negate that use and that value? – These questions prompted an extended discussion about research. **Mrs. MacLeod** acknowledged that Attorney Muller had earlier in the meeting objected to her previously referenced research, but she explained that it was for the purpose of defining what a kennel is, what an enclosure is and what that function is. She had shared that information with the entire Planning Board and with Dr. Lester in a public hearing context, at which he had time to respond. It was simply meant to bring that information into the whole procedure.

Chair Badger asked if Dr. Lester or Attorney Muller wished Mrs. MacLeod to recuse herself. Following attorney/client consultation, **Dr. Lester** asked Mrs. MacLeod if she felt she could be impartial. She replied that her research was just to get a better understanding, specifically around the difference between a kennel and an enclosure and how some other veterinary hospitals dealt with it; using the word kennel generally seemed to refer to boarding. Dr. Lester noted that the plan designates outdoor enclosure, not kennel. Dr. Lester stated he felt she should *not* be excused.

If the size and use of the outdoor enclosures has not changed, how can that devalue the property? – In 1993, there were no outdoor kennels or runs. In 2007, when the abutters bought their property, there were outside runs.

Dr. Lester clarified that Marion Merrill did not represent him in 1993, but she represented the sellers of the property.

Attorney Boldt clarified his clients' request that the outside runs be completely enclosed or removed, and that the windows in the indoor kennel area be permanently closed or soundproofed so they are not a source of sound coming out. It was clarified, with assistance from contractor Tony Guyotte, that 2 windows face the McBournie/Bell property and 2 windows face south adjacent to the run. The windows are down-facing windows and open up only to a point. Attorney Boldt asked that the 2 south-facing windows be soundproofed in addition to the 2 facing his clients' property.

The public portion of the hearing was closed.

Chair Badger reviewed that a special exception was granted in 1993 for this as a veterinary hospital with certain conditions. The ZBA portion of the minutes [with the conditions] have gone missing. Since 1993, there have been several building permits issued and the town has accepted them; whether they should have been before the Planning Board and Zoning Board is not at issue. Mr. Badger stated that they are talking about the current use as shown on this plot plan and that Dr. Lester has complied by putting everything that he wanted on this particular plot plan.

Dr. Lester recalled that they asked him at the time (1993) if he was planning on living there; at the time he was. Dr. Lester feels that it did not infer that he would always live there nor is it legal to require that he would always live there. Mr. Badger recalled that there were no outside dog runs at that time nor were any shown on the plot plan. Dr. Lester recalled being asked what he would do with medical waste (dog poop).

Chair Badger stated that the ZBA is dealing with what Attorney Boldt has said, what Attorney Muller has said, and the criteria for special exception to handle this particular proposal.

The meeting recessed at about 10:30 pm to allow the ZBA to consult with Attorney Puffer. The meeting resumed at about 10:40.

Deliberation on Criteria for a Special Exception (Section 6.3.1 of the Zoning Ordinance)

1. The specific site is an appropriate location for the intended use or structure.

It is an appropriate location for the intended use as an animal hospital.

The roll call vote was unanimous 5-0 for True.

2. The use will be compatible with neighboring land uses.

This has been an animal hospital since 1994, in continuous use as an animal hospital, and is compatible with land uses in the area.

The roll call vote was unanimous 5-0 for True.

3. The property values in the zone and in the surrounding area will not be reduced by such a use.

This is an expansion of an existing business and the land value has not been reduced since the original veterinary hospital was there. Do we have anything that says one way or the other whether the land values have been affected because of what is there? What does increasing the use as an animal hospital do to the neighboring properties within that zone? If the addition had quadrupled the size and within the 25 foot side setback, it might have affected the values. But it is at least 150 feet away. This particular extension does not change the land value, given that town shed, railroad tracks are in the vicinity.

The roll call vote passed in the affirmative 3-2.

Badger, Fistek and Tucker voted True. MacLeod and Allard voted False.

4. There will be no nuisance or serious hazard to vehicles or pedestrians.

Do not see any issue with this.

The roll call vote was unanimous 5-0 for True.

5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

This has not been answered with professional input. During the vote, Chair Badger expressed a need for a better understanding of what adequate and appropriate facilities for the proper operation means in this case, and wished to inquire of Dr. Lester. Attorney Boldt objected that it was highly unusual at this stage in the deliberation to ask for more input and said the Board has to go on the evidence that is before it.

The roll call voted failed in the negative 2-3.

Fistek and Tucker voted for True. Badger, MacLeod and Allard voted False.

6. The proposed use will comply with the minimum lot sizes, frontage and setback requirements set forth in 2.3.

The variance for this has already been granted.

The roll call vote was unanimous 5-0 for True.

7. Existing road and highways are capable of carrying the additional traffic.

The roll call vote was unanimous 5-0 for True.

Chair Badger stated that the special exception failed. The parties have 30 days to apply for a rehearing.

The meeting was adjourned at 10:49 pm.

Minutes submitted by Mardean Badger