



**TOWN OF DURHAM**  
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### **NOTICE OF DECISION**

#### **Approval of Conditional Use and Amended Site Plan for Dog Day Care Facility**

Project: **Dog Day Care Facility – Great Bay Kennel**  
Address: 27 and 35 Newmarket Road  
Applicant: Great Bay Kennel  
Property Owner: Great Bay Kennel  
Engineer: Mike Sievert, MJS Engineering  
Building Designer: Robin Wunderlich  
Map and Lot: 6, 11-7  
Zoning: Residence C  
Date of approval: **April 24, 2013**

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"Applicant", herein, refers to the property owner, business owner, individual(s), or organization submitting this application and to his/her/its agents, successors, and assigns.

#### **PRECEDENT CONDITIONS**

[Office use only. Date certified: \_\_\_\_\_; CO signed off \_\_\_\_\_;  
As-built's received? \_\_\_\_\_; All surety returned: \_\_\_\_\_]

All of the precedent conditions below must be met by the applicant, at the expense of the applicant, prior to the plans being certified. Certification of the plans is required prior to issuance of a building permit or recording of any plans. Once these precedent conditions are met and the plans are certified the approval is considered final.

**\*Please note.** If all of the precedent conditions are not met within 6 calendar months to the day of the board's approval - by October 10, 2013 - the board's approval will be considered to have lapsed and resubmission of the application will be required (unless an after-the-fact extension is granted by the Planning Board). It is the sole responsibility of the applicant (or his/her agent) to ensure that these conditions are met by this deadline. We urge the applicant to carefully track his/her progress in meeting the individual conditions. See RSA 674:39 on vesting.

#### **Noise Issues**

- 1) HDC approval for fence. Obtain approval from the HDC for the extension of the 6 foot shiplap fence along the northerly side of the site as depicted in the revised fence plan (March 26, 2013).

### **Environmental Issues**

- 1) Buffer. Add to plan notes: “The existing vegetative buffer along Route 108 and the southern property line shall be maintained and preserved in perpetuity, and no cutting or removal shall occur with the exception of dead, diseased, or invasive vegetation or thinning to best preserve vegetation and/or prevent bodily injury and/or property damage.”
- 2) Turf maintenance. Add to plan notes: “Vegetation and turf shall be maintained and well managed to aid in storm water management and run off on the site.”
- 3) Bioretention basin. Add to plan notes: “The Bioretention basin shall be maintained in accordance with the Regular Inspection and Maintenance Guidance for Bioretention Systems (last revised January, 2013, or as further revised, attached).”
- 4) Bioretention surety. Place surety to cover testing of outlet from rain garden in form and amount to be approved by Town Engineer (in accordance with semi-annual, or “biannual,” testing per Ballestero recommendation herein). The Planning Department may slightly adjust the specific timing of reimbursement if appropriate due to timing of construction loan to applicant.
- 5) Bioretention design. Modify the plans as follows: The bioretention system should be modified to include an internal water storage volume, or be replaced with a subsurface gravel wetland. This modification is for nitrogen removal.
- 6) NHDES approval. Obtain approval for both septic systems/leach fields as shown on the plans.
- 7) Manure piles. Physically remove the existing piles, including partially composed piles, of manure from the site, for disposal at the landfill.
- 8) Drainage maintenance. A drainage maintenance agreement approved by Public Works must be executed.

### **Operational Issues**

- 1) Construction activity. Add to the plan notes: “All outside construction activity related to the development of this site is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 3:00 p.m. Saturday”.

### **Other Issues**

- 1) Additional plantings. Show on the plans that the ship lap fence will be buffered with vegetation as required by the HDC. This requirement applies to the ship lap fence located southerly of the large barn type building. At least 15 spruce trees shall be placed there (relocated from elsewhere on the property). The trees will be located along the easterly side/edge of the existing vegetated buffer. The trees will be planted 7 feet on center, starting at the southerly corner of the fence. They will be staggered diagonally as space allows and the smaller and larger trees interspersed. The applicant may clear some branches, minimally, only as needed, to get a vehicle into the area and allow for some

increased light. (The trees may be placed to extend beyond the fence and provide additional buffering in front of the barn type building as well.)

- 2) Plan note. Add to plan notes: “For more information about this site plan, or to see the complete plan set, contact the Town of Durham Planning Department, 15 Newmarket Road, Durham, NH 03824. (603) 868-6698.”
- 3) Reimbursement \$2,000 to the Town for payment to Dr. Tom Ballestero, consultant on dog waste. The Planning Department may slightly adjust the specific timing of reimbursement if appropriate due to timing of construction loan to applicant.
- 4) NHDOT Driveway permit. Obtain driveway permit from NHDOT. Any significant changes to the plans as approved by the Planning Board shall be submitted to the Planning Board for review.
- 5) Landscaping guarantee. A guarantee must be posted in a form and amount satisfactory to the Director of Public Works, anticipating repair or replacement planting to assure compliance with the intent of the vegetative buffer requirements. The Planning Department may slightly adjust the specific timing of reimbursement if appropriate due to timing of construction loan to applicant.
- 6) Easement. Easement language for the driveway shall be submitted to, and approved by, the Planning Department, with an easement recorded at the Registry and proof of recording submitted to the Planning Department.
- 7) Other permits. All required state and federal permits must be obtained with copies of permits or confirmation of approvals delivered to the Planning Department.
- 8) Architecturals. The applicant shall submit two 11” x 17” paper sets of full architectural elevations in color as approved by the Historic District Commission (one for Planning and one for Code Enforcement). These must include a scale and show building height.
- 9) Final drawings. The following complete sets of all final approved drawings (site plans, details, sections, architecturals, fencing, drawings approved by the HDC, etc.) shall be submitted for signature (except the electronic version) by the Town: (a) one large mylar (of the site plan sheet only); (b) one large set of black line drawings; (c) one set of 11"x17" drawings; plus (d) one electronic version by pdf or CD. Each individual sheet in every set of drawings must be stamped and signed by the engineer or designer responsible for the plans. *Please note.* If there are significant changes to be made to the plans, as specified above, one full size paper check print shall be sent to the Planning Department for review prior to producing these final drawings.
- 10) Signature. Signature by the applicant at the bottom acknowledging all terms and conditions of this approval herein.
- 11) Add approval block on each page of drawings for signature of Planning Department. It should read: “Final Approval by Durham Planning Board. Certified by  
\_\_\_\_\_ Date \_\_\_\_\_”

## **GENERAL AND SUBSEQUENT TERMS AND CONDITIONS**

All of the conditions below are attached to this approval.

### **Noise Issues**

- 1) Other sounds. No speakers, sound amplification, nor whistles shall be permitted outside nor in the barn. Guns shall not be discharged at the facility. Hunt training shall not be provided at the facility.

### **Environmental Issues**

- 1) EPA permit. This project proposes to disturb over one acre of existing ground cover and meets other specific requirements related to permit criteria for EPA NPDES compliance. The Contractor is responsible for development and implementation of a Storm Water Pollution Prevention Plan (SWPPP), submission of a Notice of Intent (NOI) to EPA, inspection and maintenance of sediment control measures, documentation of maintenance activities, and submission a Notice of Termination (NOT) to EPA. The Contractor is also responsible to comply with any or all other aspects of current Federal, State and Local storm water or NPDES regulations or requirements.
- 2) Stormwater infrastructure. All stormwater management infrastructure shall be designed and installed in accordance with Design Standards of the Durham Site Plan Review and Subdivision Regulations, and shall be owned, operated and maintained accordingly by the property owner to protect the quality of existing onsite and offsite water resources and wetland habitat.
- 3) Bioretention inspection. The bioretention basin and stormwater treatment facilities shall be inspected twice each year with preventive maintenance provided in accordance with the “Regular Inspection and Maintenance Guidance for Bioretention Systems/Tree Filters” attached herein as an exhibit.
- 4) Collection of manure. All dog manure shall be collected throughout the day – from inside the two dog day care structures, in the yard, and inside the kennel - placed in plastic bags in a closed container (such as a dumpster) and disposed of at a landfill. The container shall be emptied at least once each week. This requirement applies to both the kennel and dog day care facility. (Note that while this approval herein applies specifically to the dog day care facility, the applicant agreed to extend this condition to the kennel, as well, pursuant to the recommendations of Tom Ballestero. It is therefore incorporated herein and must be complied with under this approval.)
- 5) Stormwater management plans. The Town Engineer has reviewed the plans prepared by MJS Engineering and dated September 19, 2012 and has determined that the project elements sufficiently satisfy the Town of Durham’s Site Plan Review Regulations relative to stormwater management. Because of the complexities of the stormwater management system components, the applicant will need to provide engineering supervision during construction and provide proper documentation to the Department of Public Works that the construction is/was performed in accordance with the Plans, including As-Built drawings in electronic and hard copy form. The applicant shall notify Engineering Division at least 24 hours in advance of back-filling of any subsurface stormwater infrastructure to allow time to schedule compliance inspections.

- 6) Erosion control. All erosion and sedimentation control structures must remain in place and be maintained until vegetation is established or ground surface is suitably stabilized.
- 7) Hosing down buildings. Dog waste inside the buildings, including the rubber matting in the barn building, shall be hosed down daily into the septic system or bioretention system and washed [See reference below to Tom Ballestero's report.]
- 8) Tom Ballestero's recommendations. The following recommendations, as stated in final report of February 15, 2013, are incorporated elsewhere in this approval:
  1. Collect pet waste daily, place in closed container (dumpster) and dispose of at a landfill.
  2. Wash down waters from inside buildings plumbed to the septic system or bioretention system.
  3. An interceptor trench should be included to prevent uphill runoff from running through fenced in dog areas. [Already shown on plans]
  4. The bioretention system should be modified to include an internal water storage volume, or be replaced with a subsurface gravel wetland. This modification is for nitrogen removal. [Show on final plans, referenced as precedent condition.]
  5. The stormwater runoff from the site should be monitored biannually [i.e. semi-annually] for 3 years for: fecal streptococcus, fecal coliform, total coliform, nitrogen (dissolved inorganic forms), pH, total dissolved solids, and chloride.
- 9) Testing. The storm water discharge from the bio-retention system shall be monitored for fecal streptococcus, fecal coliform, total coliform, nitrogen (dissolved inorganic forms), pH, total dissolved solids, and chloride as specifically stated in the list below. Starting from the issuance of a certificate of occupancy the discharge shall be monitored every six months for three years. If there are any exceedances of any of the items per the list below, during the three-year testing period, then all of the items shall be tested annually for an additional two years. If there are any exceedances of any of the items during this two-year testing period, then all of the items shall be tested annually for an additional two years. This annual retesting for two year periods shall continue until there are no exceedances over any such two-year period.

If one (or more) of the test results exceeds the standards on the items below, the applicant shall implement one or more of the mitigation measures laid out in Dr. Ballestero's February 27, 2013 testimony to the Planning Board and any other appropriate measures. These measures include, but are not limited to, enhanced maintenance procedures, adding disinfectants to the system, and installing ultraviolet light. The applicant shall consult with a qualified consultant for guidance on which measures to employ. The applicant shall inform the Planning Director of the measures that will be taken and the rationale for selecting them.

Nitrate <2 mg/l  
 Nitrite <1 mg/l  
 Ammonia <1.5 mg/l  
 Fecal coliform < 200 CFU/100 ml  
 total coliform  
 e. coli <200 CFU/100 ml  
 fecal streptococcus

## **Operational Issues**

- 1) Lighting. All exterior lights must be fully shielded and not project glare toward any abutting properties.
- 2) Drop off and pick up. During the drop off and pick up hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. dogs shall be kept inside one of the two structures (including the fully enclosed space and the barn) or within the first enclosed fenced area outside of the barn (the smallest fenced in area immediately behind/easterly of the barn)
- 3) Hours of operation. Hours of operation for the dog day care facility are restricted to 7:00 a.m. to 6:00 p.m., Monday through Friday. However, in order to accommodate customers who occasionally need to pick their dogs up late because of work or personal circumstances, a limited number of dogs may remain after 6:00 p.m. provided they are kept completely inside (only within the completely enclosed building) and are picked up no later than 7:00 p.m.
- 4) 30 dogs outside. There shall be no more than 30 dogs outside at any time (This applies to the full open air areas *and* the partially enclosed barn).
- 5) Total number of dogs. The total day care dog population (dogs kept inside and outside) shall not exceed 60 at any time.
- 6) Operational Procedures. The following operational procedures shall apply to this approval. These are adapted from the March 22, 2013 letter from Attorney Chris Wyskiel (the applicant's attorney) to Michael Behrendt, Durham Town Planner. (Note that the conditions below have been altered from that letter.)
  - a) The applicant shall continue to use the customer/dog intake forms in substantially the form of the three pages attached as Exhibit. The applicant may modify the form in the future without review by the Planning Board provided the scope of the form is not reduced in any meaningful manner.
  - b) In addition to use of such forms, the applicant shall pre-screen and evaluate the temperament of new dogs to be taken in at daycare, and evaluate the dogs' ability to interact with other dogs and humans in a positive manner. This shall include, but not be limited to, the placing of new dogs in the penned area closest to the driveway with a minimal number of dogs for limited times, to assess interaction, barking, etc. Dogs unable to associate with other groups of dogs without excessive barking will not be taken for daycare services unless confined to inside (house) and barn play areas (until able to go into outdoor penned area without excessive barking) so as to attenuate barking noise.
  - c) The applicant shall continue to maintain documentation of dogs' medical history and vaccination status.
  - d) The applicant shall determine through documentation or intake assessment that dogs taken for daycare are at least eight weeks of age.

- e) The applicant shall determine through documentation or intake assessment or obvious visual inspection that dogs taken for daycare are spayed or neutered if dogs are over six months of age.
- f) The applicant shall use best efforts to staff daycare operations to have no fewer than two employees during drop off and pick up hours (7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. or 7:00 p.m. on occasion, as stated under Hours of Operation, above), when dogs are contained within limited areas stated above. When dogs are allowed outside (beyond the enclosed or partially enclosed structures) the applicant shall staff the daycare operation with a goal of generally maintaining a staff to dog ratio of 1 to 15. It is recognized that, occasionally, this ratio will not be met if an employee is dispatched from daycare operations to the kennel or to other emergency or job-related responsibilities, or for other unforeseen circumstances.
- g) Food supplies shall be stored in containers to discourage vermin infestation.
- h) The applicant shall continue to control vermin infestation by professional applications (currently Orkin).

#### **Other Issues**

- 1) Recording. This notice of decision shall be recorded with the Strafford County Registry of Deeds, at the applicant's expense, within ten (10) days of the Town Planner's signature on the Site Plan.
- 2) Compliance. This development shall remain in compliance with all applicable law – including all pertinent provisions of the Town of Durham Site Plan Regulations – unless otherwise approved/waived.
- 3) Certificate of occupancy. All elements shown on the approved site plan must be properly completed prior to issuance of a certificate of occupancy, unless appropriate surety is placed with the Planning Department.
- 4) HDC approval. All of the conditions of approval of the HDC are incorporated into this approval.
- 5) Fence color. The ship lap fence will be dark gray color as exhibited on site in December 2012 and approved by the Historic District Commission.
- 6) Court case. All findings and conditions imposed by the Strafford Superior Court in the case, Paul A. Dubois, Trustee, et al v. Geoff Sawyer, d/b/a Great Bay Kennel, et al, Strafford Superior Court Docket No. 01-E-0089, are adopted and made a part of these conditions of Planning Board approval. That case is attached herein for reference. In the case of any conflict between the provisions of the court case and this approval herein the stricter provision shall apply.
- 7) Fire access. Access into the site for fire apparatus must be maintained at all times during the construction process. This is the sole responsibility of the applicant/developer to

maintain this access. Please contact the Fire Department at 868-5531 with any questions about access requirements.

- 8) Highway improvements. Should there be off site road improvements stipulated by NHDOT, those improvements shall be completed prior to issuance of a certificate of occupancy unless an appropriate surety is placed.
- 9) Improvements. All improvements shown on the approved site plan must be properly completed prior to issuance of a certificate of occupancy, unless appropriate surety (sufficient to cover the cost of outstanding items, in accordance with surety standards for the Town of Durham) is placed with the Planning Department.”
- 10) Building Code. Note that this approval is for the site plan only. Life safety code and building code review will be required as part of the building permit process when the construction plans are submitted. Various requirements regarding the building design may be specified at that time.
- 11) Permits. The applicant shall apply for all necessary permits for construction of the new facility. The permit applications must be approved and permits issued before any construction begins.
- 12) Life safety. As part of the permitting process, the applicant shall work with the Fire Department to ensure that fire and life safety codes are being met.
- 13) Original site plan approval. This approval herein supersedes the site plan approved by the Planning Board on January 25, 2012. Pertinent conditions of that plan have been incorporated into this approval. However, the Findings of Fact and list of documents that were submitted for that approval are incorporated herein by reference, and supplement the Findings of Fact and list of documents included herein.
- 14) Site work. No site work may be undertaken until: a) all of the precedent conditions are met; b) the preconstruction meeting with Town staff has taken place; c) the prominent orange fence along the edge of the wetland buffer, if any are present (referred to in precedent condition, above) is installed; d) The EPA permit referred to herein is submitted; and e) all appropriate erosion and sedimentation control structures are in place. These erosion and sedimentation control measures and the orange fence must be in place prior to the pre-construction meeting in order that they may be inspected at the meeting. Contact the Planning Department to arrange for the preconstruction meeting.
- 15) As built. Two sets of full size (measuring at least 22" x 34") black line paper plus one full size mylar plus 1 set of 11" x 17" plus one digital pdf copy of the as-built site plans (or “record drawings”) stamped and signed by the Engineer or Surveyor are to be submitted to the Planning Department prior to issuance of the Certificate of Occupancy (unless adequate surety is placed).
- 16) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town.
- 17) Boundary line adjustment. The approved Boundary Line Adjustment is still in effect.



- 18) Approval. All of the documentation submitted in the application package (See Pertinent documents, below) by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
- 19) Other permits. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project. Contact the Town of Durham Building Department at 868-8064 regarding building permits.
- 20) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 21) Pertinent documents. Pertinent documents include, but are not limited to, the following:
  - a) color fencing plan dated March 26, 2013
  - b) floor plans, building sections, and detail received March 22, 2013
  - c) revised site plans including details and bioretention system received March 20, 2013
  - d) drawings approved by the HDC
  - e) Drainage Analysis received September 21, 2012
  - f) Regular Inspection and Maintenance Guidance for Bioretention Systems/Tree Filters”
  - g) Reuter Associates Acoustical Study dated September 18, 2012
  - h) Great Bay Kennel Time Line prepared by Karen Edwards, Planning Department Administrative Assistant
  - i) The January 4, 2013 letter from Mike Sievert, MJS Engineering, about operations (except regarding stockpiling of manure, which is no longer done).
- 22) Development of Regional Interest. The Planning Board has determined that this is not a Development of Regional Interest in accordance with RSA 36:54-58.
- 23) Fence height. Note that fences 6 feet or higher must meet building setbacks. If any new fence shown on the plans is 6 feet in height and lies within the building setbacks, the plans may be modified to show a fence of 5’ 11” in order that the fence need not be relocated to meet the building setbacks.
- 24) Findings of fact.
  - a) The applicant submitted an application, supporting documents, and plans for the project;
  - b) The Planning Board held numerous continued public hearings on the application;
  - c) The Planning Board held a site walk on the application;
  - d) Three private mediation sessions, with the applicant and neighbors, convened by the Town Planner with the support of the Planning Board, were held using a professional mediator;
  - e) It was determined that the baseline/frame of reference for consideration of the conditional use application should be the existing condition of the site (not a hypothetical vacant lot);

- f) The Town hired Tom Ballestero, PhD, Director of the Stormwater Center to recommend methods to minimize impacts from dog waste.
- g) The applicant obtained approval from the Historic District Commission for the buildings and fencing.
- h) The acoustical study performed by Eric Reuter of Reuter Associates, consultants in acoustics, stated, “For the locations modeled (the primary play area for each scenario), the resulting sound pressure levels at the nearest residences are lower (by nearly 10 dB in some cases) for the proposed facility than then [sic] they are for the existing facility. For the proposed facility, the worst-case scenario would be a group of dogs congregating and barking at the top of the hill, near the existing building. Under this (presumably unusual) condition, levels would be the same as they are today, but not higher. For reference, a change of 10dB is generally considered to be twice (or half) as loud.”
- i) Additional findings (“Additional Proposed Findings”) are offered by Attorney Christopher Wyskiel in his March 22, 2103 letter to Michael Behrendt. This is included for reference only. The Planning Board makes no particular comment on these findings.
- j) The Planning Board duly approved the application as stated herein.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning Board chair

\_\_\_\_\_  
Date