

## Department of Community Development Staff Report

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**MEETING DATE:** October 20, 2016

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**REQUEST:** A Zoning Ordinance Text Amendment to Articles 3, 5 and 15 to Change the Approval Process and Approval Standards for Kennels.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:** Staff recommends approval of the amendment as proposed.

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### **Topic Description:**

On August 11, 2016, the Board of Supervisors initiated a review of the Kennel provisions in the Fauquier County Zoning Ordinance.

The current approach groups a very broad range of activities under the category of Kennel, all subject to the same standards. For example, keeping 13 dogs as pets would be classified as a Kennel. Boarding dogs, whether day time or overnight, and whether 10 dogs or 100 dogs, would be a kennel. Training dogs on-site would be a Kennel. Selling dogs, i.e., a Pet Shop is a Kennel. Breeding dogs, whether the dogs are for sale, show or hunting is classified as a Kennel.

Staff is proposing a more nuanced approach to Kennels, with additional standards and varying approval processes, based on the Kennel type and potential impacts.

### *Humane Issues*

Staff would note that the Zoning Ordinance is not intended to address humane issues relative to the animals in the Kennel; rather, the *Code of Virginia* and the *Fauquier County Code* address these issues. For breeding operations or dealers, these codes require annual licensing by the Sheriff's Office and establish requirements for adequate space, adequate shelter, veterinary care, record keeping and disposal of dead animals.

### **Staff Analysis**

The existing Zoning Ordinance defines a Kennel as any place where dogs are kept for any commercial venture, including sale, rental, boarding, breeding and hire as guard dogs OR where more than the 12 dogs allowed as pets by Section 2-512 of the Ordinance. A Kennel is allowed in the RA, RC, RR-2, R-1, C-1, C-2, CV and BP districts. A Special Permit is required except in the

C-2 and BP districts, where the use is by-right, and in the CV district, where kennels with larger buildings require Special Exception. Standards for Kennels are set forth in Section 5-1301. The standards establish minimum lot sizes, minimum setbacks, maximum dogs per acre, and require dogs to be confined and waste to be collected and contained.

Definition of Kennel and Approval Process

Staff is tweaking the definition for *Kennel* in the Ordinance, to clarify that any commercial activity with dogs falls under the definition of Kennel, and also to clarify that rescues fall under the *Kennel* definitions, except for government or government contracted rescue organizations, as they are defined and listed separately in the Zoning Ordinance as *Animal Shelter*. Staff has also added cats to the definition. Historically, we have, by interpretation, applied the kennel rules to cats despite the lack of Ordinance language; otherwise, cats would not have been allowed.

**KENNEL:** Any establishment where dogs or cats are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, showing, grooming or any other commercial or economic venture. Additionally, dogs kept for non-economic purposes in excess of the number allowed pursuant to Section 2-512 shall also be classified as a KENNEL. Rescue operations shall also be classified as a KENNEL, except those run by a government entity or operated for the same purpose under a contract with a government entity shall be classified as an ANIMAL SHELTER.

Additionally, staff is proposing to divide Kennel’s into two categories, Minor and Major, and definitions have been provided for each. Currently, all Kennels require Special Permit approval, except those in the C-2 and BP districts, which are by-right. Also kennels in larger buildings require an SE in the CV district. Staff is proposing that all kennels require at least a Special Permit approval (Minor Kennel), and that more intensive operations, with potential for greater impacts, require a Special Exception approval (Major Kennel).

<p>Minor Kennel - Special Permit:</p>	<p>Dogs kept as pets in excess of the 12 allowed by-right. Dogs kept by hunts. Pet shops (no breeding) Training, boarding or grooming facilities where animals are not kept overnight. All other Kennels where:</p> <ul style="list-style-type: none"> <li>- No more than 20 dogs or cats are kept at any one time, and</li> <li>- No more than 10 breeding females are maintained; and</li> <li>- No more than 10 litters per year are produced in total.</li> </ul>
<p>Major Kennel - Special Exception:</p>	<p>All other kennels.</p>

## Standards in the Rural and Residential Districts

### *Maximum Number of Dogs*

The current standards set an absolute maximum of 10 dogs per acre, although frequently far fewer are requested and/or approved. Practically, staff sees little value in this standard, and staff found no similar limitations per acre in other local ordinances. Staff considered reducing this number, but in the end has not included a reduction as a recommendation. Boarding or training facilities on smaller lots can begin to reach the maximum of 10 per acre. Staff also considered changing the proportion to number of dogs per acre utilized for the kennel, but that might also result in a very high number. In the end, staff left the existing limit in place, with the idea that it at least sets some upper limit for potential applicants. The other alternative staff would recommend would be to eliminate this standard, thereby removing any false expectations an applicant may have about the number of dogs they could have.

Staff is proposing to add language clarifying that a second limitation exists on the number of dogs allowed in kennels that are breeding operations: a maximum of 30 breeding females and 50 total breeding dogs. The *Code of Virginia* does not allow more than this number of dogs to be approved unless a locality specifically approves an Ordinance allowing more. As Fauquier has no such ordinance, the limit of 30 breeding female dogs/50 total breeding dogs already applies today. Staff believes adding this specific language will remove any ambiguity that may exist.

### *Setbacks, Confinement and Building Requirements*

The current Ordinance establishes setbacks to address noise and odor, and these setbacks are different for R-1 properties vs. other properties. Under existing regulations for R-1, all animal confinement areas and runs must be set back 200 feet from all property lines and must be within completely enclosed structures designed, including soundproofing, so that there will be no noise or odor detrimental to neighbors.

In other zoning districts, such structures only need to meet the district setback requirement if the confinement areas and runs are completely enclosed and designed to prevent noise or odor detrimental to neighbors. Otherwise, a 75 foot setback applies.

Staff reviewed setback requirements for kennels in a number of surrounding jurisdictions. Albemarle County requires the most substantial setback when animals are not confined in soundproofed, air-conditioned buildings: 500' from any agricultural or residential lot line. Additionally, Albemarle requires a "fence not less than six (6) feet in height...located within fifty (50) feet of the animal confinement...composed of concrete block, brick or other material approved by the Zoning Administrator. For Kennels utilizing soundproofed confinements, the setback is 200 feet. Albemarle's setback appears to be much larger than that of other jurisdictions. Fairfax has no special setback requirements for confinement areas, and a 100 foot setback for facilities that are not entirely indoors. Prince William, Stafford and Spotsylvania appear to have no specific setbacks for kennels beyond those of the underlying zoning district.

Staff is recommending that the minimum setback from all property lines be maintained at 200 feet in the R-1 district. In the rural districts, RA, RC and RR-2, the current setback requirement is 25

to 50 feet for enclosed/non-soundproofed facilities and 75 feet for enclosed/soundproofed facilities. Staff is recommending an increase to a minimum 100 foot setback in both cases. Until recently, 100 feet was the minimum setback in all zoning districts for structures holding feed or livestock. A recent amendment allowed some structures for livestock in the RA and RC districts to move closer to the property line, but the rationale for that amendment was the accommodation of agriculture. Therefore, the 100 foot setback, intended to protect against intrusion on adjoining properties, may be appropriate for Kennels. Staff did include language that would allow this 100 foot setback to be reduced where all activities occurred entirely indoors in soundproofed structures or where the extent of the use is so minimal that the BZA or Board finds that the 100 foot setback is not needed to protect the health, safety and welfare of neighbors.

Staff is also proposing a minimum 110 foot setback from the centerline of streams and other water bodies for all structures and confinement areas, and a 100 foot setback from the edge of a 100-year floodplain. Such a setback, in combination with the additional *Waste Management* standards, below, will address concerns about possible environmental impacts from animal waste. Staff has proposed 110 feet because 100 feet is considered a minimum width for an effective riparian buffer, but the 100 feet is typically measured from the top of stream embankment. The top of embankment may be difficult to locate without detailed topographic information, whereas the stream centerline is typically easily identified. Therefore, staff has added 10 feet to the setback from streams to compensate for the difference between the centerline and the embankment. The BZA and BOS are able to require additional stream buffers on a case-by-case basis as part of the review process where needed to address potential impacts.

#### *Noise*

The existing standards require soundproofing of kennel structures and runs in the R-1 district as well as kennels and runs closer than 75 feet from the property line in other districts. Under the County Code's new noise provisions, adopted last month, kennels that were in existence prior to September 8, 2016 are exempt from the County Code noise provisions, and any kennel approved by Special Permit or Special Exception is also exempt from the noise limits in the County Code. However, the current Zoning Ordinance limitations regarding noise would still apply, and conditions further limiting noise can be added to new or previously approved Special Permit/Special Exception approvals for any kennel going through the process. For now, the Zoning Ordinance noise regulations are difficult to enforce, but this problem should be addressed with a planned amendment to the Zoning Ordinance noise limitations.

Given the state of flux of the Zoning Ordinance noise regulations, staff is not proposing to more specifically address noise at kennels in this amendment by specifying a decibel level, but staff does anticipate this issue being addressed in the near future through the broader text amendment on noise. In the interim, the BZA and BOS may apply whatever noise limitations they deem necessary to address impacts through specific conditions on a case-by-case basis. If the BOS wishes to include a specific noise limit at this time, staff would note that both Loudoun and Albemarle consider 55db at the property line to be the maximum allowed where soundproofing is required. The BZA or Board could also utilize the County Code noise limitation language as a condition until new zoning ordinance noise provisions are adopted.

### *Waste Management*

The current Ordinance requires that [w]aste from operations must be collected and contained so as not to pollute the environment. The potential environmental impacts from poorly managed waste is always a major concern at proposed kennels. Staff found no other local examples of where waste management is specifically addressed, except Loudoun does require a “waste handling plan” for indoor kennels.

Staff is proposing additional language specifically requiring a waste management plan be submitted and approved as part of the Special Permit or Special Exception. The plan would be required to project the amount of waste to be produced and detail specific plans for managing and disposing of the waste. In no case may such plan provide for on-site burial, compost piles, or manure spreaders.

Together with the new proposed setback of 110 feet from all water bodies, this waste management plan should allow the County to better evaluate and control potential environmental issues from waste.

### Standards in the Commercial Districts

Kennels are currently allowed in the C-1, C-2, CV and BP districts. Current approvals are a Special Permit in C-1, by-right in C-2, Special Permit or Special Exception in CV (depending on building size, only) and by-right in Business Park (indoor only).

Staff has not proposed a change to where the kennels are allowed, but we are recommending that kennels in these areas be limited to those uses more typically found in a commercial area: grooming, boarding, training and pet shops.

Further, staff is requiring that such facilities be completely enclosed and soundproofed. The large setbacks proposed for residential and rural districts are not proposed, as these would likely limit the ability to actually do any of these uses, given the typical smaller size of commercial parcels.