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MEMORANDUM

TO: District of Columbia Zoning Commission
FROM: Jennifer Steingasser, ^{JS} Deputy Director Development Review & Historic Preservation
DATE: November 17, 2014
SUBJECT: ZC 14-10: Supplemental Report- Request for Text Amendments to the Zoning Regulations: Chapter 7, § 735, Animal Boarding in Commercial Districts; § 736, Pet Grooming Establishments in Commercial Districts; § 737, Pet Shops in Commercial Districts; § 738, Veterinary Boarding Hospital in Commercial Districts; § 739, Animal Shelter in Commercial Districts; Chapter 8, § 801.7, Animal Shelter in Industrial Districts; § 802.21, Animal Boarding in Industrial Districts; § 802.26, Pet Shop in Industrial Districts; § 802.27, Veterinary Boarding Hospital in Industrial Districts.

BACKGROUND

At the public hearing of October 23, 2014, the Zoning Commission discussed and heard testimony concerning proposed text amendments to the regulations concerning animal uses. The Commission requested the Office of Planning (OP) address the issues noted below. Subsequently, OP worked with the Office of the Attorney General (OAG) on possible revisions in accordance with the Zoning Commission's recommendations

PROPOSED LANGUAGE

OP recommends approval of the following text amendments to the Zoning Regulations. Proposed new text since the Final Report dated October 10, 2014 is in **bold and underlined**, struck text is in **strikethrough and underlined**.

Amend Chapter 7, Commercial Districts

1 Amend § 735 as shown below

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 shall not abut a Residence Zone. No portion of the animal boarding use shall be located within twenty five feet (25 ft.) of a property in a~~

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~~735.7 Notwithstanding §735-6, an animal boarding use existing on July 11, 2005, under 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.~~

- ~~(a) The yard shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, and/or waste~~
- ~~(b) The applicant shall demonstrate that the external yard will be fenced off for the safe confinement of the animals.~~
- ~~(c) The applicant shall demonstrate that the external yard is located entirely on private property.~~
- ~~(d) The Board shall establish the hours in which animals may be kept in the yard, provided that no animals shall be permitted in the yard between the hours of 8:00 p.m. and 7:00 a.m.~~

2 Amend § 736 as shown below

736 PET GROOMING ESTABLISHMENT

736.1 A pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.

736.2 The pet grooming establishment shall produce no noise or odor objectionable to nearby properties, including residential units located in the same building as the use. ~~not be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste~~

736.3 The applicant shall demonstrate that the pet grooming establishment will comply with the following conditions and any Board's approval shall be subject to the use's continued compliance with these standards:

- (a) All animal waste shall be placed in closed waste disposal containers and shall utilize a ~~qualified~~ waste disposal company to collect and dispose of all animal waste at least weekly.**
- (b) Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system. [(a) and (b) originally 735.4]**
- (c) No animals shall be permitted in an external yard on the premises. [(c) originally in 736.7]**

736.4 The pet grooming establishment shall not abut an existing residential use or Residence District. No portion of a pet grooming establishment use shall be located within twenty-five (25 ft.) of a property in a Residence District used for residential

- 738 3 No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals.
- 738 4 The veterinary boarding hospital shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste, **including residential units located in the same building as the use.**
- 738 5 ~~The veterinary boarding hospital shall not abut an existing residential use or a Residence District. **No portion of a veterinary boarding hospital use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes. The use shall not be within twenty-five (25 ft.) of a Residence District unless separated from a Residence District by all or a portion of a street or alley.**~~
- 738 6 External yards or other external facilities for the keeping of animals shall not be permitted
- 738.7 Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses.
- 738 8 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

5 *Amend § 739 as shown below.*

739 ANIMAL SHELTER

- 739.1 An animal shelter may be permitted as a special exception if approved by the Board of Zoning Adjustment under §3104, subject to the requirements of this section.
- 739.2 The animal shelter shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste, **including residential units located in the same building as the use**
- 739.3 **The applicant shall demonstrate that the animal shelter use will comply with the following conditions and any Board's approval shall be subject to the use's continued compliance with these standards:**
- (a) The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping. *[(a) originally 739.3]*
 - (b) **Animal waste shall be placed in closed waste disposal containers and shall utilize be collected by a licensed a waste disposal company to collect and dispose of all animal waste at least weekly.** ~~All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly~~
 - (c) Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system. *[(b) and (c) originally 739.4]*

residential purposes; The use shall not be within twenty-five (25 ft.) of a Residence District unless separated from a Residence District by all or a portion of a street or alley, and

- (iv) Outdoor runs and external yards for the exercise of animals shall be permitted, subject to the following requirements:
 - (A) No animals shall be permitted in outdoor runs or external yards between the hours of 8 00 p m and 8 00 a m ;
 - (B) External yards and outdoor runs shall be enclosed with fencing or walls for the safe confinement of the animals and the absorption of noise. Fencing and/or walls shall be a minimum of eight (8) feet in height and constructed of solid or opaque materials with maximal noise- absorbing characteristics;
 - (C) No more than three (3) animals shall be permitted within any exterior yard or outdoor run at a time; and
 - (D) No part shall be located within two hundred (200) feet of an existing residential use or Residence District.

2 Amend § 802 as shown below

- 802.21 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.
- 802.22 The animal boarding use shall be located and designed to create no condition objectionable to adjacent properties resulting from animal noise, odor, or waste, **including residential units located in the same building as the use.**
- 802.23 ~~The animal boarding use shall not abut a Residence District. No portion of the animal shelter use shall be located within twenty-five feet (25 ft.) of a Residence District used for residential purposes.~~ **The use shall not be within twenty-five (25 ft.) of a Residence District unless separated from a Residence District by all or a portion of a street or alley.**
- 802.24 External yards or other exterior facilities for the keeping of animals shall not be permitted.
- 802.25 A pet grooming establishment may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this subsection.
 - (a) The pet grooming establishment shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;

- (a) A veterinary boarding hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D C Official Code §8-1808 (h)(1), except domesticated dogs.
- (b) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;
- (c) The veterinary boarding hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
- (d) ~~The veterinary boarding hospital shall not abut an existing residential use or a Residence District~~ **No portion of the veterinary boarding hospital use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes; The use shall not be within twenty-five (25 ft.) of a Residence District unless separated from a Residence District by all or a portion of a street or alley.**
- (e) External yards or other external facilities for the keeping of animals shall not be permitted;
- (f) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
- (h) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

ISSUES AND OFFICE OF PLANNING RESPONSES

OP researched what other cities have done through the Planning Advisory Service of the American Planning Association. Together we were unable to find any jurisdictions that permit animal uses in mixed use residential/retail buildings. However, some do require different criteria from the District.

Many of the researched jurisdictions require setbacks from residential zones to protect them from noise of outdoor areas. With the exception of animal shelters, the Zoning Regulations do not permit outdoor areas. Since those jurisdictions are primarily suburban or rural, setbacks are required in the hundreds of feet, characteristic of their densities. Also, setbacks are typically required for outdoor runs, which are not permitted by the District's Zoning Regulations for any animal use except animal shelter.

Many of the criteria now used in the Zoning Regulations came from Zoning Report, April 17, 1992 titled, "Zoning for Animal Clinics and Hospitals" by Charles Reed, and most of the criteria recommended in that study were adopted by the Zoning Commission. Use of solid

OPTION 1: Include a street or an alley to be sufficient separation for an animal use from a residential zone OP proposes the following language as coordinated with OAG

OP worked with OAG to revise this language to permit a street or an alley to be sufficient separation for an animal use from a residential zone or use. That language would read as follows

“The use shall not be within twenty-five (25 ft.) of a lot within a Residence District unless separated from a Residence District by all or a portion of a street or alley ”

The proposed language above would achieve the original intent of permitting alleys and streets to separate animal uses from residential district, while retaining the essence of and conformance with Section 107.5. It would also clarify the issue of animal uses abutting residential uses as requested by the BZA. OP recommends this language be added to the regulations.

OPTION 2: Maintain the twenty five foot separation and include width of an alley and any distance within the animal boarding property not used for animal boarding within the twenty five feet

The use shall not be located within twenty-five (25 ft.) of a lot that is within a Residence district. The twenty five feet shall be measured to include any space on the lot or within the building not used by the animal boarding use and any portion of a street or alley that separates the use from a lot within a Residence district. Shared facilities that are not under the sole control of the animal boarding use, such as hallways and trash rooms shall not be considered as part of the animal boarding use.

This language maintains the twenty five foot separation of use but includes the area of the alley within that 25 foot buffer. It also includes any portion of the lot or building that is not used for animal boarding to be including within the 25 feet. This is important to a mixed use building that may have another use behind the animal boarding that would serve as separation

Survey of Other jurisdiction regulations for Mixed Use buildings.

OP was unable to locate other jurisdictions that regulate animal uses within a mixed-use building that includes residential. Other cities, such as Baltimore, permit dog boarding as a conditional use, with the only requirement that the applicant must document to the satisfaction of the Board of Zoning Appeals that it would not adversely affect neighboring properties. This approach would make the review and approval of these uses on a case-by case basis, a suggestion made the Commission. OP does not recommend the Commission adopt this option as it would eliminate the specific criteria on which the Board would make its determination.

Instead, OP recommends that additional criteria could be added to the regulations to minimize the transmission of noise from an animal use to residential units above by

- (a) The use shall be located within a building so that the use is not within twenty-five feet (25 ft.) of a lot that is within a Residence district; The twenty five feet shall be measured from the Residence district to the animal boarding use and shall include any space on the lot or within the building not used by the animal boarding use and any portion of a street or alley that separates the use from a lot within a Residence district;
- (b) The windows and doors of the space devoted to the animal boarding use shall be kept closed, and all doors facing a residential use shall be solid core;
- (c) Animal waste shall be placed in closed waste disposal containers and shall be collected by a licensed waste disposal company at least weekly;
- (d) Odors shall be controlled by means of an air filtration or an equivalently effective odor control system; and
- (e) Floor finish material, and wall finish materials measured a minimum of 48 inches from the floor, shall be impervious and washable.
- (g) If an external yard is proposed as an accessory use to the animal boarding use, it shall be subject to the following requirements:
 - (i) No animals shall be permitted in outdoor runs or external yards between the hours of 8:00 p.m. and 8:00 a.m.;
 - (ii) External yards and outdoor runs shall be enclosed with fencing or walls for the safe confinement of the animals and the absorption of noise. Fencing and/or walls shall be a minimum of eight (8) feet in height and constructed of solid or opaque materials with maximal noise- absorbing characteristics;
 - (iii) No more than three (3) animals shall be permitted within any exterior yard or outdoor run at a time; and
 - (iv) No part shall be located within two hundred (200) feet of an existing residential use or Residence district;
- (h) An animal boarding use not meeting the provisions of this section may be approved as special exception subject to §802.22

HEPA filters do not remove odors. Strike the language.

OP deleted the reference

Keep the references to “species” and delete those to “breed”.

OP deleted the reference.

Amend the regulations to require qualified waste haulers be licensed.

OP was in error when it stated that refuse haulers for animal waste are licensed by the District In light of that OP recommends the reference to “qualified haulers” be deleted.

Measure noise from the ambient noise levels