

**RESOLUTION
TOWNSHIP OF PEQUANNOCK PLANNING BOARD
IN THE MATTER OF
THE HAPPY HOUND K-9 SOCIAL CLUB, LLC
DECIDED ON APRIL 21, 2014
MEMORIALIZED ON MAY 19, 2014
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH ANCILLARY "C" VARIANCE RELIEF**

WHEREAS, the Happy Hound K-9 Social Club, LLC (hereinafter "Applicant" or "Happy Hound") has filed an application with the Pequannock Township Planning Board (hereinafter "Planning Board" or "Board"), seeking preliminary and final site plan approval and ancillary "c" variance relief for property located at 721 Route 23 South, Pompton Plains, New Jersey, and known and designated as Block 802, Lot 5, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located in the C-2 Highway Commercial District (hereinafter "C-2 Zone"); and

WHEREAS, a public hearing was held on April 21, 2014, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Peter McArthur, Esq. (hereinafter "McArthur").

NOW, THEREFORE, the Planning Board makes the following findings of fact, based upon evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for preliminary and final site plan approval and ancillary "c" variance relief in regard to property known and designated as Block 802, Lot 5, on the Tax and Assessment Map of the Township of Pequannock, which premises are located at 721 Route 23 South, Pompton Plains, New Jersey, in the C-2 Zone.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application of Site Plan signed and dated January 28, 2014.
2. Completed Pequannock Township Variance Application for Flood Plain Development, signed and dated January 28, 2014.
3. Pequannock Township Application for Variance, signed and dated January 28, 2014.

The Board also considered the following reports and/or memoranda in regard to this application:

- A. Memorandum dated April 20, 2014, from Jill A. Hartmann, P.P., A.I.C.P., Planner to the Pequannock Township Planning Board.
- B. Memorandum dated March 12, 2014 from Joe Golden, P.E., C.M.E., Township Engineer to the Pequannock Township Planning Board.

Counsel for the Applicant represented that the Applicant has filed an application with the Planning Board seeking preliminary and final site plan approval, bulk variance relief and flood plain approval for a K-9 daycare, grooming and training center with a small retail operation. Counsel also represented that there will be no overnight boarding of dogs on the premises.

Counsel for the Applicant also represented that the Applicant obtained from the Morris County Planning Board, a letter of exemption dated February 3, 2014 as well as an e-mail dated April 21, 2014 from Gail Gratzel, Pequannock Township Health Department, that the revised plans depict an onsite sewage disposal system that is in compliance with current regulations.

Testifying on behalf of the Applicant was Robert Mahoney, the owner of the business (hereinafter "Mahoney"). Mahoney testified that the hours of operation for the business will be 7:00 a.m. to 7:00 p.m., Monday through Saturday. He stated that the facility will provide for professional grooming of dogs in the front of the building. In addition, there will be a small retail area. Mahoney stated that the total number of dogs at any one time onsite would be between 25 to 30. He also represented that there will be a minimum of five (5) employees onsite

at all times. He also anticipated that grooming and training of dogs would be subcontracted out so that there would be an additional one or two other employees at the facility.

With respect to the proposed retail operation, Mahoney testified that items offered for sale would include, but not be limited to, dog leashes, dog collars and dog toys. He further represented that there would be no food for sale onsite.

Mahoney explained that dropping off of animals and picking up of animals would occur at the front entrance off of Route 23. He also represented that the windows to the building would remain closed and would not need to be opened because of the heating and air conditioning systems onsite.

Mahoney also discussed with the Board solid waste and liquid waste clean-up. He confirmed that solid waste would be picked up, double-bagged and placed into containers with a lid. Mahoney also stated that he will utilize odor-neutralizing chemicals in regard to the containers that hold solid waste. The solid waste containers with lids will be stored inside the building. Next, with respect to liquid waste, Mahoney stated that the liquid waste would be cleaned up several times a day and areas would be washed down with water so that any residue would go into the dry well.

Mahoney also addressed the issue of a dog run in regard to this application. He stated that there will be a place both inside and outside of the facility to be utilized as a dog run. He stated that the area of the dog run will be supervised. The outdoor area of the dog run would also be enclosed with a six (6) foot in height solid PVC fence. He further explained that dogs would be brought together based upon size and temperament.

Mahoney also testified that customers would be required to sign a release enabling Mahoney to bring dogs to a vet should the situation arise. He also indicated that any customer

who brings a dog to his facility must come with appropriate paperwork to confirm that the dog has been neutered or spayed and that all shots are up to date. Furthermore, he testified that he would have an isolation room in the rear of the building so that if a dog got sick, the dog would be able to be isolated from the rest of the dogs at the facility until such time as the dog could either go to a vet or be picked up by the owner.

He further elaborated that there would be no overnight boarding of dogs at this facility and confirmed that if an owner did not pick up the dog at closing time, a process would be in place where the owner would be contacted and if the owner failed to respond, or still was unable to pick up the dog, then Mahoney would take the dog home to his house. He also indicated that he has made arrangements to have the medical services of an on-call veterinarian, Dr. Howard Silverman from Wayne, New Jersey.

Mahoney also addressed the issue of grooming facilities onsite, and indicated that grooming would occur by appointment only. Mahoney further elaborated that a customer could bring a dog to his facility to be groomed as part of the daycare operation or independent of the daycare operation.

Next testifying on behalf of the Applicant was James P. Cutillo, AIA, a licensed architect in the State of New Jersey (hereinafter "Cutillo"). Cutillo had marked into evidence, as Exhibit A-1, plans that he prepared dated January 8, 2014 and last revised March 24, 2014. Cutillo testified in regard to the interior renovations of the building. He indicated that there will be no changes to the roofline of this building. Cutillo provided an overview of the floor plan to the Planning Board.

Cutillo also confirmed that in the very rear of the building would be located an isolation room which would be a solid room with a solid door. The size of the room would be seven (7) feet by six (6) feet or a total of forty-two (42) square feet.

Cutillo also confirmed that there would be two HVAC units on the roof. Each unit will be five (5) tons. He also confirmed that the building is a masonry building, and that the walls are 12 inches thick, solid masonry. In the opinion of Cutillo, he stated that this type of construction material is very good at sound attenuation.

Cutillo also agreed to one of the suggestions of the Planning Board that the dog grooming area should have a half door or gate to prevent dogs from escaping. It was also confirmed that dog grooming would occur with a maximum of two dogs at one time due to the existence of bathing and cutting facilities for the grooming service.

Next testifying on behalf of the Applicant was Paul P. Darmofalski, P.E., P.P., a licensed professional engineer and planner in the State of New Jersey (hereinafter "Darmofalski"). Darmofalski confirmed that the site is located in the C-2 Zone District. He further testified that the building is an existing building, one-story in height, and consisting of approximately 3,800 square feet. Darmofalski also provided the Board with an overview of existing land uses in the area surrounding the site. Next, Darmofalski reviewed the Zoning Table with the Board. Darmofalski further identified the "c" or bulk variance relief required by the Applicant in regard to this application. The variances sought by the Applicant are (1) lot area, where the minimum lot area in the C-2 Zone is 1 acre and the lot is 0.332 acres; (2) minimum lot width, where a minimum lot width of 200 feet is required and 75 feet is proposed; (3) minimum side yard setback, where a minimum side yard setback of 6 feet is required and 1.6 feet/1.6 feet is

proposed; (4) minimum buffer to residents, where 10 feet is required and zero feet is proposed; (5) off-street loading space, where 1 space is required and zero spaces are proposed.

Darmofalski also testified that the proposed use of the premises is a permitted use in the C-2 Zone.

Darmofalski also identified certain improvements to the property that were being made in connection with this application. He indicated that a new water line would be installed, drainage would be provided in the rear of the building and that the roof leaders would tie into it. Also, a paved area in the rear of the building was being removed and replaced with grass thereby removing impervious surface and replacing it with pervious surface. Darmofalski also stated that the Applicant will be installing curb stops in order to prevent cars from backing up onto the neighbor's property.

Darmofalski also confirmed that onsite lighting will be replaced and will comply with all Ordinance requirements. Darmofalski also reviewed with the Board the contents of the Board Engineer's review report as well as the Board Planner's review report. Darmofalski specifically addressed item no. 4 in the Board Planner's report in regard to the aisle width, where a 24 foot minimum, two-way aisle width is required and the Applicant is proposing an aisle width of 19.9 feet (rounded up to 20 feet). Darmofalski stated that this area is the northern side of the building. The Applicant intends to use this area for employee parking only. Since it is long term parking for employees, the Applicant is requesting variance relief for providing an aisle width of 20 feet where a minimum of 24 feet is required. Darmofalski also testified that employees will be able to safely circulate the site, notwithstanding the 20 foot aisle width.

Darmofalski further addressed items in the Board Engineer's review report. The Applicant will be able to comply with most items raised in the Board Engineer's report.

However, Darmofalski provided answers and explanations to other concerns raised by the Board Engineer. In regard to item no. 4, the Applicant will provide a barrier curb to prevent cars from backing up onto the neighbor's property. In regard to item no. 9, Darmofalski represented that no loading space is required for the proposed use of the property. In regard to item no. 11, Darmofalski testified that there is not a lot of room onsite for snow storage. As a result, he testified that snow removal will be required after excessive storms. In regard to item no. 17 of the Board Engineer's review report, Darmofalski testified that in accordance with the Ordinance requirements, there shall be a ten foot buffer strip which consists of landscaping or natural vegetation. The Ordinance also requires a fence to provide a buffer. In this instance, Darmofalski stated the Applicant only wants to install the solid PVC fence. He testified that plants are not necessary to mitigate noise or sound and planting is not necessary to prevent viewing of the site. He also indicated that the Applicant is eliminating an existing paved area and converting it to a grass area, which grass area will not include plants.

Furthermore, the Applicant stipulated that the fence would be a solid PVC fence and would not contain a chain-link fence as initially represented. Moreover, with respect to onsite lighting, the Applicant stipulated that all lighting would conform to the ordinance requirements and would be subject to the satisfaction of the Township Engineer and Planner.

Darmofalski next provided variance testimony in support of granting the variance relief required by the Applicant in regard to this matter. He testified that variance relief is appropriate under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) for undue hardship. Darmofalski represented that there were physical features which uniquely affect a specific piece of property. In this matter, he testified that the existing lot is deficient in lot area and lot width. He further indicated that there is an existing building on the lot which has been previously

approved and thus, the proposed development of the lot is impacted by the existing structures. He further indicated that pavement would be removed in the rear yard and grass would be added, thus eliminating impervious surface and adding more pervious surface.

Darmofalski also testified that the Applicant is entitled to ancillary "c" or bulk variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). He stated that the existing building has been vacant since Hurricane Irene. The Applicant is further improving the safety of the site. The Applicant is improving the septic system, stormwater and creating more open space. He stated that the lot is narrow which impacts the development on the lot. He further confirmed that variance relief could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. Thus, he concluded that the positive and negative criteria were met relative to the granting of ancillary "c" or bulk variance relief.

The meeting was opened up to the public and the Board was addressed by Lauren Bergen, 39 Woodland Place; Jim Koren, 35 Woodland Place; Geraldine Koren, 35 Woodland Place; and Judith Salvatori, a resident of West Milford whose brother, Donald White, resides at 29 Third Street, Pequannock. The members of the public raised various issues in opposition to the proposed development. More specifically, some of the complaints were health hazards caused by barking dogs, a diminution in property values of the surrounding properties in the neighborhood if the proposed use were approved, problems with rodents and mosquitos in this area, as well as noise from other dogs in the area. There were also questions about stormwater management measures.

NOW, THEREFORE, the Planning Board hereby makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Board is a request for preliminary and final site plan approval and ancillary "c" variance relief. The subject site is 0.332 acres in area. The site is presently developed with a one-story masonry building which has been vacant since Hurricane Irene. The site is nonconforming with respect to lot area, lot width and side yard setback.

The nature of the application is to operate a canine daycare, grooming, training center with a small retail operation onsite. The Applicant further stipulated that there will be no overnight boarding of dogs onsite. The proposed use will occur in a one-story masonry building approximately 3,800 square feet in area.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or “c” variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The Applicant requires “c” or bulk variance relief in connection with this land development application. More specifically, the Applicant requires the following variances: (1) minimum lot size, where 1 acre minimum is required and 0.332 acres is both existing and proposed; (2) minimum lot width, where a minimum lot width of 200 feet is required and 75 feet is both existing and proposed; (3) minimum side yard setback, where 6 feet is required and 1.6 feet/1.6 feet is both existing and proposed; (4) minimum buffer to residents, where 10 feet is required and zero feet is both existing and proposed; (5) 1 off-street loading space is required and zero spaces are currently existing and proposed; (6) two-way aisle width, where a minimum two-way aisle width of 24 feet is required and 20 feet is proposed.

The Board determines that variance relief for minimum lot size, minimum lot width, and minimum side yard setback are existing conditions which are not being aggravated or exacerbated in connection with the proposed development. Furthermore, the Board determines that there is an existing approximate 3,800 square foot masonry building on the site which site has been previously approved for development.

With respect to the request for variance relief for minimum two-way aisle width, where the minimum width of 24 feet is required and 20 feet is proposed, the Board accepts the

representations of the Applicant that in order to address the deficiency with respect to two-way aisle width, the Applicant is providing, on the northerly side of the building, employee parking only. The employee parking only is designed to be long-term parking. The fact that long-term parking for employees is utilized in this section of the site reduces the amount of traffic in and out of this area. The Board also finds that onsite traffic circulation will function safely and efficiently despite the deficiency of 19.9 feet two-way aisle width.

Next, with respect to the minimum buffer to residents variance, the Board also accepts the representations of the Applicant that the Applicant is providing a solid fence, six (6) feet in height, to appropriately buffer this site from the neighboring property. The Board also finds that since the site is very narrow, providing additional landscaping would not result in additional buffering, nor would it mitigate any noise from the site that may cross over the property line.

The Board accepts the representations of the Applicant that a designated loading space is not required for the proposed use because deliveries are infrequent in nature and of short duration. The Board finds that the site operates efficiently even without a designated loading space.

The Planning Board has reviewed the request for ancillary “c” or bulk variance relief under the c(2) criteria. In Kaufman v. Planning Board for Warren Township, 110 N.J. 551, 563 (1988), the New Jersey Supreme Court held:

“By definition then no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a hardship on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

The Board finds that the variance relief will benefit the community in that it represents a better zoning alternative for the property. More specifically, the Board determined that under the Municipal Land Use Law pursuant to N.J.S.A. 40-:55D-2a, certain purposes of the Municipal Land Use Law would be advanced by granting “c” or bulk variance relief. More specifically, the granting of “c” or bulk variance relief would (a) encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare; and (d) to provide sufficient space in appropriate locations for a variety of commercial and industrial uses. The Board sees this as an opportunity to adapt and reuse a masonry building which has been vacant since Hurricane Irene, which will similarly benefit the public. Further, the Applicant will be improving the septic system, stormwater management and creating more open space. The Board recognizes these additional improvements to the site as similarly benefitting the community.

As such, the Board concludes that it is appropriate to grant ancillary “c” variance relief under the c(2) analysis because the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement; the variances can be granted without substantial detriment to the public good; and the benefits of the deviation would substantially outweigh any detriment. Finally, the granting of ancillary “c” or bulk variance relief will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has submitted sufficient information so as to enable the Board to render an informed decision. The Board also determines that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law and Township Ordinances to a sufficient degree so as to

enable the Board to grant the relief being requested inclusive of preliminary and final site plan approval and ancillary “c” or bulk variance relief.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Pequannock that the application of Happy Hound K-9 Social Club for premises commonly known and designated as Block 802, Lot 5, on the Tax and Assessment Map of the Township of Pequannock and located at 721 Route 23 South, Pompton Plains, New Jersey, in the C-2 Zone District requesting land use relief as determined as follows:

- A. Preliminary site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-46;
- B. Final site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-50;
- C. Ancillary “c” variance relief as set forth herein is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2).

IT IS FURTHER RESOLVED that the above land use relief is granted subject to the following terms and conditions:

- 1. The development of this parcel shall be implemented in accordance with the plans submitted and approved, as well as any further amendments required by the Planning Board or the Board’s professionals as a result of the hearing process.
- 2. The granting of this application is subject to and conditioned upon all of the representations and stipulations being made by or on behalf of the Applicant to the Township of Pequannock Planning Board being true and accurate. The Planning Board notes that it specifically relied upon said stipulations in the Board’s granting of approval. If said representations and stipulations are false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on April 21, 2014.

4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the report of Jill A. Hartmann, P.P., A.I.C.P., dated April 20, 2014, Planner to the Pequannock Township Planning Board.

5. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the report of Joe Golden, P.E., CME, dated March 12, 2014, Township Engineer to the Pequannock Township Planning Board.

6. The granting of this application is subject to and conditioned upon there being no overnight boarding of dogs at this site.

7. The granting of this application is subject to and conditioned upon the hours of operation being 7:00 a.m. to 7:00 p.m., Monday through Saturday.

8. The granting of this application is subject to and conditioned upon a limit of four (4) dogs being taken outside in the dog run at any one time.

9. The granting of this application is subject to and conditioned upon the dog run being open only between the hours of 9:00 a.m. and 5:00 p.m., which shall be supervised by a staff member at all times that dogs are outside in the dog run.

10. The granting of this application is subject to and conditioned upon solid waste being picked up, double-bagged and put into containers with lids inside the building. The Applicant shall also provide odor neutralizing chemicals to the solid waste containers.

11. The granting of this application is subject to and conditioned upon refuse being picked up a minimum of three (3) times per week or at any other times determined to be necessary by the Pequannock Township Health Officer.

12. The granting of this application is subject to and conditioned upon the Applicant revising the plans to depict a half door or gate to the entry of the dog grooming area in order to prevent dogs from escaping.

13. The granting of this application is subject to and conditioned upon the Applicant complying with the Noise Ordinance Standards of Pequannock Township as well as the State regulations for sound at the property line. The Pequannock Township Health Department shall investigate sound levels at the property line whenever it is deemed necessary and appropriate.

14. The granting of this application is subject to and conditioned upon the Applicant installing signage on the property to "Curb Your Dog" or such other substantially similar sign.

15. The granting of this application is subject to and conditioned upon the Applicant providing a six (6) foot in height, solid PVC fence in the areas of the property as identified on the plans.

16. The granting of this application is subject to and conditioned upon all onsite lighting conforming to Township Ordinances, which shall be subject to the review and approval of the Township Engineer and Planner.

17. The granting of this application is subject to and conditioned upon Pequannock Township Health Department approval in regard to the septic system.

18. The granting of this application is subject to and conditioned upon NJDEP approval, if required.

19. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.

20. Certificate that taxes are paid current to date of approval.

21. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official and Affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the Municipal agency having land use jurisdiction over the application and supply to the Planning Board a copy of any approvals received.

22. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Pequannock, County of Morris, State of New Jersey, or any other jurisdiction.

The undersigned Secretary certifies the within Resolution was adopted by this Planning Board on April 21, 2014, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 19, 2014.

Roger Imfeld, Board Secretary

In Favor:

Against:

Abstained:

Board Members Eligible to Vote: