



Office of  
**The Zoning Board of Appeals**  
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**RECEIVED**  
 NOV 08 2022  
 TOWN OF TOWNSEND  
 TOWN CLERK

William Cadogan, Chairman  
 Sean Pearson, Member

David Chenelle, Clerk  
 Vicky Janicki, Member

Darlene Sodano, Vice Chair  
 David Funaiolo, Assoc.  
 Member

## ZONING BOARD OF APPEALS

**Wednesday, September 21, 2022 at 5:30 pm.**

on Zoom remotely accessible:

Time: Jul 20, 2022, 19:00 Eastern Time (US and Canada)

Join Zoom Meeting via this link:

<https://us02web.zoom.us/j/89263051521?pwd=eHpTbzdYdEhFMkF0YWlzMVVzYzQ5dz09>

Meeting ID: **892 6305 1521**

Passcode: **382719**

### 1 **PRELIMINARIES: votes may be taken.**

- 1.1 Call the meeting to order and roll call. Chairman Bill Cadogan called the meeting to order at 5:30pm. Chair Cadogan appointed Associate Member David Funaiolo to full member for this meeting. Present via remote access: Bill Cadogan (B.C.), David Chenelle (D.C.), Vicky Janicki (V.J.), David Funaiolo (D.F). Absent: Darlene Sodano, Sean Pearson. Others present via remote access: Beth Faxon, ZBA Admin., Hartley Pleshaw, TCAM Zoom meeting host, Mike Crowley, Land Use Coordinator.
- 1.2 Notice of Zoning Board of Appeals vacancies – review volunteer response forms received. None received.
- 1.3 Chairman's additions or deletions. None.
- 1.4 Approval of Zoning Board of Appeals meeting minutes July 20, 2022. D. Chenelle made a motion to approve the minutes of July 20, 2022. D. Funaiolo seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaiolo, B. Cadogan. The motion carried 4-0-0.

### 2 **PUBLIC HEARINGS:**

- 2.1 **5:30 PM** – continuation of public hearing on the application of **Candice Haagerstrom** for a **special permit** under Zoning Bylaw §§145-26 B. pursuant to §145-65 to operate a dog grooming business in residence at 478 Main Street. Continued to November 30, at 5:30 pm. D. C made a motion to open the continuation of the public hearing for a dog

grooming business in residential district at 478 Main Street. D. Funaiole. seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaiole, B. Cadogan. The motion carried 4-0-0.

Admin will verify that the Applicant is agreeable to the continuation of the public hearing to November 30<sup>th</sup> at 5:30pm. D. Chenelle. made a motion to continue the public hearing on 478 Main St. dog grooming application to November 30<sup>th</sup> at 5:30pm. D. Funaiole. seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaiole, B. Cadogan. The motion carried 4-0-0.

- 2.2 **5:45 PM** - public hearing on the application of **Bryan Schulman** for a **special permit** under Zoning Bylaw §145-26 B. (9) to operate a commercial kennel in residence at 227 Mason Road. (**Assessor's Map 13 Block 21, Lot 3**). D. Chenelle made a motion to open the public hearing for Bryan Schulman. D. Funaiole seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaiole, B. Cadogan. The motion carried 4-0-0.

Present: Applicant Bryan Schulman.

The mandatory referral comments were read into the record. Comments were received from the Townsend Police Chief referencing pending criminal charges at the property, Conservation Commission noting the compost area, and proximity to the pond, and requesting a compost management plan. Land Use Coordinator determining that no Stormwater management permit is required under this proposal, Board of Selectmen who were notably displeased with unpermitted business operations, The Board of Health must comply with Title V and Applicant will be required to replace septic tank with 2 compartments.

Mr. Schulman commented that they were operating a dog day care and boarding business in their home and were unaware that they needed permits and licensing to operate. An incident occurred during business operations and the building commissioner and animal control officer were called to the property. A cease-and-desist letter was issued, and the business was immediately shuttered. He filed applications according to the Building Commissioners determination letter and is now seeking a special permit from the Zoning Board of Appeals to operate a commercial dog kennel in his residence and be compliant with the Town bylaws so that he may reopen his dog day care business.

Waste management was discussed. Mr. Shulman noted that they are beginning discussions with the Board of Health on this and will seek approval. They are using a 3-bin compost system of roughly 48 sq. ft. based on a study that was done by the Dept. of Agriculture including recommendations specifically for dog waste. The compost is used for mulch and is not food grade. The applicant will meet with the Board of Health on September 28, 2022. The Applicant was asked how far the composing area is from the pond and the response was approximately 100 feet. Mr. Shulman will follow up with the Conservation Commission to address their concerns.

Correspondence was received in support and in opposition to the Applicant and public comments were made in favor of the Applicant.

The Board Members considered the special permit criteria delineated in § 145-65 and found the following: Item A. adequacy of the size of the site for the proposed use that the property is just over 4 acres in size and the house is approximately 4,000 + sq. ft. in size which is adequate for the proposed use; Item B. The suitability of the site for the proposed use in terms of size of the site and currently in primarily residential use. A concern was expressed regarding the property locus within the 200 ft. buffer zone of Mason Brook which is a tributary of the Squannacook River; Item C. Impact on traffic flow and safety was discussed and the average number of dogs per day reported by the Applicant was 10-12 dogs. The Applicant stated he is in favor of complying with any regulation or condition regarding capacity or limit on allowed number of dogs in the facility. The applicant was informed that these types of operational parameters can be conditioned as part of the special permit issued by the Board of Appeals; Item D. Impact on neighborhood visual character including views and vistas. The Board found the locus well suited for maintaining visual character; Item E. Adequacy and method of sewerage disposal, source of water and drainage. Concern was expressed regarding the composting system and potential impact to the pond and groundwater; Item F. Adequacy of utilities and other public services. There was expressed concern regarding the inefficiency of the existing air conditioning unit at the facility. This documented malfunction was likely causal to the cease-and-desist order issued in July by the Building Commissioner and the subsequent closure of the operation. The Applicant stated that a heating and cooling contractor is scheduled to replace the air conditioning systems in October, 2022. The Applicant states that multiple furnace systems and mini-split air conditioning system serve the facility now. He stated a replacement of the entire heating and cooling system is planned. Adequate electricity is available, and the property is served by a drilled well and a septic system which passed Title V upon purchase a few years ago. The Applicant noted he attended a Board of Health meeting on September 19, 2022; Item G. Impact on ground and surface water quality and other environmental and natural resource considerations. Noted the locus of the property in the buffer zone of the tributary of the Squannacook. Chairman Cadogan suggested the Applicant file a Request for Determination of Applicability with the Conservation Commission.

Chairman Cadogan commented that there are many outstanding issues with this application and suggested the Applicant may want to consider either continuing or to withdraw the application without prejudice. D. Chenelle commented that Special Permit applications are typically granted subject to conditions. However, this application is subject to an unusual number of considerations for Board members to consider. Mr. Schulman agreed to request that the Zoning Board of Appeals continue the public hearing to November 30, 2022.

D. Chenelle made a motion to continue the public hearing of Bryan Schulman for special permit at 227 Mason Road to November 30, 2022, at 5:45pm. D. Funaiolo seconded the motion. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaiolo, B. Cadogan. The motion carried 4-0-0.

- 2.3 **6:15 PM** - public hearing on the application of **Michael J. Brown** for an **Appeal** under Zoning Bylaw §145-64, Appeals. The appeal is concerning the Building Commissioners decision not to enforce the Townsend Zoning Bylaw §145-52 Outdoor lighting.

D. Chenelle made a motion to open the public hearing for Michael Brown for an Appeal of the Building Commissioner's Decision. D. Funaoile seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaoile, B. Cadogan. The motion carried 4-0-0.

Present: Michael Brown.

D. Chenelle mentioned that after reviewing the application he is not clear on the position taken by the Building Commissioner and after discussion with Town counsel could not find any basis in the determination letter for not enforcing the bylaw. The bylaw referenced in the appeal §145-52 has an enforcement provision which instructs the Building Commissioner to act. Mr. Brown (the Applicant) commented that the Building Commissioner determined that the outdoor lighting on commercial buildings was not considered “private” and therefore as Zoning Enforcement officer and Building Commissioner, Mr. Chartrand could not enforce § 145-52 the Outdoor lighting bylaw, Mr. Chartrand determined that the only thing that is deemed “private” is if the public doesn’t have access. The Board did not agree with the Building Commissioners determination on this point. Chair Cadogan noted that the examples provided in the application submitted by Mr. Brown were excellent and clear illustrations of the need for correction. Discussion ensued as to the statute of limitations point of contention outlined in the August 2, 2022, Building Commissioners determination letter. In the Building code the statute of limitation applies to structures and the Board agreed that the lighting, although it may be affixed to, is not part of “a structure”. The Board agreed that the statute of limitations in the State zoning law would not apply to redirecting or shielding a light, which is not a “structure”. The remedy to the examples that Mr. Brown provided in the application is to redirect or shade the existing light so that it complies with the lighting bylaw. The following attendees spoke in favor of the Appeal; Glenn Chapel, Veronica Kell, Dennis Argo, Linda Kimo, Cindy Boundy, Joan Savoy. No opposition to the petition was received. D. Chenelle made a motion after reading Townsend Zoning Bylaw Section 145-52 to overrule the Building Commissioners decisions in letters dated August 2, 2022, and August 11, 2022, and request enforcement of the Bylaw. David Funaoile seconded the motion. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaoile, B. Cadogan. The motion carried 4-0-0.

D. Chenelle made a motion to appoint the Chairman William Cadogan to sign the Decision on behalf of Zoning Board of Appeals members participating in the vote. V Janicki seconded the motion. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaoile, B. Cadogan. The motion carried 4-0-0.

### 3 **WORKSESSION:** votes may be taken.

- 3.1 Discussion & review of fees and regulations for Fall Town Meeting 2022. Townsend fees were compared with surrounding Towns and were found to be comparable to high. The permit process is different for different Towns. The Applicant pays for publication and the Town pays for postage. The Board discussed the fact that the Applicant now pays for publication which is a change in the process. Upon a motion made by D. Chenelle And seconded by D. Funaoile it was voted: to reduce the applicants fee for special permit,



variance and appeals from \$300.00 to \$175.00. A roll call vote was taken: YES – V. Janicki, D. Chenelle, D. Funaiolo, B. Cadogan. The motion carried 4-0-0.

- 3.2 Planning Board Mandatory Referral – 256 Main Street. - The ZBA offered no comment per Chairman Cadogan.
- 3.3 Planning Board Mandatory Referral – 227 Mason Road. – The ZBA returned no comment.

#### 4 **CORRESPONDENCE:** votes may be taken.

- 4.1 Land use presentation - planning Townsend 40R Smart Growth Overlay District/MBTA - Michael Crowley, Land Use Coordinator. M. Crowley - spoke to the Zoning Board of Appeals explaining the MBTA regulations are finalized, and that Townsend is considered an “adjacent small community” which requires creation of by-right zoning overlay districts for high density housing development. The Town is exploring the use of Smart growth 40R overlay districts to help meet the State requirements under the new MBTA housing laws. The Land Use Department staff are working with MRPC to establish 40R overlay districts and drafting the 40R Bylaw for Townsend. One overlay 40R zoning district being considered as a pilot is a parcel located near the Harbor Mall on the border of Townsend across from the high school. The Zoning Board of appeals acknowledged they are in favor of this planning effort to illustrate good faith effort to comply with the new State MBTA adjacent small community zoning law requirements.
- 4.2 Table of Principle Use regulations - Michael Crowley, Land Use Coordinator. M. Crowley discussed the draft table of uses he established for the public to reference. After discussion and review of the table, the Zoning Board of Appeals members approved of the draft and were in favor of M. Crowley finalizing the table and publishing the table on the website. D. Chenelle made a motion to approve the publication of the table of uses prepared by M. Crowley. D. Funaiolo. A roll call vote was taken: YES – V. Janicki, D. Chenelle, D. Funaiolo, B. Cadogan. The motion carried 4-0-0.
- 4.3 Email from Helen Magliozzi dated August 30, 2022, re: Harbor Trace Water Treatment Plant. The Town Administrator and the Water superintendent are handling public outreach on this project and will be meeting with and responding to the public.
- 4.4 Draft revision of Zoning Board of Appeals application form. Updated to include email addresses and readability. The number of copies of plans was reduced and added that an electronic copy is required.
- 4.5 Copy of Approved Townsend Master Plan. Noted.
- 4.6 Special permit process administrative discussion – question re: expiration of special permits, and eligibility of individual to apply for a special permit. - Michael Crowley, Land Use Coordinator. Conditions of eligibility of applying for a special permit. Chairman Cadogan stated that if the applicant has a purchase and sale agreement, they are eligible to apply as the applicant on a Zoning Board of appeals application. D. Chenelle stated that historically, his understanding was that Variances, once granted, run with the land, and special permits carry on with the property owner, and expire upon sale of the property. He then noted that he recently discovered that special permits run with the land unless terms of cancellation or an expiration date is explicitly written on the recorded Decision also known as a “Sunset provision”. In the absence of such language on a

Decision, according to case law the Special permit continues. D. Chenelle then noted that other Towns will issue a special permit with a clause such as "cancellation upon transfer of property" or "shall terminate upon transfer of property". With the use of a Sunset provision, it would allow for the revisiting of an issued special permit and provide checks and balances in the future. Board members were agreeable to writing specific wording to address this condition on the Decision. They would prefer not to have that on the ZBA Application and insert this clause on a case-by-case basis. Admin will put this on the next meeting agenda for further discussion.

D. Chenelle made a motion to adjourn the meeting at 8:15pm. D. Funaoile seconded. A roll call vote was taken as follows: YES – V. Janicki, D. Chenelle, D. Funaoile, B. Cadogan. The motion carried 4-0-0.

Submitted by:

Beth Faxon, ZBA Administrative Asst.

**Approved on:** November 2, 2022

Items on file:

1. 478 Main Street - ZBA Application – C. Hagerstrom – special permit – dog grooming business.
2. 277 Mason Road – ZBA Application – B. Schulman – special permit – commercial dog kennel
3. M. Brown Appeal of Building Commissioners Decision – ZBA Application – outdoor lighting bylaw.
4. Planning Board Referral forms and application for 256 Main Street
5. Planning Board Referral forms and application for 227 Mason Road.
6. Draft Table of Principal use regulations.
7. Email from Helen Magliozzi dated August 30, 2022, re: Harbor Trace Water Treatment Plant.
8. Draft revision of Zoning Board of Appeals application form.
9. Town of Townsend YouTube channel link to recording of Zoning Board of Appeals September 21, 2022, meeting is as follows: [https://youtu.be/8Qpq0n\\_7Ptc](https://youtu.be/8Qpq0n_7Ptc)