

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM:  Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

DATE: June 20, 2014

SUBJECT: ZC 14-___: Setdown 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.

I. RECOMMENDATION

The Office of Planning (OP) recommends that the following text amendments be **set down** for a public hearing. This amendment has been brought forward at the request of the Zoning Commission to clarify regulations pertaining to the proximity of animal related uses to residential areas. The proposed regulations are intended to provide clarity in the intended application of the regulations while not significantly expanding or contracting use permissions.

II. BACKGROUND

In 2006 the Commission adopted a text amendment (Order 05-21) to permit animal boarding as a special exception use in any C-2, C-3, C-4, CM or M zone, subject to a list of standards, and defined the term “animal boarding” in Definitions § 199. In 2007 the Commission adopted Order 05-21A, which permitted animal shelters as a matter-of-right within industrial zones and by special exception in the C-2, C-3 and C-4, subject to a list of conditions, and added pet grooming establishment, pet shop and veterinary boarding hospital as special exception uses in the C-2, C-3, C-4, C-M and M zones, also subject to conditions, and provided for definitions for each of those terms.

When the legislation was originally adopted, the Office of Planning intended that animal uses should not directly “abut”, or directly touch, residentially zoned private property, and that an alley would constitute adequate separation. However, § 107.5 of the Zoning Regulations, Zone District Boundary Lines, states, “... *the zone district boundary lines shall be intended to follow existing lot lines, the center lines of streets, alleys (including any closed streets or alleys not previously zoned), and natural water courses.*” Typically, zone boundary lines follow the centerline of a street or alley, where they exist, even though the public right-of-way is not subject to zoning. This has been interpreted as meaning that the alley itself does not constitute a separation unless the regulations specifically say so.

Therefore, if a lot proposed for animal use and a residentially zoned private property are separated by an alley, the animal use would be defined as “abutting” a residential zone, and would not in conformance with this criterion.

The Zoning Commission requested OP bring forward text amendments needed to clarify what was intended by the phrase “*use shall not abut a residential zone*” with respect to animal related uses, as three BZA cases for animal boarding were recently reviewed and denied by the Board, partially due to issues of adjacency and/or abutting. This included BZA case 18702, which was denied because of those issues. As the location of that case is within an approved PUD (ZC 05-22), the applicant subsequently filed a modification request (ZC 05-22A) to permit animal care and boarding facility within the retail portion of that PUD; an OP report on that request is being submitted under separate cover.

The proposal utilizes language similar to that used in the current zoning regulations under Section 802.4(a), which provides for separation of intermediate recycling facilities, an industrial use, from “... *property in a Residence District used for residential purposes*”. The proposed OP clarification text amendment is also generally consistent with other, existing regulations establishing the separation of special exception uses in commercial zones from residence districts, such as:

- gasoline service station (Sec. 706.3) – “*The station shall not be located within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley*”;
- bowling alleys (Sec. 709.3) – “*The use shall not be within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley*”; and
- fast food establishments (Sec. 733.2) – “*No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley.*”

While the wording, is slightly different in each example¹, each specifically addresses the separation between the special exception use and the residential area, and establishes that the separation is twenty-five feet.

III. PROPOSAL

As requested by the Commission, OP consulted with OAG on the formulation of the proposed text. Based on this consultation, OP is proposing language that deals with two main issues of adjacency:

- 1) Adjacency of animal uses to off-site residential uses. A separation of twenty-five feet would be required between the animal use and property in a Residence District used for residential purposes; and

¹ OP will, unless instructed otherwise by the Zoning Commission, rectify these inconsistencies throughout the regulations through the ZRR process.

- 2) Residential uses within the same structure as the animal use, such as in a mixed use residential and retail building. As part of the special exception review, the applicant would have to document that the animal use would cause no noise or odors unduly objectionable to residential uses within the same building. This is similar to other special exception performance standards for uses which are also intended to not result in objectionable conditions.

In addition, at the request of the Office of the Attorney General (OAG), OP also is proposing clarification of specific general standards, and to separate out unrelated standards. The word “*soundproof*” is proposed to be replaced, where necessary, with “*no noise objectionable to nearby properties*,” to be more consistent with standard special exception criteria that these uses not result in objectionable conditions; and “*produce no noise objectionable to nearby properties*” is separated out from “*Animal waste shall be placed in closed waste disposal containers...*”. The requirement that “*windows and doors of the premises shall be kept closed*” was modified to indicate that only windows and doors of space devoted to the animal uses must be kept closed. Finally, Section 735.7, Animal Boarding, is proposed to be deleted, as it provided for grandfathering of animal uses that pre-dated the regulations so is no longer relevant.

The following amendments to chapter 7 of 11 DCMR are proposed accordingly (additions to current regulations are shown in **bold**, and deletions shown in ~~strikethrough~~ text)²:

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 Residence District used for residential purposes;**
- 735.3 ~~The animal boarding 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,~~ **including residential units located in the same building as the use.**
- 735.4 **The applicant shall demonstrate that the animal boarding use will comply with the following conditions and any Board’s approval shall be subject to the use’s continued compliance with these standards:**

² OP is anticipating additional non-substantive clarifications and standardization of the format of the regulations through the ZRR process.

- (a) The animal boarding use shall take place entirely within an enclosed ~~and soundproof~~ building;
- (b) The windows and doors of the ~~premises space devoted to the animal boarding use~~ shall be kept closed;
- (c) ~~and~~ No animals shall be permitted in an external yard on the premises; [(a), (b) and (c) originally in 735.3]
- (d) 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: and
- (e) Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system.

735.5 The Board may impose additional requirements pertaining to the location of buildings or other structures; entrances and exits; buffers, barriers, and fencing; soundproofing; odor control; waste storage and removal (including frequency); the species and/or number and/or breeds of animals; or other requirements, as the Board deems necessary to protect adjacent or nearby property.

735.6 External yards or other exterior facilities for the keeping of animals shall not be permitted.

~~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. [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 purposes.**
- 736.5 ~~External yards or other external facilities for the keeping of animals shall not be permitted.~~
- 736.65 The sale of pet supplies is permitted as an accessory use.
- 736.76 The Board may impose additional requirements as it deems necessary to protect nearby properties.

3. *Amend § 737 as shown below:*

737 PET SHOP

- 737.1 A pet shop may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.
- 737.2 The pet shop 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.**
- 737.3 ~~The pet shop shall not abut an existing residential use or a Residence District.~~ **No portion of a pet shop use shall be located within twenty-five (25 ft.) of a property in a Residence District used for residential purposes.**
- 737.4 External yards or other external facilities for the keeping of animals shall not be permitted.

737.5 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

4. Amend § 738 as shown below:

738 VETERINARY BOARDING HOSPITAL

738.1 A veterinary boarding hospital may be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the requirements of this section.

738.2 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.

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.**

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. [Originally 739.3]
 - (b) 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]
 - (d) External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District. [Originally 739.6]
- ~~739.4 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. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system.~~
- 739.54 **The animal shelter shall not abut an existing residential use or a Residence District. No portion of the animal shelter use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes.**
- ~~739.6 External yards or other external facilities for the keeping of animals shall not be permitted unless the entire yard is located a minimum of two hundred (200) feet from an existing residential use or Residence District.~~
- 739.75 The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

Chapter 8, Industrial Districts

1. Amend § 801 as shown below:

- 801 USES AS A MATTER OF RIGHT (C-M)
- 801.7 The following additional uses shall be permitted as a matter of right in a C-M District, subject to the standards of external effects in § 804:
- (a) An animal shelter shall be permitted as a matter of right subject to the following standards:

- (i) The animal shelter shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping;
- (ii) Animal shelters shall place all animal waste in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system;
- (iii) ~~Animal shelters shall not abut an existing residential use or a Residence District;~~ **No portion of an animal shelter use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes;** 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 sued for residential purposes.**

- 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;
 - (b) 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. Odor shall be controlled by means of an air filtration system or an equivalently effective odor control system;
 - (c) ~~The pet grooming establishment shall not abut an existing residential use or a Residence District~~ **No portion of the pet grooming establishment use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes.**
 - (d) External yards or other external facilities for the keeping of animals shall not be permitted;
 - (e) The sale of pet supplies is permitted as an accessory use; and
 - (f) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.
- 802.26 A pet shop 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 shop shall be located and designed to create no objectionable condition to adjacent properties resulting from animal noise, odor, or waste;
 - (b) ~~The pet shop shall not abut an existing residential use or a Residence District~~ **No portion of the pet shop use shall be located within twenty-five feet (25 ft.) of a property in a Residence District used for residential purposes;**
 - (c) External yards or other external facilities for the keeping of animals shall not be permitted; and
 - (d) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties.
- 802.27 A veterinary boarding hospital 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) 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;**
- (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.

IV. RELATIONSHIP TO THE COMPREHENSIVE PLAN

Land Use Element

LU-1.3 Transit-Oriented and Corridor Development

The District's Metrorail stations include 15 stations within the Central Employment Area and 25 "neighborhood" stations (see Map 3.5). Looking forward, certain principles should be applied in the management of land around all of the District's neighborhood stations. These include:

- *A preference for mixed residential and commercial uses rather than single purpose uses, particularly a preference for housing above ground floor retail uses; (Sec. 306.4)*

What Makes a Great Neighborhood?

In 2004, "A Vision for Growing an Inclusive City" identified essential physical qualities that all neighborhoods should share. These included:

- *Easy access to shops and services meeting day-to-day needs ...; (Sec. 309.6)*

Policy LU-2.3.2: Mitigation of Commercial Development Impacts

Manage new commercial development so that it does not result in unreasonable and unexpected traffic, parking, litter, shadow, view obstruction, odor, noise, and vibration

impacts on surrounding residential areas. Before commercial development is approved, establish requirements for traffic and noise control, parking and loading management, building design, hours of operation, and other measures as needed to avoid such adverse effects. (Sec.311.4)

Action LU-2.4.B: Zoning Changes to Reduce Land Use Conflicts in Commercial Zones
As part of the comprehensive rewrite of the zoning regulations, consider text amendments that:

- c. Consider performance standards to reduce potential conflicts between certain incompatible uses. (Sec. 312.1)*

Economic Development Element

Policy ED-3.1.1: Neighborhood Commercial Vitality *Promote the vitality and diversity of Washington's neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents.*

The proposed amendments constitute clarifications of the existing regulations, and are not inconsistent with the Comprehensive Plan.

JS/sjm^{AICP}

Case Manager: Stephen J. Mordfin, AICP