

ZONING BOARD OF REVIEW MINUTES

Tuesday, June 23, 2015 Meeting 7:00 pm

Town Council Chambers, Town Hall

Present: Richard Land, Chair; Renu Englehart, Vice-Chair; Ashley Cullion, Jody Sceery, Christopher Mulhearn, Melody Alger (Alternate).

Members Absent: Barry Golden (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; and Peter Clarkin, Town Solicitor.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept and new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Appeal Hearings – 7:00 PM

1. **Ross DiSegna** for property located at 74 Cliff Street; being Map 75 A.P. 3 Lot 40 (Zoned Commercial Downtown, CD-1). The Applicant seeks Dimensional Variances under Article VI of Chapter 260 of the Town Code; Zoning Ordinance, Off-Street Parking Regulations. Additional Relief is also needed from Table 2 of the Zoning Ordinance, Dimensional Regulations by Zone. The Applicant plans to convert a former retail space to a restaurant; the change of use necessitates relief since there is a lack of on-site parking and dimensional non-conformities already exist. **(Continued from the May 26, 2015 meeting.)**

Mr. Ross DiSegna, of 537 Main Street and applicant, represented the applicant. Along with him was Mr. Matthew McGeorge of McGeorge Architecture Interiors with offices located at 333 Main Street, East Greenwich.

Mr. McGeorge explained the application is self-explanatory as there are no changes to the physical characteristics of the site as this really comes down to the zoning ordinance. He added that the application is relatively a formality in that the Applicant moving his restaurant to the subject property will improve the area and we are trying to emulate a number of other restaurants in the district.

Mr. McGeorge noted he and the Applicant have studied the parking and trash removal in a number of ways and at this point he suggested the decision should be a collaboration on what the Board feels is appropriate to the specific site and is open to feedback.

Ms. Englehart asked if the Applicant read the staff report regarding the amount of relief that is requested. She noted that 20 parking spaces is needed for relief and in her opinion that was quite excessive.

Mr. McGeorge commented that if you to look at the floor plan itself and reduce the seating count we could reduce the precise number of calculated

parking spaces. He also noted the number of restaurants on Main Street that have been granted parking relief and are not able to provide as many spaces as this parcel can.

Ms. Englehart questioned where staff will park. Mr. DiSegna stated he and staff would park on First Avenue. Ms. Hitchen confirmed there is available parking on both sides of First Avenue. Mr. DiSegna stated he would have roughly three workers at the restaurant at one time.

Ms. Englehart inquired to the comparisons of this location and to the existing Tio Mateos location. She asked if it will be the same size, seating, etc. Mr. DiSegna said no, the seating will double in the new location but it is the same square footage – the new location has two floors but the space he is currently in has a lot of wasted space. So all that wasted space can go into the basement which will provide double the amount of seating; the kitchen will remain roughly the same size as it is now.

Mr. Land asked if the Applicant had seen the staff note regarding the dumpster being converted to large barrels and whether that change had been considered. Mr. DiSegna said yes; he noted he spoke to the owner of Thorpe's Liquor who owns a large recycling bin and is willing to let him use it for recycling (up to 60 % of his garbage is recyclables) and the rest would be put in barrels.

Mr. McGeorge stated he would be happy to design the enclosure to the specifications of the Town using bins versus the dumpster.

Ms. Englehart asked about the basement floor and if it were to be used just for storage. Mr. McGeorge said it is really called a lower level because there is an egress door – it has a walk-out basement level.

Ms. Scery asked as far as trash is concerned if the Applicant is amenable to implement a similar plan to what the Greenwich Bay Oyster Bar does with smaller trash barrels with a trash hauler who comes to empty them a couple of times per week or on a as needed basis. Mr. McGeorge noted that he and his client prefer not to have any trash receptacle be located in the front of the building so we would be happy to accommodate the smaller bins.

Ms. Englehart inquired about the hours of the restaurant. Mr. DiSegna said he plans to keep the existing hours of operation for now. He has thought of doing a breakfast on Saturdays and Sundays; if that were the case he would open at 7 AM instead of the normal 10 AM and be open an additional day but as far as the nighttime scene he still plans to close at 8 PM.

Mr. Land asked for any additional questions from the Board. With no further questions he opened the hearing to the public. No public questions. With no public questions Mr. Land asked for a motion.

Motion by Ms. Sceery to approve the application with the condition that there is not a small dumpster in the front.

Mr. Mulhearn proposed a slight modification of the motion – to approve the application as presented and specifically conditioned upon an agreeable and workable plan with regard to waste storage and disposal, subject to being accepted by the Planning Department and Building Official, prior to the issuance of the final certificate of occupancy.

Second by Ms. Englehart.

Ms. Cullion stated the project is a great improvement to the building. Ms. Sceery agreed.

VOTE: 5 – 0.

2. **Anthony & Trisha Andrade** for property located at 816 Middle Road; being Map 53 A.P. 11 Lot 626 (Zoned M/LIO, Manufacturing/Light Industry Office). The Applicant seeks a Special Use Permit to accommodate a “Dog Day Care” with grooming as an ancillary use on the property. Chapter 260 of the Town Code, Zoning Ordinance, Table 1, Permitted Uses by Zone, establishes the provision for such uses, i.e. kennel, to be allowed by special use permit. The Applicant seeks to establish an all-in-one dog boarding, daycare and grooming facility at the subject property.

Mr. Land disclosed that Thomas Huling is a neighbor of his; he did not believe that creates a conflict but wants everybody present to be aware of situation.

Ms. Trish Andrade and Mr. Anthony Andrade of 36 Proctor Avenue, East Greenwich represented the application. Ms. Andrade explained she would like to open an all-in-one dog grooming and day care facility. She has been in the industry for six going on seven years throughout the Town of East Greenwich and Rhode Island with mobile grooming and has seen a large need for day care as well as boarding especially with her clients in East Greenwich. She noted that many people go to outside towns to board and there is a need for pets to be cared for.

Ms. Englehart questioned approximately how many dogs are expected to be boarded. Ms. Andrade explained boarding goes by square footage as far as how many dogs can be accommodated – with the square footage the maximum would be 25 to 30 dogs.

Ms. Englehart asked about the hours of business for day care and kennel. Ms. Andrade said for the day care the business would be open at 7 AM and close by 7 PM and for boarding that would be around the clock. In terms of pick up on the weekends it would be from 9 AM to 11 AM on Saturday and the same at night.

Ms. Andrade noted there will be nap-time and down-time for the dogs as well so there will not be pick-up times during that timeframe.

Ms. Cullion questioned how barking will be mitigated while dogs are outside. Ms. Andrade asserted she plans on having smaller groups outdoors although the business will primarily be indoors. While indoors, she noted there will be soundproofing panels installed that will help absorb noise and all dogs will be screened with trainers as not every dog will fit for day care. Ms. Andrade added that any dog with repetitive barking is not going to be part of the play group.

Ms. Cullion inquired whether all outdoor play areas will be fenced in. Ms. Andrade stated the play areas will be fenced in and double gated – every

entrance (as well as for the indoors) will have two gates so if a dog scoots by there will be a second gate.

Ms. Alger questioned if there will be any overnight staff. Ms. Andrade asserted there will be staff for 24 hour boarding depending on the ratio or the amount of dogs and they will remain inside all night.

Ms. Englehart queried about the number of staff that would be working at the business. Ms. Andrade noted that if the business is at maximum capacity there will be someone working at the front desk and then one person for every ten little dogs and one person for every eight large dogs. Ms. Englehart also wondered if any pet products were anticipated to be sold at the location. Ms. Andrade said not at this time.

Ms. Sceery asked if the Applicant is leasing the space and for how long. Ms. Andrade said yes; it is negotiable depending on the outcome of this evening's decision.

Ms. Cullion inquired if there is any proposed artificial or outdoor lighting for the outdoor dark areas or in the winter when it gets dark earlier in the day. Ms. Andrade noted that lighting will be installed. Ms. Cullion asked that the lighting will be conditional upon no overflow lighting to any of the abutting properties. Ms. Andrade said yes.

Mr. Land questioned if there is presently a dumpster on site and if it is available for the Applicant's use. Mr. Andrade confirmed there is a dumpster but it is not our intention to use it; we are going to use special sealed containers that are kept inside that will be picked up twice per week for dog waste.

Mr. Land wondered if a pet goes outside the Applicant will clean it up and bring it inside. Mr. Andrade confirmed. Ms. Andrade explained the system is similar to a "Diaper Genie" and is used at other dog facilities. She commented the waste is properly bagged and put into cat litter and it will be picked up by Pet Butler every week.

Ms. Sceery asked if there were going to be group classes with the dogs. Ms. Andrade said there will be training classes.

Ms. Englehart queried when the dogs will be outside. She asked because of her concern due to nearby residential homes and a day care facility next door. Ms. Andrade clarified she was planning on talking to the owner of Sweet Peas to see what her schedule is with the children in order to make sure the dogs would be out of sight of the kids; she did not mind doing that.

Ms. Englehart questioned if the Board could limit when the dogs would be outside, say from 11AM in the morning to say no later than 4 PM. She asked if the Applicant would be amenable to that in order to mitigate some of the noise that would spill over to the neighbors. Ms. Andrade said yes.

Mr. Land questioned if the lighting proposed will be primarily where the entrance to the business is and whether there is a lighting plan. Mr. Andrade noted that is correct although a lighting plan has not been prepared but it is anticipated a contractor will show us where to install the appropriate lighting.

Ms. Englehart inquired about signage. Ms. Andrade commented that she had a couple of ideas in mind regarding the signage but nothing specific at this point in time; it just depends on what is allowed but nothing bright. Ms. Hitchen noted the property is zoned Light Industry/Office which allows the Applicant by right to have a monument and/or wall sign.

Ms. Sceery questioned the fenced-in areas at the rear of the building. Ms. Andrade confirmed she plans to use the outdoor fenced-in area closer to the building – the plans do show a separate outdoor run in case there is the need for extra space; at this time we feel we will only need the section closer to the building.

Ms. Englehart asked if the Applicant saw the recommendation to provide info to the Animal Control Officer and Planning Department operating procedures; how you plan to deal with dogs that bark excessively or escape. Ms. Andrade explained the dogs will be dropped off by their owner and we will use slip collars; the outside area is going to be directly connected to the

building, so the dogs will not be transported or walked while they are in our care. Ms. Andrade felt it is more of a risk of people walking their own dogs, walking up and down Middle Road.

Ms. Alger asked about a dog escaping. Ms. Andrade stated that an employee will have to catch the dog – we will not have many dogs walking out at a time. She noted the dog while outside will most likely be with their owner and we will have a fence between the business and the Sweet Peas Day Care.

Ms. Englehart questioned the number of people that will be outside monitoring the dogs when in the outdoor play area. Ms. Andrade explained it will be the same ratio as indoors but it will probably be a smaller group outdoors in order to minimize the noise.

Mr. Land clarified and asked that it is the Applicants intention to screen the dogs before they are accepted as clients. Ms. Andrade confirmed the dogs will be screened by a trainer.

Ms. Englehart asked if there is a tenant on the first floor of the building. Mr. Huling confirmed he has a lease option to purchase within six months; a commercial lease option purchase for the building. Mr. Huling will occupy 10,000 square feet of the building – the front 5,000 s.f. is now being occupied by Jeff Cammons and his son who is the current owner of the building. Mr. Huling explained he has a contract with Jeff Cammons for subleasing to the Andrade's and approval for doing such.

Ms. Alger queried if the Applicant has researched the DEM regulations relative to the use of the property as a kennel. Ms. Andrade said she has looked into it as far as waste disposal.

Ms. Alger specifically asked about dog ratios. Ms. Andrade noted she has worked closely with people from Canine Clubhouse and Barking Lot about set up and process.

Ms. Englehart asked if the Applicant was aware a DEM kennel license must be obtained in addition to an East Greenwich kennel license. Ms. Andrade stated she was aware of the procedure.

With no further questions from the Board Mr. Land opened the hearing for public comments.

Mr. Bob Munce of 825 Middle Road stated he lives directly opposite of 816 Middle Road. He noted that as a residential neighbor facing industrial/commercial property he was concerned about the view, noise, odor, lighting, signage and traffic. Mr. Munce suggested possible solutions for his concerns include replanting trees and shrubs to block the view of the parking lot and building. He noted evergreen trees were removed a few years ago which blocked the front of the building and more trees were cut down in recent weeks that have opened up our view to the complete building that did not exist before. As for noise, Mr. Munce recommended limiting the amount of time the dogs are outdoors. With regards to lighting, he suggested to add covers to direct light down instead of across Middle Road; currently on the front of the building the lights still shine directly across the street.

Mr. Munce went on to suggest limiting the size of the sign and any lighting for the proposed sign for the business and with regard to traffic, he suggested to use the traffic pattern that did exist of entering vehicles via the west driveway, which is the one nearest Sweet Peas and exiting vehicles on the east driveway.

Mr. Nelson Brinckerhoff of 831 Middle Road stated he was most concerned with noise and the outdoor play area. He would like to see the front vegetation replaced as it would help reduce the noise situation.

Mr. Brinckerhoff also raised the issue of signage and questioned what type of signage was allowed. Ms. Hitchen reiterated a monument and/or wall sign is allowed. Mr. Land noted that signage is not before the Zoning Board this evening.

Mr. Brinckerhoff asked how far back from the property is the rear entrance. Mr. Andrade noted approximately 100-120 yards.

Mr. Brinckerhoff asked how many dogs would be in the outdoor play areas. Mr. Land reiterated there would be small groups – there was no specific testimony about a specific number of dogs at any particular outside area.

Ms. Sceery commented the recommended regulations there is one pet to every 100 square feet and the day care would average 20 dogs per day and 12 to 14 dogs per week for overnight boarding.

Mr. Brinckerhoff commented that he would have no problem if the dogs were inside all day; he was simply concerned about outdoor dog barking.

Ms. Englehart queried about the maximum amount of dogs that would be allowed in the outdoor play area. Ms. Andrade said there would be no more than eight dogs in the play area at one time. Ms. Englehart confirmed that equates to one employee per eight dogs. Ms. Andrade asserted the business is primarily to be indoors. Ms. Englehart asked the Applicant if they would have any issues if the outdoor area was maxed to eight dogs. Ms. Andrade said not at all.

Ms. Englehart asked about weekend times being 11 to 4 outdoor being consistent with the weekday outdoor times. Ms. Andrade commented keeping the same outdoor schedule is a good idea.

Mr. Land commented it appears in the submitted photos some of the existing parking spaces will be removed. Ms. Andrade confirmed four spaces will be lost. He inquired if there are any issues with the parking space reduction. Ms. Hitchen stated the diagram submitted by the Applicant does not depict the actual number of parking spaces – there is an aerial photo in the staff report which shows parking spaces located on the side of the building; the Applicant actually has more than enough parking spaces.

Mr. Land questioned the secondary outdoor play area and whether the Applicant can do without it. Ms. Andrade explained the second play area was extra; the one closer to the building is primarily the one that we would like to use.

Ms. Hitchen asked if the outdoor play area will be cordoned off. Ms. Andrade confirmed that it would.

Ms. Englehart asked if the fence would be installed prior to the opening of the business. Ms. Andrade confirmed.

Ms. Englehart commented she would like to see the owner of the building add vegetation screening in front of the building on the Middle Road side.

Ms. Alger questioned the type of fencing that is proposed for the outdoor play area. Ms. Andrade noted it is solid vinyl, not chain link – we did that purposely so the dogs will not be able to see the children next door.

Mr. Huling added for clarification that a technology company occupies the front level of the building and wants to maintain a technology faced building. He also noted the trees in front were removed due to rot; those specific trees were causing future problems and were told by tree experts that they needed to be removed. Mr. Huling commented that some bushes were added for landscaping purposes but the whole idea for us is because it was hindering is. One of the big trees is in one of the drive-out areas and could not see traffic coming from Route 2; the trees were eliminated for safety reasons as well.

Mr. Huling reiterated that there is existing lighting on the building which has nothing to do with what the Applicant is applying for. He verified he wants the aesthetics of the building to appear as a technology building, not a doggie day care building.

Mr. Huling explained 15,000 s.f. of space will be occupied by him as he already occupies 10,000 s.f. He thought the existing lighting on the building is probably sufficient and preferred not to add much more lighting.

Ms. Englehart questioned the internal traffic pattern. She asked if it is one-way in/one-way out system. Mr. Huling confirmed it has not necessarily been that way since the rear business moved out and there are only a handful of people currently working in the front portion of the building. He noted there was a stop sign or do not enter sign that is on one side; typically the

traffic comes into the Sweet Peas side entrance, goes around the building and exits on the other side.

With no further comments and/or questions Mr. Land asked for a motion.

Ms. Englehart made a motion in favor of the application but with the following amendments: the dogs are not allowed to be outside prior to 11 AM and no later than 4 PM; the maximum amount of dogs would be 20 dogs for the day care and 15 for overnight boarding; and the maximum number of dogs to be outside at any given time would be 8 dogs.

Ms. Andrade was concerned limiting the dogs to 20 was extremely low and would not work financially. When asked by Ms. Alger how many interior cages were to be set up Ms. Andrade indicated she would be able to give a better answer once construction begins but a typical set up is with dog beds and an open set up which limits barking so dogs do not feel as though they are not in a kennel.

Ms. Hitchen suggested reviewing the one pet per every 75 to 100 s.f of space in order to come up with a number of allowable dogs. Ms. Englehart noted 3200 s.f., that is about 30 dogs. Ms. Hitchen commented she tried to get in touch with the State Veterinarian regarding day care standards; they have kennel standards but not day care standards. Ms. Englehart commented 35-40 is the maximum as far as day care goes.

Mr. Land asked for a second to Ms. Englehart's motion. Seconded by Ms. Sceery.

Mr. Land was concerned with the motion due to starting the role of the public and consumers because the Applicant is running a business the requires customer satisfaction; if they are going to have 100 dogs in there they will violate regulations but second they are not going to have customers if they have unhappy dogs. He added that people who bring their dogs to doggie day care are interested in spending money on their dogs and making Fido happy. Mr. Land did not see the issue of overcapacity as being the big issue; he recognized the issue about having the dogs outside and the potential impact on the neighbors. He added that he respects all the

comments the neighbors have raised; it would be nice if the owner of the property at some point adds some shrubbery to improve the neighbor's view but it is not something the ZBR can impose on this application. With regard to the traffic pattern, Mr. Land did not seem to think the ZBR could impose a condition on that however he suggested the doggie day care customers be encouraged to use the circular traffic pattern due to them creating the most traffic pattern which would help with the neighbor concerns. He thought that would be the easiest resolution and safest way to keep everyone safe with the consistent traffic pattern. Lastly, Mr. Land proposed as a condition the fencing be solid vinyl and at least six feet in height. He added that he would be compelled to vote against the motion as presented but would entertain a separate motion consistent with his comments or an amendment to the current motion.

Mr. Mulhearn motioned to approve the application with several conditions: the first condition would be to have less restrictive hours in terms of dogs accessing the outdoor play area, being from 9:30 AM to 5 PM. Additionally, in terms of limiting of kennel boarding, Mr. Mulhearn noted the RIDEM licenses such activity. With regard to the maximum capacity of the doggie day care Mr. Mulhearn was concerned with the balancing that must occur between the municipality, not just in terms of relief that has been requested but also economic viability for any business. Very candidly, he did not think a maximum of 20 dogs for doggie day care would work as it would threaten the economic viability of the business. He thought by the Applicant's estimation, 75 to 100 s.f. per canine, which would be about 35 or 36 dogs maximum capacity; therefore he suggested the limitation of 36 dogs. Lastly, Mr. Mulhearn adopted Mr. Land's condition of a solid panel vinyl fence six feet high for the outdoor play area.

Ms. Englehart reconsidered her original motion and noted she was okay with the additional dogs as well as the additional outdoor time.

Mr. Mulhearn clarified his motion was separate from Ms. Englehart's original motion.

Ms. Sceery seconded the second motion.

Ms. Hitchen asked if any other condition should be imposed in terms of lighting, such as the Dark Skies Principle. Ms. Cullion inquired if it simply means that light cannot overflow onto abutter's property – so yesshe would be interested in that.

Mr. Mulhearn noted he would advance his motion that would include the Dark Skies Principle in terms of any lighting that is installed by the Applicant being mindful that any existing lighting or anything that is installed by the owner is not presently before the board.

Ms. Hitchen queried if any other proposed conditions in the staff report should be considered in the motion. Mr. Land read through all the proposed conditions and indicated whether such condition would be added.

Mr. Land reread the motion as it stood and as seconded, is to approve the application as submitted with the conditions to have the dogs be allowed outside between the hours of 9:30 AM and 5 PM; to allow no more than 36 dogs for dog day care; to have the only outside walking area/play area immediately adjacent to the entryway with a solid panel vinyl fence and the double doors as indicated by the Applicant; the Dark Skies principle would apply with respect to any new lighting installed on the property; and the limitation on kennel overnight boarding be subject to RIDEM regulation.

Mr. Mulhearn advised that he did not agree with adding a fence on the western property line as he thought that was an owner issue, not the Applicant's issue. Secondly, in terms of excessive noise, Mr. Mulhern noted the Town does have a nuisance ordinance in effect which is an enforcement mechanism.

VOTE: 5 – 0.

Mr. Land suggested the Applicant work with the neighbors as a general rule. Mr. Andrade agreed.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the May 26, 2015 meetings.

Motion by Mr. Mulhearn to approve the minutes of May 26, 2015.
Seconded by Ms. Cullion.

VOTE: 5 – 0.

With conclusion of all business, there was a motion by Ms. Sceery second by Mr. Mulhearn to adjourn at 8:20 PM. Motion supported 5-0.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.