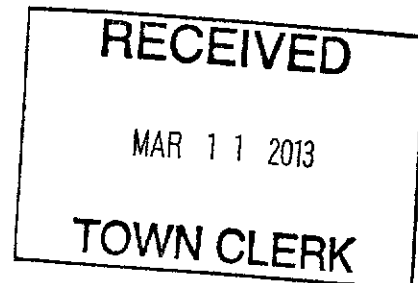


COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

**IN THE MATTER OF: Flying Fur, Inc.
Petitioner**

**Owner Medway Country Properties
135 Main Street
Medway, MA 02053**



OPINION OF THE BOARD

**REQUEST FOR SPECIAL PERMITS
135 Main Street, Medway, MA**

**Hearing: January 16, 2013
Decision: March 6, 2013**

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

THE WRITTEN OPINION WAS DELIVERED ON March 6, 2013

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, Flying Fur, Inc., requests Special Permit to permit a dog grooming and dog day care facility located at 135 Main Street, Medway. The applications submitted were stated to be under Sections V.A and V.D of the Zoning ByLaw; however, it is clear from the content of the applications and the submissions at the Hearing that what is sought in a Special Permit relating to alteration of a non-conforming use, under Section V.A, and a Special Permit for a kennel in Agricultural and Residential District II under Section V.F.1.c.6, of the Zoning ByLaw, and this decision is issued on that basis. Pursuant to an express consent by the applicants at the Hearing, the Board issues a single decision of both applications.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on January 2 and 9. Notice also was sent to all "parties of 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 January 16, 2013.

Hearing Summary

Cathy Elia, Esq., accompanied by Mr. Vander Barbosa, President of Flying Fur appeared for the applicant. The applicant stated that it had no objection to the two applications being heard jointly or to the issue of a joint decision.

The present use (a retail furniture store) was a pre-existing non-conforming use and the applicant submitted that the proposed use would not be more detrimental to the neighborhood than the present use. The applicant runs an existing business in Medway which seeks to expand. The applicant proposes to install a solid fence between the two existing buildings to avoid visual distraction of the dogs and hence reduce barking. There would be no overnight boarding of dogs; the hours of operation sought were 6 am to 7 pm weekdays and 6 am to 6 pm Saturdays.

The applicant stated that the property is presently under a purchase-and-sale agreement so Flying Fur cannot apply for a building permit. The Board took note of a letter from the Animal Control Officer stating that no complaints had been received about the applicants' existing business. The applicant further stated that the L-shaped area for outside exercise of dogs is about 5000 square feet, and they there would not be more than 50 dogs on the premises at any one time.

If a client does not return to collect their dog by the closing time, the last employee on the premises would take the dog home; the dog would not be left on the premises overnight.

Mr. Giovangelo of 144 Main Street stated that he had no problems with the proposed kennel. At the hearing, Mr. Giovangelo spoke in favor of; and no one spoke in opposition to the application.

Decision

As a preliminary matter, the Board determines that both a dog grooming facility and a dog day care facility require a kennel permit even though no dogs are being boarded overnight. The presence of four or more dogs on a single lot is singled out for special attention in the Zoning ByLaw by the requirement for issue of a special permit for a kennel, presumably because the presence of a number of dogs in one location is felt to pose especial problems, primarily the noise caused by dogs barking; it is noted for example that no similar special permit is required for the presence of a specified number of cats on one lot. It appears to the Board that the potential problems posed by any facility involving a number of dogs, are present even when dogs are only present during the day; noise problems may be felt more during the night, but they are still present by day.

The Board's detailed findings of fact (see below) may be summarized by saying that the Board has determined (a) that the proposed change in use is not substantially more detrimental to the public good than the current use; (b) that the proposed use is consistent with the special permit criteria set forth in sub-Sections III.J.1-3 and 6 of the Zoning ByLaw; and (c) a *suitably conditioned* special permit would enable this proposal to comply with the provisions of sub-Sections III.J.4 (impact on adjacent properties) and III.J.5 (undue traffic congestion) of the Zoning ByLaw (emphasis added). The applicant appears to have recognized that the size of the premises and the limitations on parking would impose some limitations on the number of dogs which could be housed in on the subject lot at any one time; see the first page of the enclosure to the application under Section V.A, which suggests that 3-5 dogs would be groomed at any one time, and anticipates that that 45-47 dogs will be in day care on a daily basis, and states that approximately 1050 square feet of the main building will be dedicated to dog day care.

The Board agrees with the applicant that some limitation on the number of dogs which can be present on the premises at any one time is appropriate, especially considering that the proposed facility will be a non-conforming use in a Zoning District intended for residential and agricultural uses. Such a limit might be based upon either the capacity of the available parking to accommodate owners dropping off and picking up their dogs, or on the capacity of the buildings to accommodate dogs without overcrowding. The Board is, for the purposes of this decision, prepared to accept that the available parking of about 15 spaces would be adequate for the presence of a maximum of 50 dogs on the premises at any one time (in accordance with applicant's suggestions of 3-5 dogs being groomed, and 45-47 dogs in day care). However, the Board does not consider that the available space within the buildings is consistent with this large a number of dogs.

Unfortunately, no evidence was proffered at the Hearing regarding standards for the amount of space needed for one dog in day care. However, the Board has recently had occasion to consider this issue in connection with the application of Mr. John Greene relating to a dog day care facility at 165 Main Street, Medway, only a few hundred yards from the lot which is the subject of the present location and on the same main highway, Route 109. In its Decision on the application of Mr. Greene, the Board stated:

[T]he 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.aspcbehavior.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.

Although the Board, as a specialist, non-judicial tribunal, is not bound by a strict application of *stare decisis*, its decisions should not be arbitrary, and fairness to all parties wishing to engage in a particular line of commerce within the Town of Medway suggests that the Board should retain the same standard unless there are obvious reasons not to do so. No such reasons are apparent in the present case.

Applying this standard of 75 square feet per dog in day care, it is readily apparent that the premises proposed to be used for the dog day care facility, about 1058 square feet in floor area, are wholly inadequate for the proposed maximum of 45-47 dogs, and that a realistic limit is about 14 dogs in day care, plus 5 dogs in the grooming section, for a total of 19 dogs on the premises at any one time. No reasons appear for further limiting the total number of dogs. Given that dogs outside are more likely to cause disturbance to neighbors by barking, a limitation on the number of dogs allowed outside at any one time appears appropriate. Since the applicants proposed a total of 45-47 dogs in day care, with no more than 10 allowed outside at any one time, with only about 14 dogs in day care, a limit of 5 dogs outside at any one time appears reasonable, and dogs outside should be attended to further reduce the risk of barking annoying neighbors. In addition, given the applicant's stated intention to provide a fenced enclosure for dogs outside the buildings, and the location of the premises on a busy highway, it is appropriate to require that all dogs outside the buildings shall remain within a fenced enclosure.

Findings:

1. The proposed change in use is not substantially more detrimental to the public good than the current use.
2. The proposed use is consistent with the special permit criteria set forth in sub-Sections III.J.1-3 and 6 of the Zoning ByLaw.
3. A suitably conditioned special permit would enable this proposal to comply with the provisions of sub-Section III.J.4 of the Zoning ByLaw.
4. A suitably conditioned special permit would enable this proposal to comply with the provisions of sub-Section III.J.5 of the Zoning ByLaw.

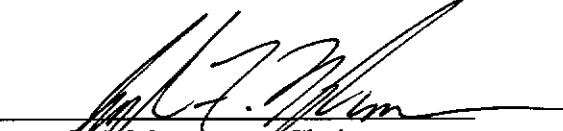
Relief Granted:


Special Permits under Sections V.A, and V.F.1.c.6 are hereby granted to Flying Fur, Inc. for a dog grooming and dog day care located at 135 Main Street, Medway, MA. 02053, subject to the following conditions and/or restrictions.


1. No more than 19 dogs shall be present on the premises at any one time.
2. No more than 5 dogs shall be present outside the buildings on the premises at any one time. When outside the buildings, all dogs shall be kept in a fenced enclosure, and no dog shall be left outside the buildings while unattended.
3. No dogs shall be present, nor shall any operations occur on the premises, between 7 pm and 7 am.


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.

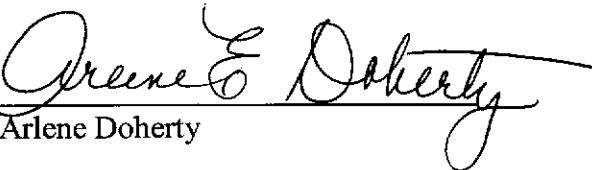
**IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A,
SECTION 11 NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF
A VARIANCE TAKES EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.**


Joseph F. Musmanno, Chairman


David Cole


Tony Biocchi


Carol Gould


Arlene Doherty