

October 31, 2005

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

~~ZONING COMMISSION~~
~~District of Columbia~~
CASE NO. 05-21
EXHIBIT NO. 7

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Re: ZC No 05-21. Agenda Item on November 3, 2005
Dog Boarding – Text Amendment

Dear Chairwoman Mitten,

We the undersigned group of dog boarding facility owners, appellants in Board of Zoning Adjustment (BZA) Appeal No. 17092, and residents, are writing to you about the proposed text amendment concerning dog boarding. This letter sets out important zoning-related considerations in respect of key elements of the *Office of Planning's proposal*, published in the *DC Register (DCR)* on August 19, 2005 (hereafter "the proposal")

As a summary of our views on the proposal, the reasons for which are set out below in this letter

- We strongly **support** the proposal that dog boarding be permitted as a *special exception* in the C-2 through C-4 and Industrial Zone Districts
- We strongly **support** the proposed prohibition on the use of new *external yards* (those not having Certificates of Occupancy in existence as of July 11, 2005) for the keeping of dogs and the proposed prohibition on dog boarding uses that *abut* Residential Zone Districts
- We strongly **support** the proposal to grandfather facilities in existence as of July 11, 2005, with Certificates of Occupancy stating "Dog Day Care Center" or "Dog Care Center" However we believe that either the proposal should grandfather the existing yard at one facility due to its special circumstances, or that, at its November 3 hearing, the Zoning Commission should use its power to act as the BZA and should grant the special exception to operate the exterior yard that the current proposal requires this facility to obtain,
- We strongly **oppose** the proposed *definition of dog boarding*, which we believe erroneously and unfairly excludes dog grooming establishments from the scope of the proposed regulations

The zoning basis for these positions is set out below, much of which was comprehensively established by the BZA's thorough examination and ruling (October 15, 2004) in Appeal No. 17092

1 Why dog boarding is correctly classified as a Special Exception in the commercial zones

- Dog boarding is a use that, unregulated, creates significant **external impacts** extremely loud intermittent barking from multiple dogs, and odor from dog urine and fecal material¹ The BZA found, in relation to the external impacts of dog boarding, that the operation of dog boarding

¹ See Attachment 1 for a Table of Noise Measures dog kennels in general produce a noise level of 108 decibels, and one dog barking at a distance of 50 feet produces a noise level of 72 decibels, a level that exceeds even the maximum noise level permitted in the Industrial Zone (70 decibels during the daytime) in DC (20 DCMR §2701.1). In addition, an average dog produces approximately one liter of urine and one half pound of feces per day (see The Storm Water Resource Center's Pollution Prevention Fact Sheet on Animal Waste Collection, www.stormwatercenter.net). Thus, in the case of a dog boarding kennel which boards 20 dogs per day, the boarding use can result in as much as 140 liters of urine and 70 pounds of fecal matter per week

facilities is characterized by greater amounts of noise and waste than the operation of either pet shops or veterinary hospitals²

- The location clearly identified within the current DC Zoning Regulations for uses such as dog boarding that involve significant external impacts is the light manufacturing (C-M) zone because it is there that the Zoning Regulations first set out and apply "**Standards of External Effects**" (11 DCMR §804) to uses in order to control noise, odor, etc
- Dog boarding facilities, however, provide services that are used by many residents on a regular basis and it would be more convenient to clients if these facilities were able to be located in commercial zones so as to be closer to the residential areas in which their clients are located ***In order to be able to locate potentially disruptive uses such as dog boarding in the commercial zones, the external impacts of dog boarding facilities must be mitigated by restrictions on the use***, so that the convenience to clients of these facilities is not achieved at the expense of external impacts that adversely affect nearby property owners³
- ***The proposed text amendment achieves this mitigation*** by specifying that dog boarding facilities be permitted by special exception if approved by the BZA and subject to the requirement that they be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor or waste
- The proposed "Special Exception" approach for dog boarding is ***entirely consistent with the current treatment in the Zoning Regulations of another use – motorcycle sales and repair facilities – that is an excellent zoning comparator to dog boarding*** in terms of the objectionable conditions it can create for adjacent properties. Motorcycles, like dogs, create extremely high noise levels⁴ The Zoning Regulations specify (11 DCMR §727) that motorcycle uses are only permitted in the C-2 Zone as a special exception if approved by the BZA and subject to restrictions⁵
- It is entirely appropriate that (like motorcycle uses) the location of dog boarding facilities in the densely populated commercial zones (which involves the keeping of large numbers of animals in close proximity to businesses and residences) should require a ***public hearing*** such as that provided by the special exception process⁶
- It would be a ***zoning misclassification if dog boarding were to be introduced as a by-right use in the commercial zones*** that is subject only to restrictions specified in the regulations. Because even detailed restrictions set out in the regulations would not be able to fully capture the diversity of situations that exist within DC's commercial zones, there would be no opportunity (without a public hearing and with a by-right procedure) for special circumstances affecting particular properties to be factored into the location and operational parameters for dog boarding facilities. The Zoning Administrator does not have the power to take account of special circumstances in issuing Certificates of Occupancy, only the BZA or the Zoning Commission has this authority

² See paragraph 17 of the BZA's October 15, 2004, Order in Appeal No. 17092

³ Restrictions on the use are especially necessary because dog boarding is an otherwise unregulated use that is not subject to the detailed operational and sanitary licensing standards that apply to pet shops and veterinary hospitals

⁴ See Attachment 1 two motorbikes can create an average noise level of 81 decibels and a peak noise level of 103 decibels

⁵ For example, all parts of the motorcycle sales and repair use must be located within a building that is at least 50 feet away from a Residential Zone and the BZA may impose any other restrictions it deems necessary to protect nearby property

⁶ The special exception/public hearing route is also highly appropriate because dog boarding uses generally do not meet the \$1 million threshold for facilities requiring an Environmental Impact report under DC's regulations

- With a use such as dog boarding that involves significant potential impacts on neighboring property owners, ***the proposed “Special Exception” process is the appropriate mechanism for ensuring that the context is adequately taken into account***, because the special exception process entails a public hearing and significant discretion on the part of the BZA with regard to the location, design and operation of such facilities. Without such discretion, a by-right approach to dog boarding facilities could result in – for example – a dog boarding facility that specialized in breeds that some people may consider to be aggressive (e.g. rottweilers or pit bulls) being located next to a nursery school or a center for disabled or handicapped persons.
- Like DC’s Office of Planning, ***numerous other municipal jurisdictions – for example New York City, San Francisco, and Baltimore County – have reached the conclusion that the location of dog boarding facilities should be subject to special restrictions in their commercial zones.***⁷
 - The city of New York has taken the approach of classifying dog boarding facilities within “Use Group 16” which consists of automotive and other semi-industrial uses which involve offensive noise, odor, vibration, etc., and which are only permitted to locate in the least restrictive commercial zone (“C8”) in the city.⁸
 - The city of San Francisco has taken a similar approach, permitting dog boarding facilities by right (with restrictions) only in heavy commercial and industrial zones.⁹
 - Baltimore County has taken the approach of requiring dog boarding facilities to obtain a “special permit” (a process which requires a public hearing) from the Zoning Commissioner who has discretion to impose wide-ranging restrictions on the use.¹⁰

2. Why new external yards and facilities abutting Residential Zones are correctly prohibited

- The noise level created by a single barking dog is so high that it is basically not possible for a group of dogs in an external yard to remain *continuously* within the maximum sound levels set out under DC law.¹¹ Thus, permitting ***the use of exterior yards to board dogs would create an enforcement nightmare for DC’s Noise Control Officers***. DC simply does not have the resources, either within the Metropolitan Police Department (MPD) or within the Department of Consumer and Regulatory Affairs (DCRA) to allow officers to respond to barking dogs exceeding the noise limits on a daily basis in the exterior yards of dog boarding facilities.
- ***The enforcement problem that is created by excessive noise from barking dogs is of a special nature***. The most common forms of noise complaints in DC are related to noise from nightclubs and noise from private parties. In both these cases, the noise is of a sustained nature, meaning that between the time of a complaint to DC authorities and the arrival sometime later of a

⁷ See also the material cited in paragraph 24 of the BZA’s Order (October 15, 2004) in Appeal No. 17092 which resulted in the Board’s finding that other jurisdictions have regulated dog kennel uses by restricting proximity to neighboring properties and controlling impacts from noise and odor.

⁸ See Chapter 2 Use Regulations of Article III Commercial District Regulations of the online version of New York City’s Zoning Regulations at www.nyc.gov/html/dcp/pdf/zone/art03c02.pdf

⁹ See San Francisco’s regulations available at [www.amlegal.com/nxt/gateway.dll/California/San%20Francisco/Planning/article00006.htm?fn=altmain-nf.htm&f=templates\\$3.0](http://www.amlegal.com/nxt/gateway.dll/California/San%20Francisco/Planning/article00006.htm?fn=altmain-nf.htm&f=templates$3.0)

¹⁰ See Section 421 Animal Boarding Place, Kennel, etc. of Baltimore County’s regulations available by searching on “kennel” at www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=alpbaltimoreco_md

¹¹ See Attachment 1 the noise created (72 decibels) by just one large dog barking at a distance of 50 feet is almost ten times the intensity of the maximum noise limit permitted during the daytime in the commercial zones (65 decibels) and more than ten times the intensity of the maximum noise level permitted in the residential zones (60 decibels) (20 DCMR §2701.1)

DC Noise Control Officer, the noise is typically still being created. In the case of dogs barking, *the noise is random and intermittent*, which makes it almost impossible to enforce. By the time a Noise Control Officer has arrived, it is virtually certain that the dogs will no longer be barking, making it difficult to issue citations for this kind of intermittent (but extremely loud and disturbing) noise.

- Without the realistic possibility of effective enforcement of the noise emanating from exterior yards, it would be over-reaching and simply unfair for the Zoning Regulations to allow the possibility of such yards in densely populated commercial zones. ***Allowing exterior yards would, by definition, subject neighboring property owners to excessive noise against which they would have no effective means of redress***, short of civil legal action. While external yards might be appropriate in the CM zones, the location of external yards for dog boarding facilities within mixed-use commercial zones would fly in the face of modern urban land use principles.
- For these reasons ***numerous other jurisdictions that have addressed the issue of dog boarding have prohibited the use of external yards***, for example the city of New York; the city of San Jose, California, the city of Minneapolis, Minnesota, the city of Ann Arbor, Michigan; and the city of Tacoma, Washington.
- Because of its noise and odor impacts, dog boarding is not appropriately located either within or adjacent to ("abutting") a Residential Zone. ***Numerous other jurisdictions have recognized that this use must be kept separate from residential zones by introducing setback requirements for dog boarding facilities***, 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), the city of Vancouver, Washington (50 feet from the property line), and, the city of Tacoma, Washington (20 feet from any residential use or any residential zone district).
- ***The current proposal to prohibit this use from abutting a residential zone is the minimum protection that should be afforded by the DC Zoning Regulations.*** Urban jurisdictions such as San Francisco have concluded that a buffer distance of 200 feet is necessary to mitigate any potential impacts on nearby residential zones, whereas the current "no abutting" proposal would provide a buffer distance of only a single property or single lot.

3. Why grandfathering the existing facilities is appropriate and should be extended to the Commission granting a special exception to the sole existing exterior yard

- We ***support the proposed grandfathering of the three dog boarding facilities in existence as of July 11, 2005, holding Certificates of Occupancy for "Dog Day Care Center" and "Dog Care Center"***. To our knowledge, none of these facilities has been the subject of complaints and each is operated in a manner that minimizes if not eliminates any impact on neighboring property owners. None of these three facilities abuts a residential zone district and all three facilities have been in continuous operation for more than 5 years, long before the currently proposed regulations were anticipated.
- Nonetheless, ***the need for the proposed regulations of dog boarding facilities has been clearly established by the BZA's ruling in Appeal No. 17092***. While the three existing facilities are well operated, this is no guarantee that future dog boarding facilities will choose their locations as well as the existing operators have done, nor that future operators will minimize impacts on neighboring property owners in the absence of regulations requiring them to do so.
- ***However, the proposed regulations impose a severe penalty on the one existing facility that has an outdoor yard***. This facility has been in continuous operation for more than 7 years in a

uniquely suitable location that is adjacent to a highway overpass and more than 200 feet from the nearest residential district zone boundary line. Its exterior yard is an integral part of its operations, without which the business's viability is threatened as the indoor structure at the site has a very small capacity. Despite the continuous use of its exterior yard during the past 7 years, no complaints have been lodged regarding noise or other impacts by neighboring property owners or others. Requiring this facility to apply for a special exception to operate the exterior yard would unfairly subject this one existing facility to considerable expense, time and uncertainty regarding its ability to operate that would not be imposed on the other existing facilities. Thus, and through no fault of its operator, the proposed regulations would severely disadvantage this one business relative to its competitors.

- ***While we understand that the Commission may not wish to grandfather this existing yard*** (because there is no guarantee that future operators of the property will be as responsible as the existing operator), ***we urge the Commission to take the alternative available to it and grant the necessary special exception to this business to operate the existing exterior yard*** at the same time as the Commission adopts the proposed regulations. The Commission has the power to act as the BZA and grant the special exception in this instance and doing so would ensure that all three existing facilities, which are District businesses of long-standing and good business reputation, are treated equitably and without penalty by this process of establishing new zoning regulations governing their industry.

4. Why the definition of dog boarding must include dog grooming establishments¹²

- Dog grooming establishments have custody of the dogs that enter their premises for grooming for 6-10 hour periods and, in some cases, overnight. With large numbers of dogs being kept on the premises of dog grooming establishments for periods of 6-10 hours, ***grooming establishments involve substantial elements of dog boarding and the same significant potential external impacts (noise, odor and waste) as dog boarding facilities.***
- In 2004, Q Street Association undertook a telephone survey of six grooming establishments in DC to assess how long dogs were generally on the premises for grooming. In every case, the most typical arrangement was that the dog's owner would drop the dog off at the grooming establishment in the morning and pick the dog up at the end of the day, leading to ***an average stay for dogs at grooming facilities of around 8 hours, of which perhaps a 45-minute period would be devoted to grooming the dog***.¹³ The remainder (and by far the majority) of the time that the dog is on the premises is effectively dog boarding or "dog day care" as opposed to dog grooming. Dog grooming establishments stated that the reason that they operate in this way is that it (a) is convenient to pet owners, and (b) is convenient to the dog grooming personnel, since it generally avoids the need for either party to get involved in detailed scheduling arrangements regarding the time window within which any individual dog will be groomed.
- ***Under the present proposal, dog grooming facilities are not covered by the Zoning Regulations, meaning that there would be no restrictions whatsoever on the operation of these facilities.*** By way of illustration, one current DC grooming facility's stated business plan for its premises specifies that the facility will have 8-10 employees and will be grooming up to 20 dogs per day. The dogs at the site for grooming will be kept both indoors and outdoors in an exterior yard.

¹² We note that, at the Zoning Commission's July 11 hearing to consider the Emergency Rulemaking on dog boarding, the Office of Planning (OP) stated that it expected to further investigate the issue of including grooming facilities under the dog boarding regulations. To date, we have not heard the outcome of OP's further investigation of this issue.

¹³ If the owner did not pick up the dog at the end of the day, each establishment stated that the dog would be kept overnight at the grooming facility.

on a C-3 site that abuts a residential zone district Under the definition of dog boarding currently proposed in the text amendment (which explicitly excludes the premises of dog grooming establishments), the use of this exterior yard would not be subject to any zoning regulations

- ***The exclusion of dog grooming***, a use with essentially the same zoning and impact characteristics as dog boarding, ***from the proposed text amendment is both inconsistent and unfair to dog boarding facilities, residents and other businesses*** Excluding dog grooming from the regulations will create an incentive for “dog day care activities” to informally migrate from (regulated) dog boarding facilities to (unregulated) dog grooming facilities, since the latter would be easier to establish anywhere in the commercial zones without restriction on their activities, including the use of outdoor yards and at sites that abut residential zones In addition to potentially seriously impacting the business viability of dog boarding facilities, this incentive for dog groomers to act as unofficial dog day care centers would have seriously adverse impacts on neighboring property owners, whose interests would have no protection from these impacts under the zoning regulations
- ***Because the potential external impacts of dog grooming facilities are indistinguishable from those of dog boarding facilities, logic dictates that they should be treated by the Zoning Regulations in essentially the same way as dog boarding uses*** These facilities are effectively boarding dogs for large parts of a day or longer and the potential impacts on neighboring property owners are identical It is a fundamental principle of zoning and land use practice that uses with similar impacts, in principle, be subject to similar provisions by the law
- ***Other jurisdictions that have addressed these issues have generally taken one of two approaches*** either they have devised and imposed separate specific restrictions on dog grooming facilities so as to mitigate the potential impacts of these facilities, or recognizing the difficulty of distinguishing grooming and boarding from an enforcement perspective, they group dog grooming and dog boarding together and subject both to the same zoning restrictions
- Examples of the former approach (specific regulations relating to dog grooming) are the city of San Francisco, California, the town of Middlefield, Connecticut, and the town of Winchester, Kentucky Examples of the latter approach (grouping dog boarding and dog grooming together under the regulations) include the city of Orlando, Florida, the city of San Jose, California, city of Ann Arbor, Michigan, and the city of Tacoma, Washington
- Zoning regulations should be straightforward to apply and enforce For this reason, we believe the approach adopted by other jurisdictions of equal treatment of dog boarding and dog grooming is the better approach ***We strongly urge the Zoning Commission to modify the proposed definition of dog boarding in the text amendment to explicitly include dog grooming establishments.***¹⁴

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

¹⁴ Unlike pet shops and veterinary hospitals, which are both subject in DC to licensing requirements that impose detailed operational and sanitary standards (see BZA Order No. 17092, paragraph 23, October 15, 2004), dog grooming establishments (like dog boarding establishments) are currently subject in DC to no regulation Thus, while dog grooming uses and dog boarding uses should both be covered by the proposed text amendment, it is not necessary to extend the definition of dog boarding to cover pet shops and veterinary hospitals, which have been ruled by the BZA to involve lesser external impacts due to the mitigating effects of the detailed regulatory standards to which those uses are already subject



Andrea Doughty

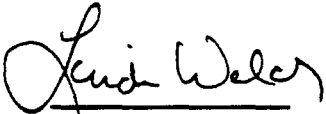
1417 Q Street, NW
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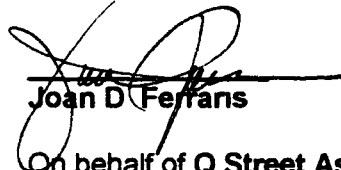
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On behalf of the Appellants in BZA Appeal No 17092



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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 05-21, Office of Planning
 Mr Alan Bergstein, Chief Counsel, Land Use Division, Office of the Attorney General
 Mr Bill Crews, Zoning Administrator, Department of Consumer & Regulatory Affairs

Noise Measures from Various Sources

Noise Source	Inside/Outside	dBA peak	dBA (Average)
Whispering @ 5 feet ¹	N/A	N/A	20
Quiet Office/Library ²	Inside	N/A	40
Large Office ¹	Inside	N/A	50
Large Store ²	Inside	N/A	50
Commercial Garage ⁷	Inside	N/A	55
Circular Saw ²	Outside	N/A	57
Chicken Shed ³	Inside	92	71
Passenger Car @ 50 feet Traveling @ 55mph ²	Outside	N/A	71
One Large Dog Barking @ 50 feet ²	Outside	N/A	72
Reception/Lobby Area ²	Inside	N/A	78
Classroom ²	Inside	N/A	78
Factory (light to medium work) ²	Inside	N/A	78
Military Helicopter @ 500 feet ²	Outside	N/A	80
Vacuum Cleaner @ 3 feet ²	Inside	N/A	81
Two Motorbikes ⁶	Outside	103	81
Large Trucks @ 50 feet Traveling @ 55mph ²	Outside	N/A	86
Piggeries (Auto-fed) ⁴	Outside	104	72
Two Dogs Barking @ 10 Feet ⁷	Outside	104	N/A
Riveter @ 35 feet ⁷	Outside	N/A	97
Dog Kennel ²	Inside	N/A	108
Amplified Rock Music Performance ²	Inside	N/A	121

¹ League for the Hard of Hearing, Noise Levels in Our Environment Fact Sheet. Available at <http://www.lhh.org/noise/decibel.htm>.

² M. David Egan, Architectural Acoustics, 1988, p. 34-35.

³ Farm Noise Hazards: Noise Emissions during Common Agricultural Activities, Australian Centre for Agricultural Health and Safety, 2002, p.36. Available at <http://www.acahs.med.usyd.edu.au/nfidc/Farmnoise.pdf>.

⁴ Farm Noise Hazards: Noise Emissions during Common Agricultural Activities, Australian Centre for Agricultural Health and Safety, 2002, p. 43. Available at <http://www.acahs.med.usyd.edu.au/nfidc/Farmnoise.pdf>.

⁵ Farm Noise Hazards: Noise Emissions during Common Agricultural Activities, Australian Centre for Agricultural Health and Safety, 2002, p.38. Available at <http://www.acahs.med.usyd.edu.au/nfidc/Farmnoise.pdf>.

⁶ Farm Noise Hazards: Noise Emissions during Common Agricultural Activities, Australian Centre for Agricultural Health and Safety, 2002, p.42. Available at <http://www.acahs.med.usyd.edu.au/nfidc/Farmnoise.pdf>.

⁷ Van Nostrand's Scientific Encyclopedia, Seventh Edition, Vol.II, 1989, p. 1986.

N/A = Not applicable

Compiled by Lisa Chiu, 2004

Noise is measured in decibels (dB). The scale for this is logarithms; this means that 90dB is ten times the intensity of 80dB and a hundred times the intensity of 70dB. An increase of 3dB doubles the sound intensity, so that 87dB is twice as noisy as 84dB. To put this into some context, a normal office environment is approximately 55dB.