

**Milford Zoning Board of Adjustment Minutes  
Sean & Christine Doherty  
March 2, 2006**

Present:                    Len Harten  
                                 Katherine Bauer  
                                 Bob Levenson  
                                 Fletcher Seagroves  
                                 Kevin Taylor

Alternates:                Ron Pieper, Jr.  
                                 David Michel

Recording Secretary:    Kathryn Parenti

**Case # 04-06: Sean and Christine Doherty – Special Exception.** The applicants, Sean and Christine Doherty, with approval of the owner of 354 Nashua Street, Anne L. Johnson, Map 30, Lots 31, Residential “A” district, are requesting a special exception from Article X, Section 10.023 to allow a home occupation for a naturopathic medicine and acupuncture clinic.

*Minutes approved on March 16, 2006 with corrections as noted in italics.*

Motioned by: \_\_\_\_\_

Seconded: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

L. Harten read the notice of hearing into the record. He then read the list of abutters. Anne L. Johnson, owner, Sean and Christine Doherty, applicants, Mary Nadeau, Charles Patterson and Christopher Fournier were present.

L. Harten then invited the applicants to come forward and state their case.

S. Doherty, an herbalist and acupuncturist, has been a resident of Milford for 4 years with his wife Christine, a naturopathic doctor, and child. Their office is currently in Nashua and has been in operation for 7 years. He and his wife Christine desired to combine their home and clinic. He said they are not looking to expand or change any of the square footage or any outside features. He also stated that the parking area is more than adequate for their needs.

L. Harten then asked him to respond to the following criteria:

- 1. The proposed use shall be similar to those permitted in the district.** S. Doherty replied that there is currently a veterinary clinic at the site. They propose to have a natural medicine clinic there and live in the house. The use would be similar and therefore no additional impact on the area.

K. Bauer stated that that was a strange condition; the use is permitted if you meet the conditions.

- 2. The specific site is an appropriate use for the proposed use because:** S. Doherty replied that this was a redundant question; the site currently has a clinic that adequately meets their needs.
- 3. The use as developed will not adversely affect the adjacent area because:** S. Doherty replied that the volume of patients they would anticipate would be about 10 to 20 people a day and it's fairly similar to what's going on at the current clinic.

L. Harten asked how many people they would see at a time.

S. Doherty replied that it would be a fixed amount; they have only two treatment rooms. He sees patients on the half hour and through the course of the day, he'd see about 10 people. Christine would see the same number of people and also treats many over the phone. At any one time, he'd anticipate about three cars in the parking lot.

- 4. There would be no nuisance or serious hazard to vehicles or pedestrians.** S. Doherty replied no, he didn't think there would be a problem at all.
- 5. Adequate appropriate facilities will be provided for the proper operation of the proposed used because:** S. Doherty said interior walls of the clinic would be rearranged to fit the proposed use. The exterior already conforms to the proposed use.

K. Bauer asked about some home occupation rules, that he would remain in the 25% use for home occupation.

S. Doherty said it was the same plan as presented at the last special exception hearing; the only change was some interior walls, non load-bearing walls.

L. Harten then read the criteria for a home occupation from Section 10.023 in the Town of Milford Zoning Ordinance. He stated that he didn't think the applicant had any problems with the criteria.

B. Levenson stated that he noticed the applicant had an online store.

S. Doherty replied that they only sell items strictly to patients and patients are seen by appointment only.

B. Levenson asked if the applicant bought the materials and resold them. S. Doherty replied yes, he sells them along with vitamins and supplements to patients.

B. Levenson stated that was contrary to the ordinance.

K. Bauer said that was a home occupation and that was one of the restrictions of a home occupation.

L. Harten asked if he would be selling items strictly to patients.

S. Doherty replied yes, but they are not all finished goods. As an herbalist, he mixes and customizes herbs.

L. Harten said that he was not just buying pills in a large quantity.

K. Bauer asked if they were packaged consumer goods.

S. Doherty replied that most are powders that are customized by him and repackaged.

B. Levenson said that was the acupuncturist side of the clinic; what would happen with the naturopathic/ homeopathic part.

S. Doherty said that was why they have an online store; those items aren't sold on site.

K. Taylor said they'd have to come before the board again.

B. Levenson said that was where they sold items they can't sell on site.

K. Taylor asked about their sign, how big was it.

S. Doherty replied there wasn't a sign, they hadn't thought about one yet.

B. Levenson said they were allowed 2 square feet.

K. Bauer warned S. Doherty about the new sign ordinance that will be voted upon on March 14, 2006.

S. Doherty asked if the existing sign was okay.

L. Harten stated it was; he has 2 SF to work with.

S. Doherty said the sign they currently have is not adequate for the new location.

L. Harten asked if any abutters or concerned citizens had any comments or questions.

C. Patterson, adjacent abutter spoke. They share a driveway apron therefore is the property that would be most impacted. He said that Dr. Johnson's business had fit in well and he had no concerns with her, just some inconsiderate customers. He expressed some concern about the days and hours of operation but had no objections to the new clinic.

L. Harten asked the applicant what his intended hours would be.

S. Doherty responded that Monday and Friday would be 9 am to 5 pm, Tuesday and Wednesday would be 11am to 7 pm and Thursday would be 11 am to 5 pm. There would be some Saturday morning appointments on occasion as well.

B. Levenson stated he would like to hear about the naturopathic side of the business since they had mainly heard about the herbalist side.

C. Doherty responded that she would work the same hours but most of her patients call in.

B. Levenson asked if she would be mixing any powders.

C. Doherty responded that she specializes in celiac disease. Much of the medicines are drop shipped directly from the manufacturer.

B. Levenson asked about supplies.

C. Doherty responded that she has some but most again, is drop shipped from the manufacturer.

B. Levenson said that “*no finished goods shall be acquired outside the dwelling unit for sale in connection with a home occupation*” (Article X, Section 10.023.4). It would be a violation of the ordinance.

C. Doherty reiterated that it’s not an over the counter business. People can’t come in off the street to buy things.

B. Levenson stated the ordinance states that there is no sale of finished products. He read from Section 10.023.A.4 of the Town of Milford Zoning Ordinance.

L. Harten said it sounds like they are making items, not just turning them over for sale. Their sales made through the mail order side of the business. They are making compounds to sell to patients.

C. Doherty said it was specific to her patients, prescription grade and can’t be sold over the counter but it’s not prescription, a controlled substance.

B. Levenson asked if someone could come in off the street and try to buy these items.

C. Doherty replied they can’t.

S. Doherty said that that keeps the number of people coming and going down to the 10 to 20 people a day.

C. Doherty said their secretary would turn people away who were not patients. They don’t sell these items to the general public.

K. Bauer stated that these were compounds that can’t be bought over the counter and was a minimal amount.

C. Doherty said if it was an item a patient can buy over the counter, she’d send them to the local store to get it. Liability wise, they can’t have people coming in to buy these items; it’s highly specialized.

L. Harten asked the board if there were any other questions.

F. Seagroves asked if the secretary would be their only employee.

C. Doherty responded yes.

L. Harten replied they were allowed one.

L. Harten then closed the public portion of the meeting.

L. Harten asked B. Levenson if he had a problem with the sale of goods at the site.

B. Levenson replied he did, it goes against the intent of the ordinance. This was a difficult situation because of the location; one side of Nashua Street is very commercial and the other side is controlled against commercial use. The ordinance is the ordinance.

L. Harten stated he understood; if you try to take it literally, then you have a problem.

L. Harten said they only sell items that are not on the market, only for their specific needs.

B. Levenson said there was no mention of this in the original conversations.

L. Harten then called for a vote.

**1. Is the exception allowed by law?**

B. Levenson – yes

F. Seagroves – yes

K. Taylor – yes

L. Harten – yes

K. Bauer- yes

**2. Are the specific conditions present under which the exception may be granted?**

K. Taylor – yes

K. Bauer-yes

B. Levenson – no

F. Seagroves- yes

L. Harten – yes

L. Harten asked if there was a motion to approve the special exception.

K. Bauer moved to accept the special exception.

K. Taylor seconded.

**Final vote:**

K. Bauer – yes

F. Seagroves – yes

K. Taylor – yes

B. Levenson – no

L. Harten – yes

Case #04-06, Sean and Christine Doherty – special exception from Article X, Section 10.023 was granted by a 4 to 1 vote.

It should be noted that an abutter, Perry Nadeau, formerly of 7 Vine Street, informed the zoning office on February 27, 2006 that he had moved and was no longer an abutter. Kevin Lynch then hand delivered the abutter notice to the new owner of 7 Vine Street, Brad Parkhurst.