

GOVERNMENT OF THE DISTRICT OF CO. BIA  
OFFICE OF PLANNING



Office of the Director

**MEMORANDUM**

**TO:** Zoning Commission for the District of Columbia

**FROM:** *LS Gov*  
Ellen M. McCarthy  
Director

**DATE** July 1, 2005

**SUBJECT:** Report for Setdown for Emergency Text Amendments to permit **Dog Boarding** within the C-2, C-3, C-4, C-M and M Zone Districts, initiated by the Office of Planning.

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This report serves as the Prehearing Filing required by 11 DCMR § 3013 as a prerequisite to the advertisement of this proposed text amendment

**RECOMMENDATION**

The Office of Planning recommends the following action.

- 1 That the Zoning Commission adopt as an **emergency text amendment**:
  - a. The definition of Dog Boarding,
  - b. The Proposed Section 721 7,
  - c. A provision to allow the issuance of a temporary Certificate of Occupancy to businesses meeting the definition of Dog Boarding, but not meeting the criteria of proposed Section 721 7, to continue in operation for no more than 120 days during which time they may apply for a special exception; and
  - d. A provision to allow the special exception applicants to continue in operation pending BZA action on their applications.
- 2 That the Zoning Commission set down for public hearing the proposed text amendment to define Dog Boarding and establish the use as a special exception with criteria within the C-2, C-3, C-4, CM and M Zone Districts

The Office of Planning has coordinated this proposal with the Department of Consumer and Regulatory Affairs.

Any dog boarding establishment, but not a business established for dog grooming, retail sales of pet supplies or a pet shop, unable to document the use through either a Certificate of Occupancy or a business license shall need to file for a special exception for Dog Boarding in order to be able to continue operating

**ZONING COMMISSION**  
CASE No. *05-21*  
**ZONING COMMISSION**  
**EXHIBIT No.** District of Columbia  
CASE NO.05-21  
EXHIBIT NO.1

The submission of documentation or the filing of a special exception will allow all of the existing uses to continue until the Zoning Commission considers the proposed text amendment. The Office of Planning is interested in ensuring that all dog boarding businesses established in good faith are given the opportunity to continue in operation until such time as the Zoning Commission has acted on the proposed text amendment

## **BACKGROUND**

The issue of a dog boarding establishment as a use not within the Zoning Regulations arose when a temporary Certificate of Occupancy Permit was issued by DCRA on July 23, 2003 for "24 hour dog boarding and grooming with accessory retail sale of pet supplies" within the C-3-A Zone District. Although the use is not specifically enumerated within the Zoning Regulations, the Department of Consumer and Regulatory Affairs (DCRA) determined that the use was similar to a veterinary hospital because dogs stay overnight at both uses. Appeal Number 17092 was subsequently filed from the administrative decision of the then Acting Zoning Administrator alleging that the use is not permitted within the C-3-A Zone. On July 6, 2004 the Board of Zoning Adjustment concluded that the Zoning Administrator erred in determining that dog boarding is permitted as a matter of right within the C-3-A Zone District and granted the appeal because the external effects of a dog boarding facility are more intense than those of a veterinary clinic or a pet shop, both of which are permitted within the C-3-A Zone District. Specifically, the Board noted noise, odor and animal waste. The Department of Consumer and Regulatory Affairs recently served the business owner with a notice of revocation.

## **EXISTING BUSINESSES**

The Office of Planning will work together with the Zoning Administrator's Office to identify all dog boarding establishments that obtained Certificates of Occupancy and/or businesses licenses for dog boarding from DCRA in good faith. There are several dog boarding establishments within the District of which the Office of Planning is aware. Some of these businesses also provide overnight and extended stay dog boarding, others provide grooming services. At least one business provides an outdoor dog area. Some provide accessory uses such as classes and occasional adoption events. These businesses, several of which have been in business since the late 1990's, provide a needed service to pet owners that allow them to have dogs even though they may work long hours away from home. In addition to providing a service to pet owners, several of these businesses opened in commercial or industrial areas that had declined over the years, sometimes being one of the first businesses to open in what since has become a revitalized neighborhood.

Permits issued in the past by DCRA identify dog boarding establishments as "Dog Care Center", "Dog Day Care Center", and "24 Hour Dog Boarding and Grooming with Accessory Retail Sale of Pet Supplies." However, as none of these uses are contained in

the Zoning Regulations, the permits issued for them are not in compliance with the specific zone regulations in which the individual businesses are located

| ZONE LOCATION OF EXISTING BUSINESSES |       |          |       |            |          |
|--------------------------------------|-------|----------|-------|------------|----------|
| Total<br>Businesses                  | C-2-A | C-2-A/DC | C-3-A | C-3-A/ARTS | C-3-A/ES |
| 6                                    | 2     | 1        | 1     | 1          | 1        |

As a result of the BZA decision the Office of the Attorney General has informed the Office of Planning that the Certificates of Occupancy for all of these facilities are subject to revocation. Further, the Office of the Attorney General informed OP that because the BZA held that these uses were not lawfully established and are therefore unprotected, they cannot be considered nonconforming uses. However, the Office of Planning proposed text will allow each of these facilities that were established as dog boarding or dog care businesses to continue as matter-of-right uses, and any expansion or new facility to be considered as a special exception.

The Office of Planning met with several dog boarding providers and with appellants in Appeal No. 17092. In addition, the Office of Planning has reviewed the zoning requirements for similar type uses within surrounding jurisdictions. The use provides a necessary service to District residents, but may have potential adverse affects on surrounding uses. In order to control the use the Office of Planning recommends conditions. The options available for attaching conditions are either to permit the use as a matter-of-right subject to criteria or permitting the use as a special exception. As a special exception use the applicant would have to satisfy the Board of Zoning Adjustment that the proposal adequately addresses the standards.

## **PROPOSAL**

### **Proposed Text**

- A. Add the following definition to the Section 199, subsection 199.1,  
DEFINITIONS:

**Dog Boarding-** Any premises, other than a veterinary hospital, pet shop or dog grooming establishment, used, designated or arranged for the boarding and/or care of dogs for a fee as a commercial service establishment. A dog grooming establishment shall not be considered a dog boarding establishment.

- B. Add the following provision to the C-2, C-3, C-4, C-M and M Zone Districts

**xxx DOG BOARDING**

**xxx.1 A Dog Boarding use shall be permitted as a special exception in a \_\_ District if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.**

**xxx.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.**

**xxx.3 No Dog Boarding establishment may be located on a lot that abuts a residence zone district.**

**xxx.4 Exterior yards, or other such facilities for the keeping of dogs shall not be permitted.**

The Office of Planning recommends that existing dog boarding businesses be subject to the following provision

**721.7 Notwithstanding § xxx.1, a Dog Boarding use in existence as of July 11, 2005 under Certificates of Occupancy for “Dog Care Center” or “Dog Day Care Center” may be permitted to apply for a new Certificate of Occupancy as a Dog Boarding use as a matter of right subject to the following criteria:**

- (a) The use shall not abut a residence zone district;**
- (b) Any existing external yards shall be fenced for the safe confinement of the dogs and no dogs are kept outside between the hours of 8:00 PM and 7:00 AM; and**
- (c) No internal or external expansion may be permitted without Board of Zoning Adjustment approval as a special exception.**

### **Analysis**

Since no definition for “dog day care” or “dog boarding” exists within the Zoning Regulations, in order to adequately control the use and not to classify it with similar type uses, such as veterinary hospitals and pet shops, or to confuse it with a dog grooming establishment, the Office of Planning recommends the following definition be added to the Zoning Regulations

**Dog Boarding-** Any premises, other than a veterinary hospital, pet shop or dog grooming establishment, used, designated or arranged for the boarding and/or care of dogs for a fee as a commercial service establishment. A dog grooming establishment shall not be considered a dog boarding establishment.

All of the dog boarding establishments within the District that the Office of Planning is aware of are located only within commercial zone districts. None are located within

residence zone districts. The Office of Planning recommends that the proposed use be permitted within all commercial zone districts, except C-1, the lowest intensity commercial district and C-5, the Pennsylvania Avenue Development District, and all industrial districts, because uses permitted within commercial districts are also permitted within industrial districts, unless specifically prohibited. Due to the potential for adverse impacts resulting from the use, it is not recommended for residence districts or the C-1 District because of the low intensity commercial nature of that district and its generally small size and proximity to residences. The purposes of the C-5 District is to "[r]einforce Pennsylvania Avenue's unique role as a physical and symbolic link between the White House and the U S Capitol," (11 DCMR § 760.2(b)) and is therefore not appropriate for the proposed use. In the zone districts where it is recommended to be permitted, the Office of Planning recommends it be subject to the following conditions.

1. A Dog Boarding use shall be permitted as a special exception in a C-2 District if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
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.

The Office of Planning recommends that through the special exception process an applicant for a new or expanded facility demonstrate to the Board of Zoning Adjustment that the use may be allowed at specific locations without adverse impacts to adjacent properties. In addition to the general requirements of § 3104, the applicant would have the burden of demonstrating that the use would not tend to have an adverse impact as a result of animal noise, odor or waste.

3. No Dog Boarding establishment may be located on a lot that abuts a residence district.

The purpose of this condition is to ensure that there is a separation of the use from residence districts. Although residential uses are permitted as a matter-of-right within commercial zone districts and the proposed use could still locate adjacent to residential units, it would be in a more intense zone district. More intense zone districts typically have higher levels of activity. Residences are not permitted within industrial zone districts. With the exception of the establishment that was the subject of Appeal No 17092, no existing dog boarding establishment within the District of which the Office of Planning is aware is located on a lot abutting a residence district.

The Office of Planning acknowledges that the existing establishment on Virginia Avenue, S E. has an outdoor area for its clients' dogs. The Office of Planning therefore recommends permitting the BZA to authorize the one existing facility with an outside yard to continue to use that space provided that it is fenced for the safe confinement of dogs, no dogs are kept outside between the hours of 8.00 PM and 7.00 AM and the area

may not be expanded. The same condition is recommended in the event that the Board decides to grandfather all existing facilities.

The existence of these establishments within the District is indicative of the need and demand for this particular use. Its inclusion into the Zoning Regulations will address a previously unmet need.

## **PARKING**

A review of the parking requirements for similar type uses within the surrounding jurisdictions indicates that although they may specifically enumerate similar type uses within their use tables, they do not specify the use within their parking tables. As a result, these establishments are parked under general commercial categories such as "Retail and Service Establishments." Typically, most uses are not specifically identified within the parking regulations of most jurisdictions; rather only those anticipated to generate more or less parking demand than the typical use are listed. The same is true for the District of Columbia, which contains a parking provision for "Retail or service establishments" under § 2100.1. As the general parking provision appears to be sufficient for this use within much of the Washington Metropolitan Area, the Office of Planning recommends the same for the District of Columbia.

The Office of Planning recommends classifying dog boarding as a commercial service establishment, as indicated in the proposed definition. As a commercial service establishment, its parking would fall under the provision listed below. Therefore, the following parking provision as contained within chapter 21 is recommended for Dog Boarding:

| <b>Zone District</b>                     | <b>Parking required for retail or service establishment except gasoline service station and repair garage</b>                  |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <b>C-2-A, C-3-A, C-M-1, M</b>            | <b>In excess of 3,000 ft.<sup>2</sup>, 1 for each additional 300 ft.<sup>2</sup> of gross floor area and cellar floor area</b> |
| <b>C-2-B, C-2-C, C-3-C, C-M-2, C-M-3</b> | <b>In excess of 3,000 ft.<sup>2</sup>, 1 for each additional 750 ft.<sup>2</sup> of gross floor area and cellar floor area</b> |
| <b>C-4</b>                               | <b>In excess of 30,000 ft.<sup>2</sup>, 1 for each additional 3,000 ft.<sup>2</sup> of gross floor area</b>                    |

*Table 1*

Most of the existing uses are not large enough to require parking as provided above. In addition, they are all located within pre-1958 structures that appear to have been built for commercial purposes. As a result, the continuation of the use of these buildings for a commercial use without increasing the gross floor area or cellar floor area will not result in the need to provide parking, as per Section 2100.6 of the Zoning Regulations.

## **COMPREHENSIVE PLAN**

The text amendment is not inconsistent with many of the Comprehensive Plan themes, goals, objectives and policies, including improving neighborhoods (Sections 102 and 1301), economic development (Sections 200 and 1301) and environmental protection objectives (Section 1211)

The provisions, policies, goals, actions and objectives of the Comprehensive Plan, as described above, recommend attracting new businesses to the City, revitalizing older business districts and decreasing health hazards. The proposed use has and continues to achieve these goals and objectives. By permitting Dog Boarding within the Zoning Regulations as proposed these businesses will be able to provide their services in conjunction with District regulations

## **Surrounding Jurisdictions**

A review of the surrounding jurisdictions found that many permit dog day care, kennels and/or boarding within their rural and/or agricultural zones. Within these zones outdoor play areas may be permitted because of the large sizes of the lots and the setbacks required, allowing for the use to operate without adversely affecting surrounding uses. This is not typical of the situation in the District, where these uses tend to be located within built-up urban areas and is therefore not applicable

Montgomery County, Maryland, in addition permitting “animal boarding places” within its residential and rural zones by special exception, also permits them by special exception within “any central business district, commercial, or transit station zone,” subject to a list of conditions. Within these zones “exterior runs, exercise yards, or other such facilities for the keeping of animals are not permitted” and all interior areas for the keeping of animals must be soundproofed. In addition, the conditions that must be met when locating within their rural or residential zones include a minimum lot size of 2 acres and a minimum setback of 200 feet from property lines for all exterior areas

Baltimore County, Maryland requires that any part of an animal boarding place or kennel, when located within either a residential, office, business or manufacturing zone, by either special exception or as a permitted use, be located a minimum of 200 feet from the nearest property line or lease line, as appropriate. This includes parking areas associated with the use.

Arlington County, Virginia permits kennels within its Limited Industrial Districts as a matter-of-right, provided the use is “conducted wholly within a completely enclosed building ..”

Fairfax County, Virginia permits kennels as a matter of right within their more intensive commercial and industrial zones, provided the use is located within a “completely enclosed building which is adequately soundproofed and constructed so that there will be no emission of odor or noise detrimental to other property in the area.”

## **CONCLUSION**

The proposed text amendments are not inconsistent with the above referenced Comprehensive Plan goals and objectives and will facilitate the realization of those goals. The Office of Planning recommends that the following proposed amendments to 11 DCMR (ZONING) be set down and advertised for hearing.

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