

1. Abutting a residence zone

In the View 14 case before the BZA, #18702, the board recognized a disparity with what was originally thought to be the intention of the ZC and their interpretation of the precise wording regarding "The animal boarding use shall not abut a residence zone." The OP believes in its Set Down Report that the intention of the ZC was to allow animal boarding across an ally or street. However, else where in the regulations it states that the borderline runs through the center of the ally, and thus the boarding use could not abut an ally where there was a residence zone on one half of the ally.

Recommendations

The ZC should allow a boarding use to be across the ally or street from a residence zone, to restore the original intention of the regulations. The regulation was simply not written the way it was intended to be enforced.

If the ZC wishes to add a measurable separation between the boarding use and a residence district, it should follow the regulations for other uses, 706.3 for gasoline service station, 709.3 for bowling ally, and 733.2:

"The animal boarding use shall not be located within twenty five feet (25 ft.) of a property in a Residence District used for residential purposes unless separated from the Residence District by a street or alley"

2. Conflict on outdoor spaces

735.4(c) and 735.6 address outdoor spaces. This was addressed with the roof deck in the Wagtime case, 18474. The BZA made their decision based on 735.6. It is unreasonable to require that "No animals shall be permitted in an external yard on the premises." The BZA decided that animals were permitted by matter of right the property so long as 736.6 was met, that "external yards or exterior facilities for the ***keeping*** of animals shall not be permitted." Temporary use was deemed permitted. Dogs may ingress, egress, go out for bathroom breaks, etc., as long as the dogs were not being ***kept***.

Recommendation

Remove 735.4(c) from the proposed regulations. The BZA has ruled on this matter previously. The conflict should be removed consistent to how it has been applied

3. Objectionable Noise requirement is too vague

735.3 states that "The animal use shall take place entirely within an enclosed and soundproof building in such a way so as to produce no noise or odor objectionable to nearby properties." It was the original intention of the ZC that an enclosed masonry structure was sufficient soundproofing. The BZA ruled in accordance with this intention in some but not all cases. Recent cases have focused on the meaning of "soundproof"

and “objectionable.” The BZA has found, through expert testimony, that there is no 100% absolutely soundproof structure, and that soundproofing in the acoustics industry is measured in relation to the ambient noise level, or background noise. A soundproof structure mitigates the noise to the level of the ambient noise level measured in the environment.

The ZC must establish a reasonable and measurable definition of the level of objectionable noise. Commercial zones are established with the idea that there will be an increased level of acceptable noise compared to Residence Zones. Dog boarding businesses have become a hot button issue in DC. BZA outcomes can vary greatly depending on the case before them. There is at times a bias among citizens that noise from a dog boarding facility is less acceptable than the noise from any other business.

Recommendation

The animal boarding use shall meet existing noise regulations for commercial districts.

The animal boarding use shall produce no noise in excess of the ambient noise level measured 25 feet from the animal boarding use.