

December 5, 2005

The Hon. Carol J. Mitten,
Chair, DC Zoning Commission,
441 4th Street, NW, Suite 210
Washington, DC 20001

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Re: ZC No. 05-21 Dog Boarding Text Amendment

Dear Chairwoman Mitten,

At the Zoning Commission's November 3 hearing on dog boarding, the Commission requested specific suggestions regarding how the proposed section 735.2 could be strengthened. Please find attached the suggestions of our group, which are written in the form of draft text amendments and discussed below. Per the discussion at the hearing the attached drafting suggestions also aim at creating provisions that would: (1) be easily enforceable by DCRA, and, (2) avoid creating a loophole that would allow dog grooming establishments to operate effectively as if they were dog boarding facilities but without regulation.

1. Boarding (§§ 735 and 736)

- The Commission asked for suggestions regarding how the proposed section 735.2 (*"The Dog Boarding Use shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor or waste"*) could be strengthened. In order to give more specificity to this general statement, we propose splitting this provision into two new provisions, as attached: § 735.3 which makes a general statement but basically focuses on noise, and § 735.4 which focuses on waste and odor.
- The attached § 735.3 proposes that dog boarding shall take place "entirely within an enclosed and soundproof building in such a way so as to produce no objectionable noise or odor to nearby properties" Numerous other jurisdictions also require dog boarding to take place within an enclosed and soundproof structure.¹ The requirement for an enclosed and soundproof structure seems to us to be a basic common sense means of addressing the noise issue. Naturally an applicant would provide the Board of Zoning Adjustment (BZA) with details of how he or she intended to soundproof the building and the BZA would decide whether the proposed plan was adequate or whether to require modifications to it. Nonetheless, specifying within the regulations that the use must take place within an enclosed and soundproof building would provide clear guidance to both applicants and the BZA.

The attached § 735.3 also proposes "the windows and doors of the premises shall be kept closed". We believe that adding this specific language to the regulations would be highly desirable. Open windows and doors have specifically led to noise (and odor) problems in DC. Stating in the regulations that windows and doors shall be kept closed sends clear guidance to facility operators and the BZA. It should also make enforcement of this issue straightforward and help to avoid the problems that have arisen in the past.

¹ Jurisdictions that require dog boarding to take place within an enclosed and/or soundproof structure include. Ann Arbor, Michigan; New York City; Orlando, Florida; San Jose, California; Tacoma, Washington; and Winchester, Kentucky.

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- The attached § 735.3 also proposes “no animal shall be permitted to be in an external yard of the premises.” While we suggest locating the prohibition on external yards (the previous section 735.4: “external yards or other such facilities for the keeping of animals shall not be permitted”) in § 736 (“External Yards”), we believe that retaining the more specific statement within § 735 that “no animal shall be permitted to be in the exterior yard” of a boarding facility would be extremely helpful. As a matter of physical reality the premises at which a boarding facility operates may in some cases include an external yard. While the proposed § 736 on external yards is absolutely necessary in order to address the issue of the non-use of external yards in general, we believe that adding the statement to the proposed § 735.3 that “no animal shall be permitted to be in an external yard of the premises” both: (1) sends a clear signal to facility operators and the BZA that – even if a yard exists – the intention is that no animal shall be permitted to be there because of the noise impact; and, (2) perhaps most importantly, establishes a rule that is easily enforceable by DCRA’s zoning inspectors – no animals may be in an exterior yard of a boarding facility, period.
- To be more specific about waste and odor control,² the attached § 735.4 proposes that boarding facilities “shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly.” We believe that these are minimum common sense requirements to mitigate adverse impacts associated with waste. Stating these basic requirements in the regulations would provide clear guidance for operators and the BZA regarding waste expectations and would again establish a rule that is easily enforceable by DCRA. The attached § 735.4 also proposes “odor shall be controlled by means of an air filtration system ... or an equivalently effective odor control system”. We believe that it would be useful for the regulations to establish that an odor control system is required so as to send a clear signal to facility operators, the BZA and DCRA regarding expectations.
- We believe that the specific provisions discussed above regarding noise, odor and waste should establish a set of minimum requirements upon which the BZA should be able to impose additional requirements in individual cases as it sees fit. In order that the BZA’s authority to impose additional requirements be clear, we believe that the regulations should make explicit reference to it, as they do in the case of other special exception uses in the commercial zones (e.g. §§ 706.5, 709.6, 727.5, and 729.5, dealing with gasoline stations, bowling alleys, motorcycle sales and repair, and laundry and dry cleaning establishments). Therefore the attached draft proposes adding a new § 735.5 explicitly stating the BZA’s authority to impose additional requirements on dog boarding facilities regarding noise, waste, odor and other issues as it deems necessary to protect adjacent or nearby property. We suggest that the BZA’s authority should also extend to the ability to impose conditions on the species, breeds and/or numbers of animals permitted in animal boarding facilities.³
- The attached draft proposes moving the prohibition on boarding facilities abutting residence zones (the previous § 735.3) to become § 735.2. A requirement that these facilities not abut residence zones effectively provides for a setback of about 20 feet (or, e.g., whatever the minimum existing lot size is in the commercial zones). We regard this “no abutting” provision as

² The following jurisdictions make reference to odor control and/or waste management for boarding facilities. Ann Arbor, Michigan; Minneapolis, Minnesota; and Orlando, Florida

³ The County of Baltimore, Maryland also provides for additional conditions or restrictions to be imposed on boarding kennels as part of its special exception process, including restrictions or conditions on the number and/or breeds of dogs

an absolute minimum since most other jurisdictions provide for significantly larger setbacks.⁴ In particular, we believe that this formulation – an effective setback of around 20 feet – is only workable in conjunction with the proposed requirements set out in § 735.3 attached (i.e. enclosed and soundproof building, windows and doors kept closed, no animals in an external yard). We know from the experience of existing facilities that have a 20 feet setback from the nearest residence zone that, if the boarding facility is soundproofed and fully enclosed with windows and doors kept shut and no animals permitted in exterior yards, then noise issues at those facilities have to date been minimized. Nonetheless, a setback of 20 feet from a residence zone really is minimal, and we acknowledge that the Zoning Commission could equally conclude that new boarding facilities should be setback 50 or 100 feet or more from residence zones in order to establish a more substantive buffer between residences and boarding uses.

2. Definitions (§ 199.1)

- The attached draft also suggests some modifications to the proposed definition for animal boarding and, for comparison purposes, includes a possible revised definition for animal grooming. (We understand that the Zoning Commission will address the issue of animal grooming facilities separately and that we will have an opportunity to comment on the issues pertaining to those facilities at a public hearing. Thus, this letter only comments on grooming to the extent necessary to describe how our proposed text amendments for animal boarding would differ from or be similar to a possible zoning treatment for grooming)
- Specifically, we propose that the definition for animal boarding facilities *include* any animal grooming facility with 10 or more animals on the premises at any one time. Thus, we propose that “animal grooming” be defined under the regulations to include only those grooming facilities at which 9 or fewer animals are on the premises at any one time.⁵
- The intention behind this proposal is to achieve a balance between, on the one hand, preventing grooming facilities from morphing into large-scale (i.e. 10 to 40 or more animals) “daycare” (boarding) establishments with all the same range of impacts to nearby properties that can be associated with animal boarding establishments and, on the other hand, encouraging small-scale neighborhood-based grooming facilities as useful local services that should be permissible as a matter of right in the commercial zones subject to minimal restrictions.
- In addition to balancing these factors, we share the Commission’s emphasis on the importance of the enforceability of regulations in the DC context. We believe that the proposed “9 or less/10 or more animals” formulation would be easily enforceable by DCRA. It would be straightforward for zoning inspectors to make a determination regarding how many animals are on the premises and thus whether the facility is operating (under the Zoning Regulations) as either a boarding facility or a grooming facility, and to proceed accordingly.
- As a matter of basic fairness across uses, once grooming facilities get beyond a small scale and involve the same potential impacts as boarding facilities, we believe that the Zoning

⁴ For example: the city of San Francisco, California (setback distance: 200 feet from a residential zone), Baltimore County, Maryland (setback distance: 200 feet from the nearest property line), San Diego County, California (50 feet from the lot line); and, the city of Vancouver, Washington (50 feet from the property line).

⁵ A similar, although stricter, requirement exists in the town of Middlefield, Connecticut, which limits grooming facilities to a maximum of 5 clients (dogs and/or cats) per day

Regulations should subject grooming facilities to the same requirements as boarding facilities. By defining 10 or more animals on the premises (of a grooming facility) as a boarding operation, we propose that larger-scale grooming facilities, which involve larger numbers of animals and the same potential impacts as boarding facilities, be required to obtain a special exception (like boarding facilities) to operate in the commercial zones. At the same time, we are proposing that small-scale (9 or fewer animals) grooming facilities be permitted to operate (either on a stand-alone basis or co-located with retail stores, etc) as a matter of right (subject to certain conditions) in the commercial zones.

- Finally, we would note that the approach we propose with respect to grooming facilities above a certain size being defined as boarding establishments is no different in effect from the size restrictions placed by the DC Zoning Regulations on a number of other matter-of-right uses in the commercial zones. For example: sections 701.1 (j), (k) and (q) regarding the size of self-service laundries, dry cleaning establishments, and tailors; section 701.2 regarding the size of community-based residential facilities; sections 721.2 (j) and (r) regarding the size of storage and printing facilities; and section 721.5 regarding the size of youth residential care homes, etc

3. Grooming (§ 721.2)

- Again, we understand that the Zoning Commission will address the issue of animal grooming facilities separately, so we have only included proposed provisions addressing grooming in the attached draft in order to provide a point of comparison to the provisions proposed for animal boarding.
- We believe that, if the size of grooming facilities is limited per our proposed definitions (to 9 or fewer animals), then it would be possible to allow these small-scale grooming facilities to operate as a matter of right in the commercial zones *under certain conditions* designed to ensure that any potential impacts on nearby property are mitigated
- In particular, we believe that two of the basic requirements proposed for animal boarding (§ 735.2: no abutting a residence zone, and § 735.3: enclosed and soundproof building, windows and doors kept closed, no animals in an exterior yard) could and should apply equally to animal grooming facilities as a matter of right use. Even if the size of animal grooming facilities is limited to 9 or fewer animals on the premises, it takes only one dog barking to break DC's noise limits in the commercial zones and thus 9 animals at a grooming facility could create very serious objectionable conditions for neighboring property owners if the use was entirely unrestricted. Therefore, we believe that, like boarding facilities, grooming facilities should also be required to be fully enclosed and soundproof, to keep their windows and doors closed, to not permit animals in exterior yards, and to not be located abutting residence zones
- In order for OP's proposal that animals not be permitted to stay overnight at grooming facilities to be enforceable, it may be necessary to include in the regulations a provision that limits the hours during which animals may be on the premises of grooming facilities. One possible formulation would be that animals not be permitted on the premises of grooming facilities outside the hours of 8:00 AM to 7:00 PM weekdays and 9:00 AM to 5:00 PM weekends. These hours would be sufficiently long to allow grooming facilities a high degree of flexibility regarding animals being dropped off and picked up at either end of the day and thus a high degree of flexibility in conducting their business. At the same time, without explicit reference to animals not being permitted outside these (or similar) hours, our experience suggests that any prohibition on animals staying overnight at grooming facilities would be unenforceable in practice by DCRA

- We would note that this general approach of placing conditions on a matter of right use in the commercial zones exists in relation to other uses in DC's Zoning Regulations. For example: § 701.1(i) regarding gasoline stations; §§ 701.3 and 721.5 regarding youth residential care homes, etc; § 701.6 regarding rooming and boarding houses; §§ 701.7 and 701.8 regarding antennae; § 721.3 (s) regarding fast food restaurants, and, § 741.3 regarding motorcycle sales and repair.

4. General

A couple of general issues regarding the attached draft text amendments.

- We suggest use of the term "animal" throughout, instead of "dog and/or cat" because it is more comprehensive and should allow greater consistency across uses (which becomes even more relevant if the Zoning Commission should, as it indicated at its November 3 hearing, be considering adding further definitions for veterinary hospitals, pet shops, animal shelters, etc).
- In the case of several provisions we suggest the formulation "no animal shall be permitted ..." (e.g. to be in an exterior yard, or to be kept overnight in a grooming facility) or "9 or less animals (on the premises of grooming facilities). There is an important enforceability rationale for using some formulation like this that focuses on "animals" instead of, for example, one that focuses on "clients" (e.g. dogs and/or cats that are being boarded or groomed). In numerous instances, including in one case currently under investigation for prosecution, DCRA and OAG have had great difficulty with claims that animals on the premises are not there commercially but are present, for example, because they are the operator's animals or because they are there for adoption. Since it is the number of animals present that affects the degree of potential impact of these facilities, we believe that the new regulations should be formulated so as to avoid spurious arguments about whether the animals are on the premises of these facilities commercially or otherwise.

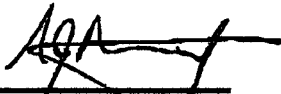
5. Dog-ma Boarding Facility

- We understand that Dog-ma boarding facility will be writing separately to the Commission in order to provide documents that the Commission requested at its November 3 hearing.
- We urge the Zoning Commission to use its power to act as the BZA and, at the same time that it adopts the new dog boarding regulations, grant Dog-ma boarding facility a special exception to operate its existing exterior yard. Despite the continuous use of the yard during the past 7 years, no complaints have been lodged regarding noise or other impacts by neighboring property owners or others. Dog-ma's exterior yard, which we have seen, is uniquely located adjacent to a highway overpass and some hundreds of feet from the nearest residence zone. It is also securely fenced and screened for the safe confinement of dogs. Requiring a separate special exception hearing in front of the BZA on this matter would unfairly subject Dog-ma boarding facility to both considerable expense and a period of considerable uncertainty regarding its operations, since the BZA's schedule is currently fully booked through April 2006. Thus we hope that the Zoning Commission will be able to grant this special exception itself, thereby preventing the BZA's calendar from being further burdened by a need to re-hear issues concerning Dog-ma's long-existing exterior yard.

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We thank the Zoning Commission for the opportunity to comment on these issues and thank Commissioners for their time and effort on this matter.

Sincerely,



Andrea Dougherty

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Attachment

cc: Zoning Commissioners
Ms. Ellen McCarthy, Director, Office of Planning
Ms. Jennifer Steingasser, Deputy Director, Office of Planning
Mr. Stephen Mordfin, Case Manager, Office of Planning
Mr. Alan Bergstein, Chief Counsel, Land Use Division, Office of the Attorney General

ATTACHMENT**Proposed Text Amendments for Animal Boarding (& for Animal Grooming as a comparison)****735 Animal Boarding**

- 735.1 An Animal Boarding Use may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section
- 735.2 The Animal Boarding Use may not abut a residence zone.
- 735.3 The Animal Boarding Use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no objectionable noise or odor to nearby properties. The windows and doors of the premises shall be kept closed and no animal shall be permitted to be in an external yard of the premises.
- 735.4 The Animal Boarding Use shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system
- 735.5 The Board may impose additional requirements pertaining to the location of buildings or other structures, entrances, exits, buffers or barriers, fencing, soundproofing, odor control, waste storage and removal including frequency, the species and/or number and/or breeds of animals, or other requirements, as the Board deems necessary to protect adjacent or nearby property

736 Animal Boarding Uses: External Yards

- 736.1 External yards or other such exterior facilities for the keeping of animals shall not be permitted.
- 736.2 Notwithstanding § 736.1, an Animal Boarding Use existing on July 11, 2005, which obtained a Certificate of Occupancy for a "Dog Care Center" or Dog Day Care Center", may continue the use of an external yard for the keeping of dogs if approved by the Board of Zoning Adjustment pursuant to § 3104 and the requirements of this section.
- 736.3 The yard shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor or waste.
- 736.4 The applicant shall demonstrate that the external yard will be fenced off for the safe confinement of the dogs.
- 736.5 The Board shall establish the hours in which dogs may be kept in the yard, provided that, at the minimum, no dogs shall be permitted in the yard between 8:00 PM and 7:00 AM

199.1 Animal Boarding- Any premises, other than a veterinary hospital or pet shop, where the overnight boarding and/or recurring daily care (including "daycare") of domestic pets such as dogs or cats takes place for a fee as a commercial establishment. Animal Boarding includes any animal grooming premises at which 10 or more animals are on the premises at any time.

Animal Grooming- Any premises where bathing, brushing and/or clipping services for domestic pets such as dogs or cats are performed for a fee, provided that there are 9 or less animals on the premises at any time. Animal Grooming does not include animal boarding or daycare and no animal is permitted to stay overnight at animal grooming premises. Animal grooming may include the sale of pet supplies.

721.2 (y) Animal Grooming, [shall be permitted as a matter of right] provided.

- (1) The Animal Grooming Use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no objectionable noise or odor to nearby properties. The windows and doors of the premises shall be kept closed and no animal shall be permitted to be in an external yard of the premises;
- (2) The Animal Grooming Use may not abut a residence zone,
- (3) No animal shall be permitted to be on the premises of the Animal Grooming Use outside the hours of 8:00 AM to 7:00 PM on weekdays and 9:00 AM to 5:00 PM on weekends.

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Date: 12/5/05

Re: ZC 05-21 Dog Boarding Text Amendment

Please see the attached letter regarding ZC Case No. 05-21.