

Chaplin Planning and Zoning Commission
Public Hearing Minutes
Chaplin Town Hall
July 11, 2019

The public hearing opened at 7:40 pm

Members present: Doug Dubitsky (Chair), Peter Fiasconaro (Vice Chair), Helen Weingart, Randy Godaire, Alan Burdick, Dave Garceau, Eric Beer

Alternates present: Bill Ireland, Brandon Cameron, Ken Fortier

Also present: Jay Gigliotti, Zoning Enforcement Officer (ZEO); Elizabeth Marsden, Recording Clerk, Town Attorney Dennis O'Brien

D. Dubitsky asked for a show of hands from the PZC members to confirm who was seated for the June 13, 2019 first segment of this public hearing. All regular members were present except Dave Garceau.

Subject of Hearing: SP19-103-29 Pumpkin Hill Road, Adam Bernardin, Applicant/Owner, Assessor's Map 75-60-5, Proposed Dog Care Facility per section 5.2.B.12.

This hearing is continued from the June 13, 2019 public hearing. D. Dubitsky stated that the notice of continuation of the hearing was posted on the Chaplin Town Hall notification board. He read the notice of continuation. He said there was no requirement that the hearing notice or notice of continuation be published in the paper again.

D. Dubitsky read a letter from Julie and Carl Lindquist (Chaplin Street) opposing the dog kennel, it is especially annoying May-October when windows are open. The letter is included in the minutes as Attachment 1.

He also read a letter from Judy Hohman, 31 Pumpkin Hill Road, she is opposed to the business and is annoyed by repeated loud dog barking. The letter is included in the minutes as Attachment 2.

Town Council Dennis O'Brien was given the opportunity to speak, he did not speak.

Adam Bernardin (applicant) had the opportunity to speak: He said most of his work is done on the road, he said he has addressed the noise and said the dogs have been almost silent in the last 30 days, said he has had no complaints in the last 7 years. He said he has limited the total number of dogs to 15 dogs including his own personal dogs, and has had from 5 to 25 dogs at a time since 2013. He said he and his wife are full time residents at the property and travel 3 to 4

days per week. He tries to keep dogs quiet during quiet hours, he only has them outside between 8 a.m. and 8 p.m.

He was asked what he has done to reduce noise and he has invoiced estimates for a sound barrier wall and/or arborvitae planting.

Applicant's attorney, Joseph Mortelliti: Spoke in favor of the applicant's care of dogs and his accomplishments in the dog show world. He went over the zoning law and mentioned conditions that the PZC can add. He mentioned an increase in assessed value of abutting properties (based on town property cards) in the years the applicant has been operating his kennel there. He stated that the applicant's facility is 500 feet from all but 2 abutting property lines, and one of them is the public forest land. He said the applicant worked with the town to get his special permit as did Quiet Corner Dogs.

Public comments were then opened:

First, people who are speaking in support of applicant:

Richard Blanchard, North Smithfield Rhode Island, spoke about the applicant's professionalism and how well-known the applicant is in the dog world.

James Lanham, 7 Pumpkin Hill Road, Chaplin, CT said the dogs aren't any louder than any others. He said how clean the property is as well.

David Rose, 416 Babcock Hill Road, Coventry, CT is the applicant's auto mechanic, and said he is a character witness, and he has been to the kennel location and he didn't hear barking.

Ed Raymond, 15 Chestnut Street, Newport, RI has had his dogs with the applicant for years and the kennel is clean and the applicant is responsible.

Donna Thibeau, 514 Bassetts Bridge Road, Mansfield, CT has known the applicant for 15 years, spoke favorably about him, and she lives at the applicant's property and cares for the dogs left at the property when he travels.

Maureen Rogers from Clinton, CT spoke in favor of the applicant and has stayed at the applicant's home to care for the dogs when he travels.

Laurel Donelson, Dayville, CT: says the applicant is not running a boarding kennel, she has known him for 15 years.

Amy Burnim, Eastford, CT, said the applicant shows her dogs and she has known him for 5 years. She spoke about the professional care of the dogs.

Barbara Garceau, Bedlam Road, Chaplin, CT has known the applicant for years and said she has walked at Garrison Park several times in the past month and has not heard any dogs barking, she supports a waiver for applicant, said the applicant is able and willing to make his business work.

Jessica Thibeau, 53 Pumpkin Hill Road, Ashford CT, works with the applicant and has cared for his dogs and the kennel is immaculate. She has a dog daycare and grooming business and feels that the applicant is very professional in the way the business is conducted.

Second, people who spoke in opposition to the application:

Paul Peifer, Bedlam Rd, Chaplin CT asked if the applicant had a similar facility in Danielson or Dayville. The applicant said he had applied for a kennel license in Danielson but decided not to go through with that property. (Chairman Dubitsky requested that commenters refrain from directing questions toward the applicant). Mr. Peifer said that the people who are speaking on behalf of applicant are all dog owners and tolerant of dog noise. He said that for six years the applicant didn't look into the zoning regulations and never got a permit to put a dog run 20-30 feet from the property line. He said the applicant's property doesn't comply with the regulations for a special permit and isn't suitable for the RAR zone.

Steve Smith, Chaplin Street, Chaplin CT said he finds the barking annoying and he walks around the pond on the abutting state property. When he gets near the applicant's property he can often hear barking.

Sue Peifer, Bedlam Road, Chaplin CT said that the property card for 29 Pumpkin Hill Rd says 10.7 acres not 12 acres; under the regulation that would allow a special permit for 7-8 dogs. She said just because some of the abutting land is state forest or town land doesn't mean that users of those areas are not impacted. The property line setbacks are 500 feet, and the applicant is way under the required setbacks. She said no one has discussed whether the dogs are exercised in the dog runs only or are the dogs out and about, closer to property lines? She mentioned that the special permit goes with the land, not the current owner and anyone could buy that property. Chairman Dubitsky stated that the PZC can place renewal conditions on the applicant but Ms. Peifer said she looked online for that and can't find anything to that effect. She said that waiving application requirements sets a poor precedent. This would be rewarding people who ignore zoning regulations. She said that if the PZC approves this permit, it is going to be very difficult for them to reconcile the lack of required setbacks and the number of dogs allowed for the size of the property.

Adele Swart, Tower Hill Road, Chaplin, CT can hear the dogs in the winter clearly. She mentioned last month's public hearing where the first selectman said he has to close his windows because the noise is distracting. She said that the applicant might be the best dog shower and cleanest kennel owner there is, but that doesn't help the fact that his property abuts a beautiful town park where people go to enjoy nature and quiet.

Steven Laume, North Bedlam Road, Chaplin CT. He said that when he co-owned Quiet Corner Dogs, a very small dog boarding business, they did not open that business before going to the PZC and getting the regulation changed to allow for a special permit. The special permit allowed them to have a total of 7 dogs including their own pet dogs. They also obtained the required state kennel operator license before opening the business. He feels that the new, recently changed regulation benefits the applicant and his clients, but offers no benefit to the town. The town has allowed the applicant to continue operating without a permit and has not exercised any cease and desist order, then modified the regulation to suit the applicant, and now appears ready to waive specific regulations the applicant can't meet. He stated that if the applicant is planning a noise barrier, he should be required to show it on an official plan and explain how it will eliminate noise. The abutting park is used by a lot of people for quiet activities as well as kids' games and concerts, etc and it isn't fair for one person to be able to impact all of the residents who have to put up with this noise nuisance.

Ann Chuk, Chaplin Street, Chaplin CT says that the applicant should have come to the PZC before opening the facility. She doesn't understand how he has been able to operate this business for so long without any permit. She is a member of the business development commission and believes that there are other locations in the business district that are more suitable for this business.

The applicant was then invited to speak: He said he did not apply for a permit because he was in trouble, it is because he wanted to do the right thing. He said he has been dealing with the ZEO for 4.5 years on this and wants to make this right and be a good neighbor.

Applicant's attorney: Stated that this use is possible per zoning regulations. He said there can be no waiving of special permit conditions, and the PZC has flexibility in terms of what it can require to approve a special permit. The applicant is requesting 15 dogs and the PZC can decide what conditions it will require. He said that the applicant will have to leave town and close his business if the PZC won't approve the special permit. He mentioned any "substantial change" in the use of the property could result in revocation of the special permit; this is established in CT zoning law. He believes that the zoning officer will enforce the law and that there are many mechanisms in place for him to monitor the business and enforce the law if this application is permitted. He stated that no formal complaints have been lodged against the owner/applicant for many years until he began to apply for a permit.

D. Dubitsky asked what the true acreage is, and the applicant said the property has been surveyed at 12.7 acres. A survey map was produced which D. Dubitsky said has been included as part of the record. In reviewing the map, he then discovered that the survey doesn't state the acreage and is not a stamped survey.

D. Dubitsky asked the applicant's attorney if, in his opinion, a time limit can be placed on a special permit. The attorney said case law seems to support renewal requirements rather than

allowing for a permit to expire on a certain date, because expiration dates would set up a permit holder to go from compliance to noncompliance based on the expiration being built into the permit.

The applicant's attorney offered written Proposed Conditions to Attach to Special Permit. These are included in the minutes as Attachment 3.

D. Dubitsky read a list of the proposed conditions, which are summarized here:

1. No more than 15 dogs
2. Privacy fence to mitigate noise
3. Evergreen shrubs/noise buffers
4. Dogs will be released outdoors at intervals/in smaller groups
5. Zoning Officer will visit the property periodically to ensure compliance

The applicant's attorney stated that the proposed conditions are suggestions and they can be added to or changed; the applicant is very flexible in terms of what he is willing to do at the discretion of the PZC. D. Dubitsky asked the applicant what changes he has made to improve the noise situation since last month. The applicant responded that it is the way they are caring for the dogs by removing barking triggers and not allowing the worst barkers to go out with other dogs, which will then start barking as well. He said he can resolve the problem and the last 30 days have been significantly quieter.

More public comments:

Susan Peifer, Bedlam Road, Chaplin CT said the town assessor's card for the property, which is part of the application, shows a 2 acre house lot and a 8.7 acre additional parcel for a total of 10.7 acres. The ZEO said that they would need to look at the deed for the property to determine the exact acreage.

D. Dubitsky then invited the applicant's attorney to read his letter including relevant zoning case citations and proposed conditions, which he did. (Again, this material is included in the minutes as Attachment 3).

More public comments:

Jessica Thibeau, 53 Pumpkin Hill Road, Ashford, CT says she has gone hiking on the state land abutting the kennel frequently and has only heard the dogs barking twice in 3 years, and it was at 2:00 p.m.

James Lanham, 7 Pumpkin Hill Road Chaplin, CT has lived at his home since before the applicant moved in. He has never had any of the applicant's dogs running loose but has had farm animals loose before.

Barbara Garceau, Bedlam Road, Chaplin, CT said she came to the (abutting) park at several different times during the day and never heard the dogs bark. She asked why no one complained before the applicant brought the permit forward.

David Rose, 416 Babcock Hill Road, Coventry CT spoke about how people have to learn to get along with their neighbors and when people complain about each other it isn't a positive situation.

Steven Laume, North Bedlam Road, Chaplin, CT said barking dogs can be very annoying. To give the applicant a variation for the setbacks to the abutting park, and to give him a variation to allow almost twice the number of dogs the permit allows on 10.7 acres is not addressing the problem of too many dogs. He questioned the practicality of managing the number of dogs by taking only a few out at a time, especially in bad weather, and says the number of dogs is the issue.

Clerk's note: references to the clerk's tape recording are listed for the discussion below in case anyone wishes to confirm what was discussed:

Tape E/06 1:05:45:

D. Dubitsky invited the town attorney to weigh in, and Attorney O'Brien said they have to apply the regulation; if they allow more dogs with less room, they have to be wary of that. He added that it is not up to him to tell the PZC what to do.

Tape E/06 1:06:25:

D. Dubitsky then directed a procedural question to the town attorney:

To resolve the uncertainty about the applicant's actual acreage and to give the applicant an opportunity to present a noise-mitigation plan, and for the public to comment on both of those, would it be possible, within the legal framework by which they are bound, to keep the public hearing open for an additional month?

Tape E/06 1:08:28:

Attorney O'Brien said that according to the ZEO, the deadline to finish the public hearing is today unless the applicant gives permission to extend it. The applicant then said that if 10.7 acres is what the property card says, he would "go with that." D. Dubitsky then reminded the applicant that he can also provide a plan for the mitigating plantings, etc and the applicant said he can show on the map what his plan is. The applicant then said he would give permission for the hearing to be extended another 30 days.

The applicant said he talked to a contractor about a privacy fence and would have brought a written plan if he had known one was required.

The PZC members discussed the fact that the applicant is required to provide his own documentation, rather than the ZEO or the PZC.

The applicant must submit in writing a request for another 30 day extension of the public hearing and the above-mentioned plan submitted to the town so that the public will have a chance to review it next month. The applicant verbally gave permission to extend the hearing another 30 days.

Motion to suspend the public hearing until August 8, 2019 by E. Beer with the applicant's permission, seconded by H. Weingart, all in favor, motion carried.

The public hearing was suspended at 9:27 p.m.

Respectfully submitted,

Elizabeth Marsden
Recording Clerk

Dog kennel hearing

Attachment 1

Carl Lindquist <clind01@gmail.com>

Wed 7/10/2019 10:32 AM

To: Zoning <zoningofficer@chaplinct.org>;

Cc: Bill Rose <firstselectman@chaplinct.org>; Julia Lindquist <jlindquist@snet.net>;

H.

Dear Mr. Gigliotti:

I am writing re the hearing before the Planning and Zoning Commission on July 11 about the dog kennel on Pumpkin Hill Rd.

We live on Chaplin St, approximately one half mile from that facility. Frequently and for prolonged periods of time, we hear a chorus of loud barking. It is especially annoying from May to October when our windows are often open.

While I have never visited the facility, it is obviously overcrowded based on the volume of noise. I am not in a position to judge accurately the sanitary conditions, but am very concerned. What sort of monitoring is there for cleanliness and for reasonable canine treatment? Is there a full time caretaker on site? Is our animal control officer involved?

Please limit the dog population to control the noise. It is persistent and very annoying. Insisting that there be full time on site monitoring by a caretaker (not distant electronic surveillance) may also help. For those of us who live nearby this is a very aggravating condition that must be modified.

Thank you for your consideration of our concerns.

Respectfully, Julie and Carl Lindquist

Carl W. Lindquist, M.D.

PO Box 23Chaplin CT 06235-0023

Tel: 860-455-9914

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clind01@gmail.com

Attachment 2

I.

To: Doug Dubitsky, Chairman, Planning and Zoning Commission, Chaplin, CT

From: Judy Hohman
31 Pumpkin Hill Road
Chaplin, CT 06235

This is in regards to Special Permit Application #SP19-103 proposed dog care facility on 29 Pumpkin Hill Road, Chaplin, CT.

I vehemently protest the establishment of a business such as this in Chaplin, CT. My family and I have been subject to repeated loud dogs barking for the past few years. We are appalled that our town would even consider or allow an operation like this in our community.

We moved here to enjoy a nice, quiet and peaceful relaxing atmosphere in this beautiful and scenic town. To allow loud dogs ruining this atmosphere would be very detrimental to the neighborhood along with the town of Chaplin.

Property values have been stagnant enough for years now. The sound of obnoxious barking dogs will only devalue the neighborhood and town even further. My family and I strongly object to this business. It should be permanently closed and forced to move elsewhere. The town of Chaplin does not need dog care facilities invading our beautiful scenic environment.

The dogs are a nuisance and ruin the unique peacefulness we enjoy in Chaplin. Please have this business removed immediately. We don't need exposure to these constant highly pitched sounds and noises.

Sincerely,

Judy Hohman

Received
7/11/19
JRG



ATTORNEYS

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Vernon, CT 06066
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kkc-law.com

11 Professional Park Rd
Storrs, CT 06268
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fax: 860-487-1786

To: Chaplin Planning & Zoning Commission
From: Joseph Mortelliti; Adam Bernardin
Date: July 11, 2019
Re: Proposed Conditions to Attach to Special Permit

Dear Members of the Chaplin Planning & Zoning Commission:

This correspondence is provided in connection with the special permit application filed by Adam Bernardin (the “Applicant”) with the Chaplin Planning & Zoning Commission (the “Commission”) on April 9, 2019. Please see the attached set of conditions which the Applicant respectfully offers for the Commission’s consideration to facilitate the approval of the Applicant’s special permit application.

Before the Commission reviews the Applicant’s proposed conditions, I respectfully offer a brief overview of pertinent case law concerning special permits. When deciding whether to grant a special permit, a land use agency has the authority under Conn. Gen. Stat. C.G.S. § 8–2 to place reasonable conditions on the proposed use associated with the special permit. St. Joseph's High School, Inc. v. Planning & Zoning Comm'n of Town of Trumbull, 176 Conn.App. 570, 576, 170 A.3d 73 (2017). Stated differently, a land use agency may grant a special permit with conditions necessary to protect the public health, safety, convenience and property values.

While Conn. Gen. Stat. § 8-2 provides that the public health, safety, convenience and property values may be considered in making a determination on a special permit, this is to be done in conjunction with, and not as an alternative to, the standards which the zoning regulations themselves must provide.” Powers v. Common Council of City of Danbury, 154 Conn. 156, 161, 222 A.2d 337 (1966).

As a general rule in zoning law, special permits run with the land. However, when the owner of land subject to a special permit wants to substantially change the use from the one approved by the land use agency, or seeks to deviate from the conditions imposed on it, those changes would require an additional approval, and the landowner cannot unilaterally expand the specially permitted use. 9 Conn. Practice, Land Use Law & Practice § 24:11 (4th ed.). Therefore, if a subsequent owner of the Applicant’s property sought to commence a dog-related business with more dogs, for example, that owner would need to obtain additional approvals from the Commission. In essence, the Commission has significant regulatory control over the actual use of the property that is subject to the special permit, both now and in the future.

Lastly, Connecticut courts have established that a land use agency cannot deny a special permit application which meets the criteria in the agency's existing regulations. Irwin v. Planning and Zoning Comm'n of the Town of Litchfield, 45 Conn.App. 89, 95, 96, 694 A.2d 809, 812 (1997); DeMaria v. Enfield Planning and Zoning Commission, 159 Conn. 534, 540, 541, 271 A.2d 105, 108 (1970). By the conclusion of the special permit hearing, the Applicant is hopeful that sufficient information has been presented to confirm the Applicant's compliance with all special permit requirements. If, however, Commission determines that conditions must be attached to the special permit to ensure compliance with the zoning regulations, the Applicant is prepared to accept such conditions.

If you have any questions regarding this matter, please contact me at (860) 730-2155, or at jmortelliti@kkc-law.com. Thank you for your time and thoughtful consideration of this special permit application.

Respectfully,



Joseph P. Mortelliti

Proposed Conditions to the Special Permit

In addition to any reasonable conditions which may be imposed by the Chaplin Planning & Zoning Commission, to facilitate the receipt of a special permit from the Planning & Zoning Commission the Applicant respectfully proposes that the following conditions be attached to its special permit:

1. The Applicant's dog care facility shall not accommodate more than fifteen (15) dogs.
2. The Applicant shall install a privacy fence to mitigate noise emanating from the dog care facility.
3. The Applicant shall plant evergreen shrubs and other forms of vegetation to function as noise buffers on the Applicant's property.
4. The Applicant shall release dogs into the outdoor section of the dog care facility in intervals to minimize any noise.
5. The Chaplin Zoning Officer shall conduct a periodic visual inspection of the Applicant's property to ensure compliance with the special permit conditions and the relevant sections of the zoning regulations.