

## WARREN TOWNSHIP ZONING BOARD OF ADJUSTMENT

### REGULAR MEETING MAY 6, 2013

The regular meeting of the Board of Adjustment was called to order at 7:03 p.m. by Chairman Cooper in the Municipal Court, 44 Mountain Blvd., Warren.

**THOSE PRESENT AT ROLL CALL:** Vincent Oliva, Brian Di Nardo, George Dealaman, Fernando Castanheira, Foster Cooper Scott Bowen, Alt. #1 and Clerio Martins, Alt. #2 Also present was Steven Warner, Esq., Attorney for the Board.

**THOSE ABSENT:** Richard Hewson

**THOSE TARDY:** John Villani (7:00)

#### **ANNOUNCEMENT:**

Adequate notice of this meeting has been provided by posting Public Notice on the Municipal Bulletin Board on the main floor of the Municipal Building, and sending a copy to the Courier News and Echoes Sentinel, and filing a copy with the Municipal Clerk, all on January 8, 2013. We plan to adjourn at 10:00 p.m.

#### **FLAG SALUTE:**

**MINUTES:** The minutes of the 4/1/13 meeting had been forwarded to members for review.

Mr. Oliva made a motion to approve, seconded by Mr. Castanheira. All were in favor, so moved.

#### **COMMUNICATIONS:**

March/April 2013 edition of THE NEW JERSEY PLANNER

Memo dated 4/1/13 from Kevin Sumner of the Board of Health concerning CASE NO. BA13-02 K9 RESORT DAYCARE, which will be continued this evening

#### **PRIVILEGE OF THE FLOOR PORTION OF THE MEETING**

Mr. Cooper asked if any member of the public wished to make a statement, which is unrelated to tonight's agenda.

There was none.

He closed that portion of the meeting.

Because the audience was rather large, Mr. Cooper took the opportunity to explain the hearing process. This is a quasi-judicial Board. Each witness will be sworn in to give testimony. Upon completion, the Board can ask its questions. Afterwards, the audience is invited to ask questions, based on the testimony given. The same procedure will be followed for each witness. After all testimony has been heard, members of the audience will be invited to be sworn in and make statements.

#### **AGENDA:**

Continuation of the application of:  
CASE NO. BA 13-02 K9 RESORT DAYCARE & LUXURY HOTEL  
BLOCK 75, LOT 3.02  
167 WASHINGTON VALLEY ROAD

Application for a use variance, preliminary & final site plan approval (& bulk variances) to convert the former Warren Township Post Office to use as a high quality center for the care of pet dogs

Glen Kienz, an Attorney, represented the applicant. He said that he reviewed the documents submitted as well as the transcript and noted a number of concerns of the Board.

Mr. Benjamin Mueller, an Acoustical Expert, was called to testify. He was sworn in. He gave his background and credentials and was accepted as an expert witness. He distributed to Board members what was marked into evidence as Exhibit A-3. It is a report dated 3/26/13 to Ms. Natalie Mooney. It is in regard to Sound Emissions of Dogs in Outdoor Exercise Areas.

John Villani arrived at this point – 7:10 p.m.

Mr. Mueller said he was asked to come in and evaluate dog activity at a K9 facility. He mentioned the state and local noise regulation codes. The State Noise Control Regulation generally regulates daytime impulsive sounds such as a dog barks to a maximum dB(A) at receiving commercial or residential properties as measured using the FAST or IMPULSE response settings on a sound level meter.

Mr. Mueller was asked to and undertook the following tasks. He visited Warren to become familiar with existing conditions and to obtain calibrated measurements of prevailing ambient sound at representative locations in the neighborhood. He visited a similar facility in Fanwood, New Jersey to witness a dog exercise period and to obtain calibrated acoustical data of dog barking sound. He held discussions with team members concerning dog exercise times and durations. He made engineering calculations to project dog exercise activity sound to relevant locations for comparison with code limits and the ambient. He mentioned that an impulsive noise might be a door slam or a back-up alarm on a car.

Mr. Mueller said he met with Steven Parker at the K9 Resorts daycare facility in Fanwood. The facility has a similar outdoor exercise activity to what is expected in Warren. He set up a microphone about 75 ft. from the solid vinyl fence for the exercise area at this site in anticipation of measuring a typical outdoor exercise period. The 75 ft. distance was selected to allow sound level projections to other distances of interest in Warren, and was also a practical measurement location given the site limitations in Fanwood. There were 30 dogs on the test date of 3/21/13.

Mr. Mueller mentioned three locations at which the tests were conducted. Location A was at the northwest corner of the site. Location B was on the west side of Green Valley Drive, set back from Washington Valley Road about the same distance as the side of the nearby Lot 15 dwelling. Location C was on the south side of Middle Brook Road, about 50 feet from Green Valley Drive. He discussed, in detail, his findings and how he arrived at them.

From all three locations he found background noise in the mid 40's. Intrusive noise was in the middle to upper 50's.

The plan was to measure relative dog activity and project that at the facility and project that at this facility. At the Fanwood facility they set the audio equipment 75 ft. from the elimination area. Approximately 30 dogs were let out for 6 or 7 minutes. They did not measure a single dog bark. Their line of site was blocked. They were unaware of his presence. They were brought inside for a few minutes before being let out again. This time they were provoked to bark. They barked but then, it died down quickly. There were 18 barks over a seven minute period.

The third test was with a Doberman pincer only. Mr. Mueller was only five feet from the fence, and the dog was aware of his presence. They provoked him. He barked at 75 db(A) from 25 ft. and 65 db(A) from 100 ft.

With the two tests, they concluded that they could expect a level of 75 db(A) at 25 ft. from the fence or 65 db(A) at 100 feet from the fence. They took this data back and used it for the new facility. The dogs are mostly kept inside.

Mr. Mueller said that the project will meet State and Municipal compliance. In his opinion, the amount of noise will not create a nuisance –especially in a residential area with low impact on the surroundings.

The dogs will not go out at night. Mr. Chadwick was told that they are kept indoors from 10:00 p.m. to 7:00 a.m. The dogs are let out 3 to 5 times a day for periods of 10 to 15 minutes.

Mr. Warner was told that they would stipulate to the night time hours, during which the dogs would remain inside.

Mr. Mueller mentioned that the former use as a post office involved a great deal of delivery trucks going in and out. Acoustically, the impact of this use has less impact on the neighborhood than post office traffic.

Mr. Oliva said that, at night, if he walks past a house with a dog inside, the barking is continuous and intrusive. He was told that, if a dog barks more than 4 times in an hour, it is treated as a steady noise source. More stringent levels apply.

Mr. Oliva asked about the different pitch of barking with small and large dogs. He asked if there was a mix of breeds. He was told that, when the testing was done, Mr. Mueller could not tell the difference. With 30 dogs in the test, the level was pretty consistent.

Mr. Castanheira asked if he checked to see if there were any complaints at the Fanwood facility. He was told that he did not.

Mr. Cooper asked what is the difference in code requirements concerning individual noise and consistent and impulse noise. Discussion followed.

Mr. Chadwick was told that they will have a 7 ft. high solid plastic fence, which would provide ample noise control – an acoustical barrier. He said we will hear barking dogs. He asked if they could put a top on the exercise area. Discussion followed.

Mr. Cooper opened the meeting to the public for questions.

A resident asked at what time was the testing done. He was told between 1 and 3 p.m. The resident didn't feel that this time is not a valid time for the test.

Kevin Curtin of 65 Green Valley Drive mentioned that he heard there would be 44 dogs in daycare. He noted 10 parking spots and 6 employees. He asked about the noise of cars slamming and lining up along Green Valley to drop off the dogs.

Mr. Kienz objected to the question. Mr. Mueller did not testify about the number of cars. They will present a traffic expert.

Joel Hol of 2 Middle Brook Road asked if Mr. Mueller was an expert in dog behavior. He was told that he is not.

Mr. Bill Stash of 172 Washington Valley Road was told that for noise sensitive residential receptor, projections of dog barking sound were carried out using the distance from the southernmost east side play area, which is the closest possible range for a dog. The rear play area is an additional 100 ft. to the north, and better shielded by the intervening building. It is expected that a dog barking sound occurring in the rear play will be even lower in sound level at residences.

Mr. Stash submitted a photo, which was marked into evidence as O-1. It was taken on Tuesday. It depicts what is on the site. He did not believe the witness is accurately reflecting what is in there. Mr. Kienz stipulated that the picture depicted the site.

Mr. Cooper closed the public portion. He stated that this case will be carried to the 6/3/13 meeting at 7:00 p.m. in this room without additional notice.

5/6/13 – page 4

Mr. Cooper called for a recess at 8:40 p.m.  
He recalled the meeting to order at 8:44 p.m.

CASE NO. BA13-04 WESTFIELD GOSPEL HALL, INC.  
BLOCK 80, LOT 12.02  
10 TECHNOLOGY DRIVE NORTH

Application for an amended prel & final site plan approval together with certain variances to construct a 17,213 sq. ft. Church on a property in place of the previously approved office building. Applicant seeks conditional use variance to have a Church front yard less than 150 ft. & a variance to allow parking in the front yard

Mr. Villani stated that the file is in order.

Memorialization of Resolution for CASE NO. BA 13-01 CMG CHELSEA LLC

Mr. Dealaman made a motion to approve, seconded by Mr. Di Nardo.

Roll call vote was taken. "Yes" votes were received from: John Villani, Brian Di Nardo, George Dealaman, Fernando Castanheira, Foster Cooper and Clerio Martins