

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

**IN THE MATTER OF: John Greene
 Petitioner**

**Owner John Greene
 165 Main Street
 Medway, MA 02053**

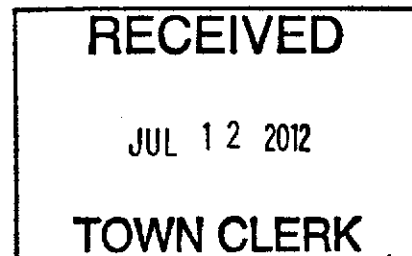
OPINION OF THE BOARD

**REQUEST FOR SPECIAL PERMIT
165 Main Street, Medway, MA**

**Hearing: April 18, 2012
Decision: June 27, 2012**

**MEMBERS PRESENT: Joseph Musmanno, Chairman
 David Cole, Clerk
 Carol Gould
 Arlene Doherty**

THE WRITTEN OPINION WAS DELIVERED ON JUNE 28, 2012



*20 day appeal date
Aug 1, 2012*

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Law of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioner, John Greene, requests a Special Permit under Section V.A, last paragraph of the Zoning By-Law to permit the conversion of a steel structure located at 165 Main Street, Medway (otherwise known as Medway Mill) to house a canine boarding kennel.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on April 4 and 11, 2012. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A, Section II.

The Public Hearing was held and closed on April 18, 2012.

Hearing Summary

The applicant, Mr. John Greene, appeared at the Hearing on his own behalf. The applicant stated that the proposed use was appropriate to the Medway Mill, which is essentially its own community, and the nearest residence is approximately 350 feet from the buildings to which this application relates. The buildings have been provided with 6 inch wall insulation and 4 inch roof insulation to deaden noise from dogs within the buildings. The dogs would be taken outside two or three times per day for about 15 minutes each time. There would be no new lighting. Customers would drop dogs off from about 6 am to about noon, with perhaps 50 cars arriving during this time. The outside runs would be occupied by groups of dogs sorted by size and energy, with perhaps 15-25 dogs with one handler. If overnight boarding was carried out (it was not proposed to begin overnight boarding immediately), there would be one attendant per 25 dogs, which would be in small cages. The area behind the buildings to be used is wooded so the dogs would not be seen by neighbors, the applicant maintained. The applicant pointed out that he would not wish to do anything which would adversely affect the revamped buildings on the Mill site. The buildings which are proposed to be used as kennels would be difficult to lease for any other purpose since they have no loading dock and access is difficult. The buildings presently have windows but the applicant wished to be able to add more double-paned windows to allow the animals to have natural light.

There were no questions from the public. However, when public comments were invited, Ms. Cathy Sutton, of 216 Main Street (a neighbor of the Medway Mill site) stated that housing 200 dogs in 3500 square feet does not meet industry standards as recommended by trade associations, and is a danger to the animals; Ms. Sutton owns Happy Tails Doggy Daycare in Franklin.

The applicant noted that the space is expandable to 6500 square feet; the two spaces are not segregated from one another. The existing garage door would, the applicant stated, have to be rebuilt to a more normal entrance. The building is of steel beam construction. The proposed windows would be four feet square on 12-16 foot centers; there would be four or five such windows adjacent the first run and a similar number adjacent the second run.

Decision

The proposed use of the subject buildings as a canine boarding kennel is a commercial use permissible under the use variance in effect for the subject lot at 165 Main Street, Medway. Furthermore, the proposed location appears well adapted for use as a canine boarding kennel, being spaced by a substantial distance of approximately 350 feet from adjacent residential buildings. Other buildings on the subject lot are also spaced from the buildings to be used as a canine boarding kennel, and are used for commercial and industrial purposes, which can generally tolerate somewhat higher background noise levels than residences. Accordingly, the subject buildings appear suitable for the proposed use.

However, the requirement for a Special Permit for any kennel in any Zoning District set out in Section V.A, last paragraph of the Zoning By-Law indicates that kennels are a use posing peculiar problems. It is readily apparent, and confirmed by the Board's experience with numerous previous applications for kennel permits, that kennels are especially likely to annoy neighbors because of the potential for loud barking of dogs. Furthermore, the Board is concerned by the scale of the proposed canine boarding kennel; the applicant is seeking a special permit for 200 dogs for day care and 50 overnight, and there is no existing kennel in Medway involving anywhere near 200 dogs at any one time. Accordingly, the Board has no directly comparable operation which it can use to gauge the potential impact of the proposed boarding kennel on neighboring lots.

In addition, testimony was given at the hearing that the subject buildings were not sufficiently large to accommodate 200 dogs and satisfy industry-recognized standards regarding the area required for each dog in boarding kennels. This testimony was given by a person engaged in the boarding kennel industry, who may reasonably be presumed to have knowledge of such standards. Although the Board is alert to the possibility of bias in such testimony arising from the desire of a person engaged in the industry to hinder potential competition, in the present case, the Board's attention has been directed to various sources which confirm the testimony given at the hearing and which appear to represent the views of knowledgeable people having no obvious bias. For example, the American Society for the Prevention of Cruelty to Animals, in a detailed article at <http://www.aspcabehavior.org/articles/55/Daycare-for-Dogs.aspx>, suggest that in choosing a canine boarding facility, dog owners should expect to find a play area of 75 to 100 square feet per dog. Similarly, Robin Bennett and Susan Briggs, *Off-Leash Dog Play* (Dream Dog Publications, LLC., Woodbridge, VA, 2008), pages 118-119, suggests a play area of 50 to 100 square feet per dog. Other similar sources appear to suggest a range of from about 50 square feet per small dog, 75 square feet per medium dog, and 100 square feet per large dog. Since there was no testimony at the hearing as to the expected mix of small, medium and large dogs at the proposed facility, for present purposes the Board will assume a required area of 75 square feet per dog.

Given this standard, it is readily apparent that the buildings proposed to be used are much smaller than would be required to house the proposed 200 dogs. The first available building has an overall area of about 3600 square feet, and the second building, which requires further work before use, is approximately 3100 square feet. However, these figures are somewhat misleading. Part of the first building is occupied by a dog wash business, which (according to testimony given at the hearing) will remain when the remainder of the building is to be used for the boarding kennel. The area actually available for the boarding kennel appears to be about 2400 square feet, sufficient for 32 dogs. If the second building is used, with an area of about 3100 square feet, and additional 41 dogs could be accommodated, for a total of 73 dogs.

There appears to be more risk of disturbance to neighbors when the dogs are allowed outside for exercise than when they are confined within the buildings. The applicant stated at the hearing that the dogs would only be allowed outside in limited groups, and the Board considers it reasonable to require that not more than 15 dogs be allowed outside at any one time.

There exists greater likelihood of noise and other disturbances during night time hours. The Medway Zoning By-Law defines this as between the hours of 7:00 PM and 7:00 AM. Additional limitations are appropriate during these hours.

For the foregoing reasons, grant of a suitably conditioned Special Permit would not be inconsistent with any of the requirements of the Section III.J of the Medway Zoning By-Law.

Relief Granted:

By a vote of 4-0, with Mr. Biocchi abstaining from all votes:

Grant a Special Permit to John Greene for conversion of existing steel structures to house a canine boarding kennel subject to the following conditions:

1. At no time shall dogs be permitted outside the building while unattended.
2. No more than 15 dogs are permitted outside at any one time. Between the hours of 7:00 PM and 7:00 AM, not more than 5 dogs are permitted outside at any one time.
3. Not more than 73 dogs shall be allowed on the premises at any one time. Between the hours of 7:00 PM and 7:00 AM not more than 25 dogs shall be allowed on the premises at any one time.
4. There shall be an attendant present at all times when dogs are on the premises.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

**IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW,
CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT OR
CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT UNTIL
RECORDED IN THE REGISTRY OF DEEDS.**

Joseph F. Musmanno, Chairman

David J. Cole

David Cole

Carol Gould

Carol Gould

Arlene E. Doherty

Arlene Doherty

Anthony Biocchi