



Town of Groton Massachusetts Zoning Board of Appeals

Meeting Agenda and Minutes

June 5, 2013 – GRG/O'Brien Dog Day Care

Present

Megan Mahoney, Associate Member
Mark Mulligan, Chairman
Cynthia Maxwell, Member
Robert Cadle, Member
Bruce Easom, Associate Member

Not Present

Alison Manugian, Member
Jay Prager, Member

A quorum was attained. The meeting was called to order at 7:10 pm.

Meeting Minutes

GRG/O'Brien Comp. Perm. Modification-Dog Day Care

Chairman Mulligan convened the hearing by reading the legal notice.

There were many abutters present.

Ms. O'Brien said she wants to change the use of the building to doggie day care and boarding, noting that dogs would be dropped off after 6 am. She said that when they are not playing they will be crated, and will be picked up by 7 pm. She said boarders are put in crates at 7 pm and given a potty break at 10 pm, and classes are held after 7 pm weekdays and on weekends. She said the building will be divided to house the kennel on one side and day care on the other side, noting that she is not sure about grooming yet.

Chairman Mulligan asked whether the applicant already has a dog care business.

Ms. O'Brien said she currently goes into peoples' homes to train, sit, etc.

Chairman Mulligan asked how many dogs the applicant planned to accommodate.

Ms. Obrien said on a good day, 45.

Member Cadle asked whether there would be a maximum at any given time.

Ms. O'Brien said an average day is 45 dogs, with no more than 60, noting that the boarding number is much less. She said sometimes there are no dogs, with a good night having four, and maybe more on holidays.

Member Cadle asked how many kennels and runs were proposed.

Ms. O'Brien said she won't have individual runs, noting that the dogs would be crated until play time, which would consist groups of no more than eight dogs with a staff member. She said two groups of eight may be outside at a time. She said that the play area would be on the left side of the building (when one is facing it), with the condos on the right. She said there is PVC fencing along that side now, noting that the dogs are supervised at all times when outside. She said that dogs bark when territorial or when bored, which won't be the case here.

Chairman Mulligan said he wants to read the abutters' letters into the record, which was a form letter signed by more than 20 people. He read one form letter and a letter from a realtor involved in the sales of units about the possible impact on sales. He also read a letter from town counsel into the record.

Patricia Carol, abutter, asked about the size of dog runs.

Ms. O'Brien said the yard would be about 45 x 90 feet.

Ms. Carol asked about fire truck access around the yard.

Mr. O'Brien said there would be a roadway there for truck access.

Ray Capes, abutter, said he has a lot of questions, noting that he read the legal opinion and wondered if this is being evaluated as a business use in a B-1 or as an aggie use.

Chairman Mulligan said it would be considered under the zoning district.

Mr. Capes said it is a B-1 business district and asked whether the ZBA was acting as the PB site plan review agent.

Mrs. Collette said that because this is coming under a Comprehensive Permit, it is not subject to zoning and thus the ZBA has to do site plan review. She said the Board may want to request that the PB evaluate the proposal for fire truck access, etc. She noted that Town Counsel said this is a two-step process, with the

first step being to decide whether this is a substantial change and if so, the board would proceed treating this as a major modification and continue the review as such.

Member Mahony asked what would be considered a substantial change if a business is being replaced by another business.

Mr. Capes said he wants to know what level of site plan review will be followed, noting that he is a dog person and pro economic development. He said he is coming to this hearing with an open mind but has some concerns, particularly about the number of dogs at the day care, cited as typically 45 but with a maximum of 60.

Ms. O'Brien said there hasn't been a rule for capacity, noting that as far as the building is concerned, there is only room for said number of dogs and she won't allow for more than is safe.

Mr. Capes asked about the maximum number of dogs boarding.

Ms. O'Brien said there is no rule.

Mr. Capes said he doesn't want a rule, but what she expects.

Ms. O'Brien said maybe 40 during a holiday.

Mr. Capes asked whether there would be a full time over night person.

Ms. O'Brien said she is not sure yet, but will have cameras, etc.

Mr. Capes said he wants to ask this so the board can determine whether this is a major change.

Member Mahony said the board is here to determine whether the change is lawful under the comprehensive permit.

Discussion ensued regarding whether specific questions are relevant.

Mr. Capes said that any other business change of use would need site plan review. He said the board should be careful what constitutes a change in use and feels questions need to be answered.

Member Cadle agreed.

Mr. Capes said it is early and this is the only thing on the agenda so the board should hear everything.

Member Cadle said that is not relevant, noting that there is no public hearing for a substantial change decision.

Member Easom said he feels this is a substantial change and suggested the board could vote on that now.

Member Mahony said she wants more information.

Ms. Carol said the gym was not invasive and this use will be invasive with much more activity, etc.

Member Mahony said she understands what everyone is saying about the impact but is struggling with what is a substantial change and how the board handles this issue.

Member Easom suggested discussing jurisdiction after a vote of substantial change.

Member Mahony said she doesn't understand.

Member Easom said Article 25 at Town Meeting defined a commercial dog kennel and asked whether this activity meets this definition and would it require a special permit then. He said that this article places controls about what control the ZBA has over aggie operations in town and the board needs to decide how this fits in.

Catherine MacAvee asked how the waste of 60 dogs is going to be disposed of, noting that there is a specific procedure to deal with this type of waste.

Earl Russell, abutter, said there is a definition of how many animals can be kept but noted that he doesn't remember dogs being listed.

Mrs. Collette said the amendment at Town Meeting was to bring the Town Zoning Bylaw into compliance with the State statute, noting that a town can't limit the number of animals in the State statute. She said other things need to be met for this to be considered a by right aggie for a dog kennel. She said the Attorney General flagged that in certain situations dog kennels are aggie but she said this is different because this comes under a comprehensive permit and thus ZBA purview.

Member Mahony said there must be other departments that handle licenses for this, etc. Board of Health. She said she is interested in keeping the fire truck access open but doesn't know if that raises the bar for a substantial change in use.

Member Cadle said the board could vote to modify, vote to deny the modification or vote to modify with conditions.

Member Mahony said the permit already allows for a commercial use, noting that this is a commercial use, and thus asked what the board is modifying.

Mr. Capes said that putting a dog run over the pavement could impact storm water management, making this a major modification.

An abutter said that the yard will be sprayed with a product with a label that says keep out of the reach of children, and other abutters' properties are right down the hill.

Ms. O'Brien said that children shouldn't drink from the bottle but what she uses is diluted with water, one part to 32.

Ms. Carol said this is an attractive nuisance to children who may be tempted to pet the dogs.

George Basbanes, owner of the building, said he has an office in Mill Run Plaza, noting that he bought the building when Anytime Fitness was there. He said the abutters seem to be concerned mostly about noise. He said the gym was open 24 hours a day, with music blasting, weights clanging, grunting, etc., and there were no complaints about noise, etc. He said the building is pretty good and he doesn't want anything bad to happen to it. He said he has a photo and that the houses/condos are more than 200 feet away.

There was some background discussion about the condos being much closer, etc.

Mr. Basbanes said he is here in support of Ms. O'Brien. He said he heard Town Counsel's opinion, and to him it seems all definitions have to do with changing the outside of the building, number of units, etc. He said this is an insubstantial change because it seems that this use is by right, with certain reasonable restrictions, such as lighting, waste removal, etc. He said it is still a commercial use, noting that the applicant is not selling anything but a service. He said a dog daycare/kennel etc., is allowed by right, noting that a resident can have less than 15 pigs by right. He said that as a landlord, the operation would be a fine tenant, with a good service provided to residences. He said this is a retail service oriented facility.

Mrs. Collette said it maybe helpful to look at the site plan review section of the bylaw in making a determination. She said that under normal circumstances, the applicant may be requesting a waiver, but would still be subject to site plan review. She all of these changes to the site could be used in making a determination. She said there is certainly an outdoor component to this.

Member Mahony said she could see now that this could be a major change given all the questions and also the changes in exterior, etc.

Member Cadle said he feels he doesn't have enough information about where the runs are going to be, the size of fencing, storm water runoff, etc.

Ms. O'Brien said she met with the sewer department.

Member Mahony said the application doesn't deal with all the questions the board has.

Discussion ensued regarding what qualifies for an aggie exemption.

Member Easom made a motion that the board has determined that this meets the definition of a substantial change of the comprehensive permit. The motion was seconded by Member Mahony and passed unanimously.

Brenda Thurston, abutter, said she was at the gym regularly, noting that a few clangs is different inside than dogs barking outside. She said many residents have dogs and there will be increased barking and interest in the kennel dogs. She noted that Rte. 119 is right there.

Member Easom said he wants the board to discuss what the PB would ordinarily require under site plan review, such as public safety, traffic, storm water, lighting, and Board of Health issues.

Chairman Mulligan said he gets the sense that the hearing will probably be continued but tonight he wants to get questions on the table for the applicant.

Bill Thurston, 513A, asked how the applicant proposes to control barking dogs when they arrive at 6 in the morning.

Member Mahony asked how the PB would measure the nuisance factor.

Mrs. Collette said that noise is harder to factor, particularly given ambient noise from Rt. 119. She suggested that it would be worthwhile to engage the Board of Health.

Joan Guilmond, abutter, said she sold her house to live there for peace and quiet, noting that she wants to be reasonable but felt this is very unreasonable. She said she has a big concern, noting that she walks every day and there is water in the gully when it rains and feels there will be a smell there.

Mr. Andrews, abutter, said the units are set back from Rt. 119 and the noise is negligible. He said that dog barking would be heard.

Mr. Capes began reading his list of questions, which were about site plan review type issues.

Mr. Andrews said he had a concern about parking, noting that the residential units have four units in the commercial building lot.

Ms. Carol said that any opening in the fence in the dog run is an attractive nuisance to children.

Abutter of 505C said the density of population here is created through the 40B process, making it much denser than the rest of Groton, and this is forcing a large population of animals into a small area. He said he is against this proposal.

Chairman Mulligan said the will get info from the PB, BOH, and other questions for the applicant.

Member Easom said the board needs to find out when other boards can provide info.

Mrs. Collette suggested that the applicant meet with the PB, noting that because of the summer schedule she needs at least two weeks notice.

Member Cadle suggested sending the application to each board that would get asked for input with a comprehensive permit.

Member Maxwell made a motion to continue the hearing to July 9 at 7 PM, which is a Tuesday. The motion was seconded and passed unanimously.

Other business

Michelle Collette said she is setting up a meeting with Judy Barrett and the board about master plan change of use issues and concerns.

Minutes and Bills

No bills were approved/signed.

Chairman Mulligan made a motion to approve the April 24th and May 1st minutes as drafted. The motion was seconded and passed by the four members present.

Member Easom made a motion to adjourn at 8:35 pm. The motion was seconded and passed unanimously.

Minutes approved 7/9/13.