

1417 Q Street NW
Washington DC 20009

December 5, 2005

Ms. Carol J. Mitten
Chairman
Zoning Commission
441 4th Street, NW
Washington, DC 20001

Dear Ms. Mitten

Re. Zoning Commission Case 05-21 – Dog Boarding Text Amendment

I testified at Zoning Commission hearing on November 3, 2005, in relation to the proposed text amendment concerning dog boarding in the District of Columbia. At the end of my testimony, you asked me to provide a written submission covering aspects of my testimony relating to the zoning regulations in other jurisdictions as they relate to animal boarding and grooming.

The purpose of my testimony at the hearing was to argue that the proposed text amendment should be expanded to cover animal grooming so as to avoid leaving a major loophole in the regulations through which animal dog boarding businesses could masquerade as animal groomers. In support of my views, I referred to how some other densely populated jurisdictions have addressed the issue of regulating dog grooming as a use in zoning regulations. A number of these jurisdictions have addressed these issues before the District of Columbia and it would seem to make sense to review the positions they have reached so as to learn from them.

I noted in my testimony that there have been two common ways that the need to regulate dog grooming as a use has been addressed. First, recognizing that dog grooming itself has impact, but potentially lesser than overnight boarding, some jurisdictions differentiate between boarding and grooming. Grooming is still identified as a use, but subject to lesser restrictions on the use presumably reflecting a view that the impact of grooming is less than that of boarding. The city of San Francisco is an interestingly thorough example of this approach. In San Francisco, a differentiation is made between groomers who board overnight and those who do not. Both are controlled but where overnight boarding is involved, the business is grouped with veterinary hospitals and the standards that must be met are much tighter, virtually the same as apply to kennels.

More frequently, however, it seems from my research that jurisdictions opt to group animal grooming with other animal service uses (boarding, veterinarian, pet retail and pet supply) and treat them as similar for the purposes of the zoning regulations. My understanding is that this is because it is exceedingly difficult to differentiate, from a regulatory perspective, between the various uses of dog grooming, boarding, veterinary hospitals and so on. Examples of this approach include Orlando, San Jose, and Tacoma.

~~Zoning Commission~~
~~District of Columbia~~

CASE NO.

05-21

EXHIBIT NO.

16

ZONING COMMISSION
District of Columbia
CASE NO.05-21
EXHIBIT NO.16

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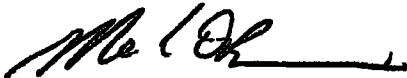
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What is interesting is that, irrespective of which of these approaches is followed, and how dog grooming as a use is addressed in other jurisdictions' zoning regulations, the regulations include measures to limit the impact of dog grooming. In virtually all cases, the businesses are required to be carried out only inside a fully enclosed building (that is, no exterior yards of any sort). In a few cases, there are requirements for sound proofing and even, in one jurisdiction that I looked at, a requirement for special soundproofed (double-paned) windows.

In no jurisdiction that I looked at, are grooming businesses allowed in residential zones. Where they are allowed in commercial zones or mixed use zones, they are often only allowed as of right in the least restrictive commercial zones and the manufacturing zones. Many jurisdictions explicitly require setbacks from the nearest residential zone boundary (from 20 feet in the case of Tacoma, WA, up to 500 feet in the case Orlando, Florida, although special exceptions can be made in Orlando subject to proof that there will be no adverse impact on the surrounding properties).

The attached table summarizes the cases I have referred to as well as one or two others. I am also attaching a letter that I submitted to the Board of Zoning Adjustment in respect of BZA case 17092. In that letter I noted the conditions that a wide range of jurisdictions in this country apply to dog boarding in their zoning regulations.

Yours sincerely



Mark O'Brien

Summary of Zoning Regulations for Dog Boarding or Grooming Facilities in Various Jurisdictions

Jurisdiction	Uses defined	Primary/accessory use, setbacks etc	Noise, fencing, restrictions on exterior use etc	Other
San Francisco, CA (Municipal Code)	<p>Separately defines animal hospital, grooming shop, cat and dog boarding commercial kennel), pet shop and pet supply store.</p> <p>If a grooming shop provides overnight boarding services then its is treated the same as an animal hospital, which in turn is treated similarly to a boarding shop. Otherwise, less restrictive conditions apply.</p>	<p>Commercial kennel must be not less than 200 feet from a residential district, and is a permitted use only in an "M" district.</p> <p>Animal hospital is permitted in an "M" district, so long as it is 200 feet from a residential zone.</p>	<p>An Animal hospital is a conditional use in the three least restrictive "C" districts only if conducted entirely within an enclosed building.</p>	
Tacoma, WA (Land Use Regulatory Code)	<p>"Animal boarding" defined to include animal exercising, grooming and daycare.</p>	<p>All animal care or sales (including animal clinics, kennels, grooming, boarding/daycare and retail sales) must be conducted within an enclosed building.</p>		

		Must be setback from residential uses or a residential zone district boundary by at least 20 feet.		
City of Orlando, FL (City Code)	Pet boarding is permitted only as an accessory use to another pet-oriented use such as veterinary clinic, grooming parlor, pet retail shop or pet day-care facility.		All animals must be within a fully enclosed structure designed to limit noise and odor. No pet boarding facility shall generate noise in excess of the Class A Standards set forth in Chapter 42 of this Code. No pet boarding facility shall generate off-site offensive odors. A pet boarding facility may include an attached outdoor exercise yard for animal exercise and recreation if: (1) Such yard shall be permitted if located at least 500 feet from any residential zoning district or any residential area of a planned development. Exceptions may be granted if it is demonstrated that the	Must provide boarding for no more than one (1) animal per ten (10) square feet of indoor boarding area. Must utilize a licensed pet waste disposal company or State approved pet waste disposal system for the disposal of all pet waste.

			<p>lesser separation distance will not adversely affect surrounding properties.</p> <p>(2) Such yard shall be fully enclosed by a masonry wall or wooden fence at least six (6) feet in height.</p> <p>(3) No animal shall be permitted in such yard between the hours of 7:00 p.m. and 7:00 a.m.</p> <p>(4) No more than four (4) animals shall be permitted in the exercise yard concurrently.</p> <p>(5) No animal may be kept in the yard for more than two (2) hours per day.</p> <p>(6) The yard shall be fully enclosed by a masonry or wooden fence of at least six (6) feet in height.</p> <p>(7) Yard waste, including solid excrement, shall be removed daily.</p>	
San Jose, CA (Zoning Ordinance)	All animal uses (uses involving any type of	All animal uses must be conducted wholly		

	care for animals, including but not limited to grooming, boarding, and medical care) treated similarly.	inside a building. Only permitted in less restrictive commercial districts.		
San Diego Co., CA		No kennel within 50 feet of any interior lot line, or 25 feet of any rear lot line except where lot line is contiguous to an alley. Where operation abuts a residential use, setbacks must be maintained in accordance with residential zoning requirements.	Kennel must follow specified parts of County's Noise Abatement and Control regulations. Must be enclosed in a non-transparent fence, at least 6 feet high. Animal odors shall not be detectable beyond lot lines, Daily removal of waste. Use of disinfectants mandatory to prevent spread of disease, odors and flies.	
New York City, NY (Zoning Resolution)	Groups animal hospitals with kennels, and treats them the same as animal pounds. Does not define grooming.	Animal hospitals/kennels are in use group 16 (uses which "involve offensive noise, vibration, smoke, dust, or other particulate	All use group 16 uses which are not preexisting must be enclosed within buildings.	

		<p>matter, odorous matter, heat, humidity, glare, or other objectionable influences, making such uses incompatible with residential uses and other types of commercial development.</p> <p>Use group allowed only in the very least restrictive "C" districts and "M" districts.</p>		
<p>Winchester/Clark Co, KY (Zoning Ordinance)</p>	<p>Defines pet grooming as a separate use. Notes that boarding, breeding or medical care are not permitted as part of a pet-grooming service.</p>		<p>Grooming must take place entirely within the principal building and no overnight boarding nor any outdoor facilities such as pens or dog runs shall be permitted.</p> <p>Animals at veterinary offices or clinics must keep animals entirely within confined kennels or buildings.</p>	

1417 Q Street, NW
Washington, DC 20009

October 28, 2005

Mr. Geoffrey Griffiths,
Chairman
Board of Zoning Adjustment
441 4th Street NW, Suite 210 South
Washington DC 20001

Dear Sir

BZA No. 17092—Appeal of Zoning Administrator's Decision Allowing the Location of a 24-Hour Dog Boarding Kennel at premises 1412 Q Street, NW

I am a resident of the 1400 block of Q Street NW in the District and am writing to express my full support of the appellants in the Board of Zoning Adjustment's (BZA) case number 17092.

I was also one of a number of people who wrote to the Department of Consumer and Regulatory Affairs, prior to their issuance of the Certificate of Occupancy (C of O) in question, giving my view that the Certificate should not be issued in respect of the dog boarding component of Wagtime's operation. It was clear at the time to anyone with basic common sense that the location of a dog kennel at this property would unavoidably have a significantly damaging impact on the welfare of the neighboring residents and on the local environment: dogs bark, it cannot be avoided. Multiple dogs together bark constantly, and at very loud levels which are well known to frequently exceed noise control limits. They also produce waste, which causes odor even when specially treated, and which can be hazardous to individuals as well as the environment. Thus, unless setbacks and other special site arrangements are made, dog kennels will unavoidably have an adverse impact, which is inconsistent with the principles underlying the zoning regulations as well as other regulations such as DC's *Environmental Policy Act*.

Wagtime's proprietor made it clear from the outset that she intended to use the open yard at 1412 Q Street, which by definition cannot be soundproofed and is *directly adjacent* to a residentially zoned home and thus part of the residential zone for noise control purposes, as an outdoor kennel run. This use should have, by itself, been enough for DCRA to realize that this operation would not be at all similar to a pet shop and therefore to refuse to issue the C of O. The slope of the yard into the alley was always going to give rise to waste run off problems to the environment. DCRA was also made aware that the proprietor had had major noise problems in Wagtime's previous (totally indoor) location and that they had not been addressed (e.g., with sound proofing).

Even if the DCRA felt that it needed a more concrete basis than common sense to refuse the issuance of the C of O, there is ample solid evidence of the damaging impact of dog kennels, and thus their dissimilarity to pet shops, available. To take just one example: in 2001 the Baltimore County Planning Board undertook a thorough review of this issue. Their comprehensive report was, and still is, publicly available including on the County's website (http://resources.co.ba.md.us/Documents/Imported_Documents/p/po_kennel0601.pdf). Amongst other things, the report notes that:

"The overriding and most contentious challenge associated with commercial kennels is the noise impact of barking dogs.....the noise quality of a barking dog is very different from background, or "white" noise such as traffic".

It further notes that:

"Other challenges associated with commercial kennels may include increased traffic.....commercial kennels also generate much waste, which in turn generates odor. Both have the potential to become a nuisance as the majority of kennel owners bag solid waste and dispose of it in outdoor trash cans

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or bins where the odor can emanate to adjacent properties. Nuisances such as these adversely affect the strength of neighborhoods and quality of place. "

Since 2002, Baltimore County's zoning regulations have specifically and separately defined dog kennels and dog grooming facilities and note that they are not the same (Section 101). The regulations further specify that neither the term "dog kennel" nor "dog grooming facility" includes pet shops, veterinarians' offices or veterinarians.

Further, the County's zoning regulations require setbacks of 200 feet from the nearest property line zone, for all aspects of a dog kennel or dog boarding facility (Section 421). In granting any special exceptions relating to dog kennels, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.

Baltimore County is only one of many places throughout the country which have already addressed the issue of how to balance the growing demand for kennel facilities in urban areas with the rights of residents to quietly enjoy their properties, and the kinds of requirements imposed in Baltimore County—which 1412 Q Street NW does not meet, and was not required by DCRA to meet—are quite typical (See the attached table). In the absence of clear guidance from the District's zoning regulations, DCRA could and should have used common sense in assessing Wagtime's proposed dog boarding use and should have looked to the information on impact and impact abatement measures available from elsewhere when forming that assessment.

Unfortunately, DCRA did not do either of these things so that now we residents have had to endure six months of hard evidence of the impact. I understand that a good deal of proof of this has been provided to the BZA by the appellants, including that the barking from Wagtime frequently—and unavoidably, given the use of the open rear yard as a dog run—exceeds legally allowable noise levels (which both DCRA and the Metropolitan Police Department have so far not been prepared to enforce in this case despite repeated requests from residents).

The damaging impact of Wagtime has been most severe on the directly adjacent neighbors. However, I would like make it clear that it is not restricted only to them. I live on the other side of the street from Wagtime, and about three properties along (i.e., with the width of Q Street and Wagtime's building between my house and Wagtime's rear yard). Yet, even with my doors and windows closed I am frequently annoyed by the dogs barking in that rear yard including very early in the morning and on weekends. I also have to put up with the traffic problems that are caused by cars blocking either Q Street or the alley behind my house while dog owners drop off or pick up their dogs. Luckily, because I live on the other side of the street, I have not had to transit through the rear alley behind Wagtime with the constant bad odor and dog waste run-off.

I understand that there is a need for this kind of business in the District. Not only does dog boarding assist dog owners, it provides needed stimulation and exercise to the dogs themselves. However, such facilities need to be sited *completely within* appropriate commercially zoned areas and with premises that take *adequate precautions to minimize environmental impact* in a manner consistent with DC's zoning and other regulations. This would include such requirements for sound proofing, setbacks, no open dog runs near residential areas, adequate sanitation facilities, and so on, which 1412 Q Street NW with its open rear yard cannot meet.

Consequently, I fully support the appellants in their case that DCRA were wrong in deciding to issue a C of O to Wagtime in respect of a dog boarding kennel at 1412 Q Street NW. This decision should be reversed by the Board of Zoning Adjustment and Wagtime should be required to immediately cease the kennel aspect of its operation..

Yours sincerely

Mark O'Brien

ATTACHMENT

Summary of Zoning Regulations for Dog Kennel and/or Boarding Facilities in Various Jurisdictions

The following table summarizes some key aspects of the zoning regulations in various jurisdictions in the United States that aim to control the impact of dog kennels/boarding/day care facilities on the neighboring properties as well as the general environment. As can be seen these regulations commonly restrict proximity to neighboring properties (setbacks), noise, odor and traffic/parking.

The regulations for each jurisdiction included in the table can be found at:

<u>Jurisdiction</u>	<u>Zoning Regulations</u>
Baltimore County, MD	<i>Baltimore County Zoning Regulations, Section 421, Animal Boarding Place, Kennel, Pet Shop, Veterinarian's Office, Veterinarianium.</i>
Howard County, MD	<i>Howard County Zoning Regulations, Section 131 Conditional Uses, N.1.30, Kennels and Pet Grooming Establishments.</i>
Calm Township, Chester County, PA	<i>Calm Township, Chester County, Pennsylvania, Ordinance No. 2003, allowing Kennels by Conditional Use in the I-2 Industrial District and Establishing Associated Conditional Use Regulations.</i>
Canaan Township, Wayne Co., PA	<i>Canaan Township Zoning Ordinance, Article V – Supplementary Regulations Applicable to Specific Uses, Section 125-23: Kennels.</i>
Bernalillo County, NM	<i>Bernalillo County Code, Chapter 6 - Animals</i>
Leavenworth, KS	<i>The Zoning Ordinance of the City of Leavenworth, Kansas Section 21.902 Special Use Permits B. 2 Kennels – Breeding and Boarding</i>
San Diego County, CA	<i>San Diego County Zoning Ordinance, Part 3 – Animal Regulations</i>
City of Vancouver, WA (proposed)	<i>City of Washington Vancouver Development Code, Title 20.850 – Dog Day Care</i>

Summary of Zoning Regulations for Dog Kennel and/or Boarding Facilities in Various Jurisdictions

Place	Space	Setbacks	Noise, fencing	Other
Baltimore Co., MD	Not specified	All aspects of a kennel, including exercise areas, septic systems, etc must be situated at least 200 feet from nearest property line.	See next column.	If exceptions are granted for any reason, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.
Howard Co., MD	Three acres for up to 10 dogs. Five acres for 11 dogs or more.	For up to 10 dogs, 100 feet from lot lines for kennels, runs and structures. For 11 or more dogs, 200 feet from lot lines for kennels, runs and structures and 100 feet from street line. These may be reduced so long as it does not adversely affect neighborhood as regards, noise, odors, visual impact or otherwise.	All parking areas and outside pens and runs, and as appropriate, all buildings shall be screened by landscaping or other suitable means from adjoining properties and public street rights-of-ways.	Odors must not be detectable at lot lines. Other details in Dept. of Planning and Zoning brochure on Conditional Uses.
Calm Township, Chester Co. PA	Not specified.	No animal shelter may be within 200 feet of any adjoining property. No runs within 100 feet of any adjoining property.	No dogs outside between 9:00pm and 7:00 am. Business must be enclosed by a fence at least 8 feet high. Fence must be at least 20 feet from property line.	A plan for waste disposal must be submitted in order to be approved. Sewage disposal and water supply must be adequate and meet applicable regulations. Regular waste disposal. Sewer system must be approved. Operator of business shall not allow any animals to create objectionable noise, odors or other disturbances.

Canaan Township, Wayne Co., PA	3 Acres or 10,000 square feet per dog, whichever is greater.	Structure housing dogs must be at least 300 feet from property line.	No dogs outside between 8:00pm and 8:00am. Noise barrier at least 6 feet high or dense vegetative planting shall fully encircle kennel areas not enclosed in a building.	Adequate off street parking, including one space per employee and one space for each four dogs.
Bernalillo Co., NM	75 Square feet for each dog under 30 pounds, 100 square feet for dogs between 30 and 60 pounds, 125 square feet for larger dogs. Adequate facilities for exercising must be provided.		No excessive noise. No night time noise allowed at all.	There must be a waste removal system in place. Interior floors must be smooth and easily cleanable and impervious to water. Facility must be structurally sound and constructed of nontoxic material.
Leavenworth, KS	Two acres	Kennel buildings and runs at least 75 feet from lot line.	Adequate screening to prevent dogs getting excited. Materials for fences specified. Loud, frequent or habitual barking, howling or yelping a nuisance and subject to specified penalties.	
San Diego Co., CA	Not specified.	No kennel within 50 feet of any interior lot line, or 25 feet of any rear lot line except where lot line is contiguous to an alley. Where operation abuts a residential use, setbacks must be maintained in accordance with residential zoning requirements.	Kennel must follow specified parts of County's Noise Abatement and Control regulations. Must be enclosed in a non-transparent fence, at least 6 feet high.	Animal odors shall not be detectable beyond lot lines. Daily removal of waste. Use of disinfectants mandatory to prevent spread of disease, odors and flies.

<p>City of Vancouver, WA. (proposed in revised Development Code currently in preparation)</p>				
<p>Kennels (overnight boarding allowed)</p>	<p>Same rules for kennels apply as to horse stables, animal sales yards, riding academies, feed yards etc.</p>	<p>Kennels shall be located not less than 50 feet from any property line.</p>	<p>See next column.</p>	<p>Applicants shall show that odor, dust, noise, and drainage shall not constitute a nuisance, hazard, or health problem to adjoining property or uses.</p>
<p>Day care (no overnight boarding allowed, operating hours limited to 7am to 7pm)</p>	<p>When property commercially zoned, property must be a minimum of 10,000 square feet for first 10 dogs, and 50 square feet for each additional dog. Maximum of 30 dogs on premises. For other zoning, a minimum of 1 acre for the first 10 dogs and 100 square feet for each additional dog. Total number of dogs allowed no more than 20.</p>	<p>Outdoor areas that dogs use must be a minimum of 50 feet from any property line. The specific case where the property is zoned commercial but where it abuts a residential district is identified and these setback requirements emphasized.</p>	<p>See next column.</p>	<p>Operator must provide a plan of operation that demonstrates the control of odor, dust, noise, waste management, drainage, security and that the facility will not constitute a nuisance or health problem to adjoining property or uses.</p>

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Chairman
Zoning Commission

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Pages: 14

Phone:

Date: 12/5/2005

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

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Please find attached a submission regarding the above Zoning Commission case, as requested by Chairman Mitten at the November 3, 2005, hearing.

Regards



Mark O'Brien

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