



**TOWN OF DURHAM**  
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***Town Planner Recommendations***  
**Great Bay Kennel – Dog Day Care Facility**  
**Wednesday, April 10, 2013**

**Application for Conditional Use and Amendment to approved site plan** to replace **dog daycare facility** with new building including indoor and outdoor play areas, parking, office and studio apartment at **27 & 35 Newmarket Road. Great Bay Kennel**, c/o Jaki and Geoff Sawyer (applicant), Christopher A. Wyskiel (attorney), Mike Sievert, MJS Engineering (engineer), Robin Wunderlich (building designer). Tax Map 6, Lot 11-7. Residence C Zoning District. ***Recommended action:*** Final action.

➤ I recommend approval of the application as stated below

Please note:

- At Peter Wolfe's request I have broken up the Precedent Conditions and Subsequent Conditions into four sections: noise issues, environmental issues, operational issues, and other issues.
- Rick Renner, an abutter, asked the applicant to make some repairs to his driveway/mailbox likely caused by vehicles driving past queueing cars on Route 108. This is a question for the Planning Board as NHDOT will review whether a slip lane should be installed but they will not require the applicant to make these types of repairs. Mr. Renner mentioned, "personal issues with torn up driveway/rutted front of mailbox/banged mailbox for impatient people going around onto our property – to avoid the parked cars waiting to turn into the Sawyers." *It would be beneficial if Planning Board members could take a look at the driveway and see if any correction should be required as part of this approval.*

***\*DRAFT\****

**Notice of Decision**

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

Project:	<b>Dog Day Care Facility – Great Bay Kennel</b>
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:	<b>April 10, 2013</b>



"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) Additional fence. Show on the plans extension of the 8 foot shiplap fence on the northerly side to where it would meet the 6' high chain link fence with stockade, as shown on the fence plan.
- 2) HDC for fence. Obtain approval from the HDC for this change, above regarding the fence, to the plans.

### **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."

*[I changed this from my prior recommendations consistent with the January 25, 2012 site plan approval.]*

- 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. 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 of manure from the site
- 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 6:00 p.m. Saturday”. *[This is stricter than the provisions in the Noise Ordinance.]*

### **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, 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. No notices or public hearing shall be required.
- 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 board (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 set of mylars; (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, whistles, nor shouting shall be permitted outside nor in the barn. Guns shall not be used 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” document on file.
- 4) Dog manure. All dog manure must be hauled away. This applies to both the kennel and dog day care facility.
- 5) Stormwater management plans. The Engineering Division 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) Collection of manure. Pet waste (manure) shall be collected throughout the day, both inside the two structures and in the yard, place in a closed container (such as a dumpster) and disposed of at a landfill.
- 8) Hosing down buildings. Water inside the buildings shall be washed down daily to go to the septic system or bioretention system [See reference below to Tom Ballestero’s report.]
- 9) 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 for 3 years for: fecal streptococcus, fecal coliform, total coliform, nitrogen (dissolved inorganic forms), pH, total dissolved solids, and chloride.
- 10) Testing. The stormwater runoff from the site shall be monitored biannually for 3 years from the issuance of a certificate of occupancy for fecal streptococcus, fecal coliform,



total coliform, nitrogen (dissolved inorganic forms), pH, total dissolved solids, and chloride.

Note that standards are not given for some tests. If test results exceed the above standards, applicant shall inform the Planning Director of steps to be taken (consistent with Dr. Ballesteros's February 27, 2013 Planning Board meeting testimony recommending next steps if outlet water testing exceeds limits (noted below), including, but not limited to, enhanced maintenance procedures, use of disinfecting additives to system, or installation of UV light. Applicant shall consult with Dr. Ballesteros, or an equally qualified consultant if Dr. Ballesteros is unavailable, for advice for system enhancement as necessary.

Nitrate <2 mg/l  
Nitrite <1 mg/l  
Ammonia <1.5 mg/l  
Fecal coliforms < 200 CFU/100 ml  
total coliforms  
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 or within the first enclosed fenced area outside 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 up their dogs 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) Dogs outside outside hours of operation. No dogs shall be allowed in the outdoor fenced-in play areas associated with the dog day care facility (such as from the kennel) outside of these hours of operation, above.
- 5) 30 dogs outside. There shall be no more than 30 dogs outside at any time (This applies to the full open air areas, not to the partially enclosed barn).
- 6) Hose. A hose bib is located at the southeasterly corner of the main house. The applicant may use this to hose individual dogs to stop them from barking, as appropriate.
- 7) Operational Procedures. The Operational Procedures (item 5.) included in the March 22, 2013 letter from Attorney Chris Wyskiel to Michael Behrendt are included in this approval by reference (Some specific provisions are individually included in this notice.)



- 8) Total number of dogs. The total day care dog population (dogs kept inside and outside) shall not exceed 60 at any time.

### **Other Issues**

- 1) Recording. This notice of decision and the certified plans 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 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) 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.
- 7) Off-site improvements. Any off-site improvements included in this approval shall be completed prior to issuance of a certificate of occupancy unless an appropriate surety is placed.
- 8) 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.”
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.

- 13) 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; and d) 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.
- 14) 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).
- 15) Execution. The project must be built and executed exactly as specified in the approved application package unless changes are approved by the Town.
- 16) Boundary line adjustment. The approved Boundary Line Adjustment is still in effect.
- 17) Approval. All of the documentation submitted in the application package 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.
- 18) 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.
- 19) Energy Code. Building construction shall be in compliance with the energy efficient standards of Chapter 38 of the Town of Durham Code of Ordinances.
- 20) Pertinent documents. Pertinent documents include, but are not limited to, the following:
  - a) color fencing plan
  - 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).
- 21) 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.
- 22) Conditional use criteria. The responses to the conditional use criteria, as discussed in the September 19, 2012 letter from Attorney Christopher Wyskiel are deemed to satisfactorily address the criteria
- 23) Findings of fact. The Planning Board finds the following to be true.
  - 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 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 approved 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) After lengthy reviews, public hearings, and examination of voluminous materials, it is the opinion of the Planning Board and the Town Planner that all reasonable and appropriate, cost effective, and legal measures to mitigate noise from dogs barking and potential environmental impacts are integrated into the plan and these conditions of approval.
  - j) 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.
  - k) The Planning Board reviewed the application in accordance with state law, the Durham Zoning Ordinance, the Durham Site Plan Regulations, and other applicable law and found that the application meets all requirements (including any waivers, conditional uses, special exceptions, and/or variances that might have been granted);
  - l) The Planning Board duly approved the application as stated herein.



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Applicant

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Date

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Planning Board chair

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Date