



**DUMFRIES, VIRGINIA**  
Virginia's Oldest Continuously Chartered Town  
CHARTERED 1749 INCORPORATED 1961

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**AT A REGULAR MEETING OF THE PLANNING COMMISSION (PC), HELD ON SEPTEMBER 15, 2014, AT 7:00 P.M., IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA:**

**Call to Order**

Mr. Webb called the meeting to order.

**Roll Call**

Present: John Webb, Chair  
Christopher Padberg, Vice-Chair  
Naeem Arshad  
Selonia Miles  
Lou Praino  
William O'Kelly Russell  
Louise Waggy

Staff Present: Laura O'Dell, Town Planner/Zoning Administrator

**Adoption Approval of Minutes from August 11, 2014 and June 9, 2014**

Mr. Russell moved, seconded by Mr. Arshad, to adopt the minutes from the August 11 and June 9, 2014 meetings as presented. The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, yes; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

(Meeting minutes for August 11, 2014 were not available for adoption. They had not been transcribed.)

**Public Hearing for Zoning Text Amendment to B-1 Zoning District, Section 70-247 Boarding Kennels and Animal Hospitals and Consideration of the Amendment**

Ms. O'Dell explained the proposed zoning text amendment before the PC would allow animal hospitals with kennel facilities to be allowed in the B-1 district. Materials were provided to the PC and she was available to answer any questions.

The public hearing was opened to public comments.

Patricia Healy, Attorney, Leming and Healy P.C., was here on behalf of Doctor Roger Nichols. He is a principal in the company that owns the property currently operating as Dumfries Animal Hospital and is also a principal in the hospital. Dr. Nichols has operated the Dumfries Animal Hospital at this location for over 20 years. There has been an animal hospital at the location since about 1975. To their knowledge, there have not been any issues with the operation of the animal hospital and boarding kennel in that time. He is a good citizen of

Dumfries. He provides a valuable service to the citizens of Dumfries. He would like to continue to operate his business at the location as a by-right use, which he was under the previous definition of the B-1 zoning. With the ordinances passed in 2011 and 2013 there are other issues. She was going to speak to the operation of an animal hospital and boarding kennel no longer being a by-right use. It would require a conditional use permit (CUP), which of course is discretionary. From Dr. Nichols standpoint that would have a negative impact on the value of his property and his business. If the business were destroyed, he would not have the right to rebuild. In addition, if he wanted to expand the business he would not have the right to expand. He would have to request that and it would be completely discretionary as to whether the request was granted. Dr. Nichols is requesting that he be allowed to continue to operate his business as he has personally done for the past 20 plus years as an animal hospital and boarding kennel as a by-right use in this district. There was some discussion at the work session about the definition of kennel and a concern about making a change to what the current requirements of a kennel are. She did not have that before her because she was not aware that was going to be discussed tonight. She wanted the PC to be aware that back in 1991 Dr. Nichols redesigned his operation, actually built a new building, and put the kennel runs in as well as the boarding kennel operation. He sat down with the Town and agreed to certain conditions having to do with the hours of operation for the outdoor facility be only during the daylight, a landscape buffer, and the area be fenced. The Leyland Cypress that were planted are now over 30 feet tall. Conditions were agreed to at the request of the Town designed to mitigate any noise or other impact from the kennels. At this point, they are not in a position to agree that it all be within the walls because that could cause other problems. She will do some research on that. They do not want to change anything that is in place now. They want to be allowed to continue the operation just as it has for the past two decades. She requested that the PC approve the text amendment as requested by Dr. Nichols. She let the PC know that she and Dr. Nichols were available for questions.

Ms. O'Dell read the following email received from a property owner that abuts the Animal Hospital.

"My address is 17510 Tripoli Boulevard and I live directly behind the Animal Hospital. I have some concerns in regard to the expansion in regards to noise and hours of operation and sound barriers.

Concern 1 – Outdoor kennels. I have lived behind the animal hospital for several years now and during the day I can clearly hear dogs barking outside and in my house on occasion, which is fine. The Animal Hospital does a good job of staying with hours of operation and there is seldom noise from dog barking after 10 p.m. I am worried that if allowed to expand that the

Animal Hospital would consider outdoor kennels, which would lead to loud volume of dogs 24 hours a day, 7 days a week. I would like to have assurances that any expansion would have to remain indoor kennels with the same hours of operation and sound limits.

Concern 2 – Sound Barriers. I currently have many trees between the Animal Hospital and me. I am worried that due to the stormwater management project many of those trees on my property will be removed due to the project construction. If the Animal Hospital is allowed to expand in the back, I am worried they will have to cut down trees to create the expansion. If trees are lost on both my side and on their side I fear the noise, even during the day and hours of operation, will become too loud and constant to handle. I would like assurance that if the Animal Hospital expands, even indoor kennels, they must maintain a solid sound barrier.

Concern 3 – Hours of operation, sound ordinance. Currently the Animal Hospital has been great about following sound ordinances and having no dogs outside barking after 10 p.m. I fear that if they expand they will not have outside space to give all dogs outside exercise within the hours of operation and may find it difficult to stay in those hours for sound control. I would like assurance that the Animal Hospital will expand outdoor exercise space to accommodate the increase of indoor kennels to insure all dogs given outside time and back inside by the time limits on hours of operation. I also fear that more kennels means more dogs outside at the same time and that the sound even during hours of operation will become too loud.

I would like to request that your or someone else read my concerns.”

Cliff Brewer lives a few doors down from the individual who asked that his comments be read. He has lived there since 1983. The Animal Hospital has been there for a lot longer than he has. He hears the dogs outside. It is not bothersome. The dogs have to have a place to run and exercise. They have been a good neighbor. He did not see any problem if they wanted to expand. They have been a good neighbor to those in Tripoli Heights. He has not seen that they have done anything wrong. The outside run for the dogs to get exercise is something that has been ongoing for years. The Town should not be changing in the middle of the deal here. He thinks the Town needs to approve it as it previously was. The Animal Hospital met the concerns of the previous Council who approved it in the first place. He did not see there being a problem with the Animal Hospital operating the same way they were before.

Cleveland Anderson, Liberty Village, has a professional business just as Dr. Nichols does. Wonderful neighbor. Comments he gets are about how proud people are to have the Animal Hospital here. It has proven to be a total win-win situation for the Town. As a neighbor, it has worked out just fine and he is glad they are beside him.

There being no further comments the public hearing was closed.

Mr. Webb indicated the PC would take up the item to be voted on even though it does not say it on the agenda.

Ms. O’Dell explained the language that was proposed and the way it was advertised is for boarding facilities and animal hospitals with indoor kennels. It does not state outdoor kennels.

That would have to be addressed or the kennels would be non-conforming if this was approved as recommended by her and the Town Attorney. This is not an approval for one business it is for an entire district. Those were the only comments she wanted the PC to keep in mind.

Mr. Webb had a question for Mr. Simmons, Town Attorney. He asked if the PC could change the language, even though the public hearing used the verbiage Mr. Simmons had suggested for this.

Mr. Simmons indicated the PC could. He pointed out the code section, before it was changed, had in it pet shops including boarding kennels on the premises. The original language did not say indoor/outdoor it just said boarding kennels.

Mr. Russell lives at 17485 Tripoli Boulevard and is not directly adjacent to the property, but it is across the street from Mr. Webb who asked Ms. O'Dell to read his comments. He has also not had an issue with the business there. The noise from the dogs being fed in the morning is minimal. His issue is with this use being moved from by-right in the B-1 to requiring a CUP. The applicants attorney stated the applicant had worked with the Town to meet a set of conditions the Town wanted applied to that when they did that and the applicant did what he needed to do to be compliant. He is looking at this as not just the applicant. He is looking at this as all future businesses that may be a veterinary clinic or a boarding kennel or a pet shop, or whatever applies to this. The point is, is that there are conditions that need to be met when dealing with this type of business. He did not see where the PC is trying to impede this property owner's rights, but he sees that the PC is trying to make sure that the PC is being compliant and doing it across the board and not just for individuals.

Mr. Webb asked if any other PC members had any questions about the suggested verbiage by the applicant.

Mr. Padberg needed some clarification. He was not sure who needed to clarify it; however, he keeps hearing about conditions, negotiations or working with a previous Council and that is fine. Those comments are confusing him more than he was previously. He thought this was a by-right use before the zoning ordinance changed a few years back. If it was a by-right use, he asked if someone could elaborate on why there were negotiations or conversations with the Town about anything that was built or renovated in 1991. He asked if a rezoning was involved back then.

Ms. Healy did not have the details. She was not expecting to discuss it until the issue came up at the work session. Perhaps Dr. Nichols can elaborate, but her understanding is that when the site plan was being worked on for the expansion, the new building; it was part of the design. The use was by-right, but of course, the site plan must always be approved.

Mr. Padberg just wanted clarification. There was mention of trees and that sounds potentially like, he did not want to suggest he has the solution, that was simply to comply with what was already in the Town ordinance to have a buffer between residential and the B-1, so that would not have been a special condition. It sounds like there were some conditions that were already met, but were any of those conditions anything other than the normal zoning ordinance.

Ms. Healy noted she would have to go back and research that. Her point was simply that there was an agreement made with the Town when the site plan was being reviewed.

Mr. Padberg indicated that was when he got lost on the matter.

Ms. Healy apologized. This is all the result of the discussion about the kennels. She was not aware that was an issue otherwise, she would have done some research. That is something that can be looked at presuming the Town has records from 1991. Her point primarily was that Dr. Nichols is a good citizen, tries to be a good neighbor, and tries to work with the Town to make sure that this works for everybody. Those were Dr. Nichols efforts and part of what he was advised to do. She had specifically asked about the hours since that has raised some questions. She was advised it was daylight hours with a fence and trees. She would be remiss if she tried to guess. It sounds to her like it could potentially have been part of the site plan.

Mr. Padberg thanked Ms. Healy. He just wanted to make sure that he understood.

Ms. Healy did not have all the facts; however, it is something she could look into if needed.

Mr. Webb believed, noting he could be wrong, that would be proffers. Staff and Town Council may have, at that time, asked for things to be done when the Animal Hospital expanded and they agreed. The things were not necessarily conditions it was more like a proffer.

Mr. Padberg indicated he was lost again.

Mr. Webb indicated it was not a conditional use permit with conditions. The Town can ask somebody, when they come in to expand, for proffers.

Ms. O'Dell clarified proffers would only be for a rezoning. Not for a by-right use.

Mr. Webb stated Council could ask for proffers even if it were not a rezoning. Council can work with any applicant and ask them to do things, which is similar to a proffer. If the applicant were to say they do not want to, the Council could not do anything about it. With anything being built in the Town, Council can ask for things to be done.

Ms. O'Dell indicated that was possible.

Mr. Webb thinks that is what happened. It may not be called a proffer, but it is similar to a proffer. It was a by-right use, there was nothing limiting them on any type of outdoor kennels

or anything like that, so they could go forward with it. But, somebody from Council, or all of Council, and staff worked with the applicant and asked for those things. There has to be a 25-foot buffer, rear yard, between residential and business. The buffer really only has to be a six foot privacy fence.

Mr. Padberg was just trying to figure how they got where they are. If he were adding an addition to a by-right commercial property, he would not even sit before the Council. He would come down, apply for a building permit, and that is the end of the story. There is no conversation with the Town. He agrees with Ms. O'Dell on a by-right use. What he is trying to understand is what conversations were happening and why. He did not know why Council would even be engaged in a conversation back in 1991 when the expansion was occurring, unless there is something he does not understand. He asked if they were over the GFA (gross floor area), whether there a parking issue, or something else that he does not get, because that would be the only basis to have a meeting before Council. Council does not talk to any applicant about anything that is by-right.

Mr. Webb indicated Council could talk to the applicant about anything they want when the site plan comes before Council for approval.

Mr. Padberg indicated Council does not approve site plans that are by-right.

Ms. O'Dell stated Council does.

Mr. Webb noted Council surely does site plans.

Mr. Padberg got what Mr. Webb was saying about the site plan being part of the expansion.

Mr. Webb indicated that when it came before Council, Council might have said you know what, now the applicant did not have to listen at all and could have said no, this is a by-right use, and this is what we want to do; however, that does not create a good working relationship so he can understand how things worked there. He noted Mr. Padberg was correct in that the applicant did not have to do anything.

Mr. Padberg indicated he was just confused about the how and why. This was real clear to him and he supported it and still does; however, when he heard the attorney talk about all the things that were done in 1991 he got foggy.

Mr. Russell appreciated the clarification because his understanding of a by-right use is the applicant has every right to develop his property any way he sees fit as long as it is within the guidelines of the zoning district. With that said, he is stepping back, and the PC does not have all of the facts. If the applicant comes in and states he is building this by-right it does go before Council for approval. However, if it is by-right the applicant can take the Town to court

for impeding on his business and his rights as a property owner to develop that property as it is already stated in the zoning district. His point being is, this is one of the reasons why some of these uses have been, and he understands that many business owners have not been happy about this, put into having to get a CUP. The only thing an applicant would have to have, if it was by-right, is a 25-foot buffer with a fence for commercial. No landscaping. No additional types of sound attenuation or restrictions on hours. He has a question about the sound ordinance and whether that really specifically speaks to decibel levels and animal husbandry, kennels, and things like that.

Ms. O'Dell indicated it could.

Mr. Russell stated that is a police issue. The applicant has done everything he can. He has been an outstanding citizen and business in this community. He is well respected. That is not the issue here that he sees. The issue he sees is the use and the lack of guidance on how the use is going to be regulated in the B-1 district and that is why it was changed to require a CUP. The CUP process starts by going before the PC, the PC makes recommendations to Council, and then Council reviews the application. Council might say we appreciate it; however, Council does not think these conditions are needed or can set different conditions needed for approval. For it to be a by-right use there are many issues that need to be considered whether it abuts residential, another similar use, or on a piece of property that is not zoned for it and not part of the Comprehensive Plan. Again, it was stated that a previous Council made recommendations to help improve the property, to make it better for the applicant, which sounds like a conditional use permit to him.

Mr. Praino noted he forgets whether it was Marvin Wilkins or Lee Lansing in 1991 who was the engineer for the Town at the time, but both of them were similar, and they would go study the site and review the plans themselves. They were the whole Public Works Department. They would talk with the business owners and suggest things and they very seldom used CUPs. Most of their work was just done on a handshake basis. This plan looks good, can you put a few dozen trees here, and they were very good at getting people to agree. So, he thinks that is how things came about. He kind of remembers the construction back then when it was going on and thinks it was Mr. Wilkins who was doing it then.

Someone in the audience stated it was.

Mr. Praino mentioned that Mr. Wilkins was good about suggesting things. He very seldom put in for CUPs. That was paperwork and Mr. Wilkins did not like paperwork. If it fit the code and everything was okay Mr. Wilkins would always add, you could tell by the businesses that Mr.

Wilkins approved in Town, trees and buffer zones. He would suggest that was strictly a handshake deal.

Mr. Webb stated the PC needs to come up with the verbiage to recommend to Council. He asked if the PC wanted to leave it as a CUP or change it to a by-right use as the applicant has requested without any restrictions. Did the PC want to forward the suggested language provided by the Town Attorney with kennels being indoors.

Mr. Praino put a motion forward to have the veterinary clinic be by-right with the indoor/outdoor. Pet shops to him are indoors. Anyway, that is another one. His reasoning behind this is that he believes veterinary practices are more likely to take better care, meet the standards, are usually locally owned, and basically work with the community while pet stores are mostly chain stores. He did not think the Town would get the same adherence and response.

Mr. Webb was looking through the application and he thought he saw the applicant's suggested verbiage and he was not seeing it.

Mr. Russell pointed out where the verbiage was. He stated the request was to add veterinary hospital and boarding kennels as a by-right use in the B-1 zoning district.

Ms. Waggy asked if the verbiage was in there to have kennels indoors.

Mr. Webb asked if anyone wanted to make a motion to recommend Council set a public hearing with the recommendation to approve zoning text amendment to add to 70-247(A) veterinary and boarding kennels.

Ms. Waggy wanted it to include the verbiage indoor boarding.

Mr. Praino had a problem with the numbering. 70-247(A)...

Mr. Webb interrupted adding 70-248(B) is under the allowable with a conditional use permit, which is where it is now that is why you see the 70-247(B) there. Section 70-247(A) is allowable uses or by-right uses. The suggestion is to take it out of 70-248(B), he thought it was item 15, and move it to 70-247(A) and do away with pet shops and just add veterinary hospitals and boarding kennels. Mr. Webb asked Ms. Waggy if it was in the form of a motion to move it forward with the verbiage veterinary hospitals and boarding kennels with indoor boarding as a by-right use.

Ms. Waggy agreed.

Ms. Miles seconded the motion.

Mr. Webb reiterated the motion on the floor is to add to 70-247(A) veterinary hospitals and boarding kennels with indoor boarding.

Mr. Russell asked if there was indoor boarding whether they could have an outdoor kennel run or does that mean they would have to go through the CUP process to get an outdoor boarding run, an exercise area.

Ms. O'Dell stated that would be a non-conforming use, for the kennel part.

Mr. Webb stated this would make them non-conforming.

Mr. Russell stated for an existing use. What if he wants to open a veterinary clinic and wants to have an outdoor run.

Ms. Waggy asked if they had an outdoor run.

Mr. Webb stated they did.

Mr. Russell explained that regardless of this applicant right now he is looking at this for any other businesses coming in. He asked again if he wanted to have an outdoor run what would he have to do. He asked if it was addressed in the CUP process.

Mr. Webb stated there is no CUP for this. If it goes into the by-right use, allowable use, with this terminology they do not have the opportunity.

Mr. Russell stated that as a business owner he cannot have an outdoor run if he wants one.

Mr. Webb stated all they would have is indoor boarding.

Ms. Waggy stated the run is a separate issue.

Mr. Webb stated it was not. He indicated the PC would have to address that. Verbiage would have to be added.

Ms. Waggy stated the boarding is indoors but the runs are outdoors.

Mr. Webb needed legal advice.

Mr. Simmons stated if the runs are to be outdoors it needs to be made very clear in the ordinance so that it is very clear to the citizens. At this point, he understands that the PC wants the kennels to be indoors. What he thinks the PC is saying is that the outdoor runs is a separate issue, which should be addressed by the PC specifically.

Mr. Webb stated if the PC wants to address outdoor runs the verbiage needs to be in this motion.

Ms. Waggy wanted to amend her motion.

Mr. Webb asked the seconder if she was okay with an amendment.

Ms. Miles agreed.

Ms. Waggy wanted the language to include outdoor runs for the animals to exercise.

Mr. Padberg offered the friendly amendment by amending the outdoor kennel run component to be only allowed in cases where a licensed veterinary doctor operates the facility.

Ms. Waggy asked why Mr. Padberg was making that suggestion.

Mr. Padberg thinks that the PC has an example of a professionally run facility that has handled this well for 20, 30 years. He does not want to let it turn into a shopping mall free for all for anybody who wants to come to the Town and open a...

Ms. Waggy was hearing in other words not pet shops.

Mr. Padberg clarified with respect to the outdoor runs.

Ms. Waggy accepted the friendly amendment.

Mr. Webb asked Ms. Miles if she was okay with the friendly amendment.

Ms. Miles said yes.

Mr. Russell noted any veterinary clinic coming in that is a licensed veterinarian would be able to develop his property as he sees fit and the only restrictions he would have would be needing to have a 25-foot buffer from any residential zoned property and a six-foot board on board or opaque fence. The reason he is bringing this up is because the Town has had a previous owner, business, operating in the Town for over 30 years that has done everything by the book and did it correctly. The PC has been told he was asked by Council; however, by-right anyone else coming in may or may not have to go to the extent that this owner has.

Mr. Webb stated that was correct.

Mr. Russell asked staff, under that consideration, is there adequate language in the zoning ordinance or noise ordinance to help understand how this applicant has been running his facility in compliance with what has been asked of him by the Town. It has not been addressed and he does not believe the hours of operation are going to be addressed in the zoning ordinance. The noise level is not going to be addressed.

Ms. O'Dell could only tell the PC that she was not aware of any complaints.

Mr. Russell understood that. Again, he reiterated his issue is not with this applicant. His issue is with anyone down the line. The applicant could sell his business. Granted, if he sells his business the new owner would have to meet all those conditions that he already had. But, if someone sets up shop on the other side of him, where there are existing properties up for sale or lease, they would not have to meet the same conditions that the applicant did.

Ms. O'Dell stated if it is by-right, it is by-right. Whatever the PC wants to make by-right that is what a new business would have to conform to.

Mr. Russell asked the PC if it would be favorable to define those issues of hours of operation and/or noise level in the zoning ordinance.

Ms. O'Dell stated that was something that is very specific, not something that she has seen in a zoning ordinance, and is typically a condition.

Mr. Russell pointed out it is a condition.

Mr. Webb noted that Mr. Russell makes a good point. He explained that when the PC changes something in the zoning ordinance and makes something allowable with a CUP it is not directed towards an existing business. It is directed toward the district and what may come in to that district in the future. As everyone has stated, including Mr. Brewer, the applicant has been an exemplary business partner of the Town. That does not mean the next person who comes in and sets up business would do the same thing. When the PC made this use allowable with a CUP it was not directed at the applicant it was directed toward the B-1 zone and it was to try and give conditions to someone else coming in and building. He noted it does effect the applicant and makes the property non-conforming as far as the outside dog run, but that is why it was put in as a CUP. It was in order for the PC to get compliance from anybody else who came in wanting to set up something. It does hurt the existing businesses, but it protects the Town in the future for other businesses that come. The B-1 zone covers a decent-sized area and a lot of it backs up to residential, so that is one of the reasons it was put in as allowable with a conditional use permit and he thinks that was what Mr. Russell was getting at. It is not directed toward the applicant and was directed to the B-1 zoning district and that was what it was for.

Mr. Russell asked Ms. O'Dell if this were to go forward, as it has been amended twice, are there other areas in the zoning ordinance that could address these issues.

Ms. O'Dell thought possibly under nuisance.

Mr. Webb pointed out that was not in the zoning portion of the code.

Ms. O'Dell stated the PC would have to talk about it.

Mr. Webb explained it is the same with the noise ordinance. He stated the buffer is the only thing that would be addressed in the zoning ordinance.

Mr. Padberg explained that with everything the PC is hearing tonight, and frankly prior to tonight, about this particular property everyone seems to think, as does he, that this particular operator for two decades or more has been an example of how to make this work. He asked what other things the PC can draw from, as Mr. Russell has just referenced. The type of landscape that has been used, whether it was required or not, it sounds like the applicant has done some things that are working because no one has spoken up tonight about anything being a problem. What are things the applicant is doing that is working that the PC can incorporate into the zoning ordinance if the PC makes the use by-right that do not impose on folks that are here and doing it right, but will help guide those who come in the future as to what has worked for the Town for all of these years. He noted it is hours of operation and landscaping. He is just putting that out there for consideration noting he does not have the answer.

Mr. Webb stated that to cover all of those items you would have to have all that verbiage within the text amendment that the PC would pass. He has seen it in other areas. For example, 247(A) number 15 would have (a) buffer has to be 50-feet – buffer has to be evergreen or something like that, minimum of 20-feet tall when first installed. (b) hours of operation would be such and such and such (c) veterinary doctor. It would be a by-right use with all the other things listed that you have to follow and that is the reason for going with a conditional use permit. What is happening is the conditions are being put in for everybody else who comes in, but it is in the by-right section instead of having it with a CUP. Can it be done? Yes. It gets a little bit harder to start doing because if the PC does it for this one the PC may have to do it for another one and then another one and pretty soon all the CUPs are allowable as long as they meet certain conditions. Basically, that is what the PC would be doing with this. It will be an allowable use, but it has to have this condition, this condition, this condition.

Ms. O'Dell pointed out there are many by-right uses in the zoning ordinance where it is less than 30,000 square feet of floor space or where bigger than.

Mr. Webb agreed.

Ms. O'Dell reiterated that she has never seen the regulation of hours before. She indicated the PC could use the verbiage of a kennel with no more than 50 dogs.

Mr. Webb agreed. He indicated it used to be in there.

Ms. O'Dell noted it could also state no more than x number of outdoor runs.

Mr. Webb indicated that to him what the PC is doing then is making a CUP right now and putting it into the allowable uses. It would be conditions to make it an allowable use.

Mr. Arshad noted under Article 3, Noise, Section 26-62, maximum permissible sound pressure levels, it is related more to construction. It does talk about maximum dBA during daytime and nighttime for different zoning districts: residential, mixed-use, commercial, office, and industrial. It also states any person with lawfully obtained permits, who between the hours of 6:00 a.m. and 10:00 p.m. weekdays and between the hours of 9:00 a.m. and 10:00 p.m. on Saturdays, Sundays and legal holidays observed by town government operates or causes to be operated any equipment used in construction, repair, alteration or demolition and other construction related activities in the outdoors in any residential district within 100 yards of a lawfully occupied dwelling shall not be subject to the levels enumerated above. There are some guidelines for the noise level but it is more toward construction. He read the following. 'This article shall be known and may be cited as the "Noise Control Ordinance of the Town of Dumfries." It shall be applicable to the control of noises originating within the jurisdictional limits of the town and from town-owned lands located outside the jurisdictional limits of the town.' He reads it as

a general standard, but of course, because of the construction those noises do increase. He guesses that maybe the Police Department uses this to control noise levels.

Mr. Russell asked Mr. Simmons if that would be adequate for the Town to enforce what the applicant has already abided by.

Mr. Simmons thought it was made clear that is a noise ordinance that applies to every aspect of Town: business, citizenry, and construction. If someone is in violation of that particular ordinance, the Police can be called to make sure the decibel levels are not too high. If they are too high, a violation can be issued. Those things can be regulated by the Police Department and it would apply to Dumfries Animal Hospital.

Mr. Praino wanted to combine things and make it smaller. He suggested vet clinic, licensed vet, indoor kennel, and adding, with outdoor run with staff to approve site specific buffering. He explained every site is different. The buffering cannot really be put in the ordinance. If a new business wants to come in and build a by-right kennel with outside runs, staff could look at the location and indicate that x number of trees and bushes need to be placed here and here with a mound of dirt here. If it does not have the proper buffering, it could be stopped. Make that specific for just the outside run that way you would not have to mess with everything else. You might have one in a valley that does not need anything. Another one might be behind the shopping center and the sound would carry for half a mile.

Mr. Webb stated the PC would be putting it all on the zoning administrator.

Mr. Praino stated it would be on the site plan.

Mr. Webb noted that would be getting back into conditions.

Mr. Russell stated that would be a recommendation because that would be a by-right use.

Mr. Webb indicated the PC would have to go to the site plan portion of the code and place that requirement in there.

Mr. Russell thanked Mr. Arshad for bringing up the noise ordinance. He felt that would address the hours of operation and noise, which would be the two main concerns of any adjacent neighbor, which has been stated this evening by adjacent property owners. He asked Ms. O'Dell if she saw any issues with the verbiage, licensed veterinarian.

Ms. O'Dell thought that was a great idea.

Mr. Russell was in favor with the verbiage the PC has come up with for the amendment and feels the issues of hours of operation and noise are addressed in the noise ordinance. He pointed out the issue of buffering is currently not addressed in the zoning ordinance and it is one of those issues that he keeps bringing up about the DCSM (design and construction standards

manual) that In Prince William County (PWC) buffers are defined in the zoning ordinance and then the DCSM follows that. He believes buffers are a separate issue that should be taken care of at a later time for the entire district and not just this specific property.

Mr. Webb, for clarity, asked Mr. Padberg if the friendly amendment was for the facility to be operated by a licensed veterinarian doctor or owned/operated.

Mr. Padberg believed the term, and he was open to suggestions, would be operation, which is more important than owner. Operated in his mind means directly accountable. That to him is more powerful than owner. He pointed out the owner could be in Hawaii and the operator is on site.

Mr. Simmons advised that Dr. Nichols, owner of Dumfries Animal Hospital, informed him that veterinary hospitals have to be owned by a state licensed veterinarian noting he had not looked into it himself.

Mr. Padberg stated that was good information. The discussion on the floor that has come up that he would be happy for guidance on. He thinks one of the things that has made this work for the Town thus far, in this property case, is that it is not just owned but operated by a state licensed veterinarian. Operated by to him defines control. Ownership can be absentee. He thinks operation is probably more significant.

Mr. Webb questioned Dr. Nichols about whether it has to be owned by a licensed veterinarian.

Dr. Nichols stated it has to be owned by a licensed veterinary and there absolutely has to be a veterinarian in charge on the premises.

Mr. Webb reiterated an animal hospital has to be owned and operated by a licensed veterinarian. He thought that if the PC went with owned and operated or owned/operated.

Mr. Padberg suggested the PC did not even have to do that if the term state licensed veterinary hospital. State guidelines would take care of it.

Ms. Waggy noted it was not only pertaining to a veterinary hospital since it also deals with any other animal operation such as a pet shop.

Mr. Webb stated pet shops was being taken from a by-right use and make it allowable with a CUP.

Mr. Russell asked about kennels.

Mr. Webb noted it states veterinary hospital with kennels so there are no separate kennels that he can remember being included.

Ms. O'Dell agreed it was animal hospital with kennels.

Mr. Russell stated, in the Town, you could only have a kennel if an animal hospital is affiliated.

Ms. O'Dell noted only if it was part of the animal hospital.

Mr. Russell asked again, there are no separate boarding kennels.

Ms. O'Dell noted the kennel has to be a specific part. It has to be where the animal hospital is.

Mr. Webb stated that Mr. Russell was asking about someone wanting to come in and just set up a kennel in the B-1 district.

Ms. O'Dell reiterated that would not be allowed unless it was owned and operated by a licensed veterinarian.

Mr. Russell asked if there were any facilities with just kennels in the Town.

Ms. O'Dell was not aware of any.

Mr. Padberg asked if under this premise there is any spot for a kennel in the Town, which is not part a vet.

Ms. O'Dell stated no. If the motion is to allow kennels with animal hospitals, owner operated.

Mr. Padberg just wanted to make sure everyone was clear.

Mr. Russell's confusion is from stating the PC is allowing kennels and in doing so is stating only kennels operated by veterinarians. He asked if that was an unfair condition being set upon a business owner.

Ms. O'Dell thought kennels should only be allowed within an animal hospital owned and operated by a veterinary assistant. This way you cannot say I am this veterinary hospital, but my partner owns the kennel down the street that his daughter runs.

Mr. Russell just wanted clarification on the matter.

Mr. Webb noted the motion on the floor was made by Ms. Waggy.

Mr. Simmons explained there are provisions that need to be made to 274(B) where you need to strike certain language. It has under 17, pet shops, including boarding kennels on the premises and under 22, veterinary hospitals and boarding kennels. Those two items need to be stricken as well.

Mr. Webb asked if it would be 248(B) instead of 247.

Mr. Simmons stated it was 247(B).

Mr. Webb reiterated what needed to be removed.

Mr. Simmons clarified that the motion needs to remove the verbiage veterinary hospitals and boarding kennels from 247(B), to make it clear, and under 17, the verbiage, pet shops, including boarding kennels on the premises is being stricken.

Mr. Praino, to sum things up to make it simple, if the motion passes, the PC would be approving veterinary clinics, licensed vets, indoor kennels, outdoor runs. So, pet shops and the outdoor kennels are being eliminated.

Mr. Russell and Mr. Webb stated and dog grooming.

Mr. Webb took a moment to look over the zoning ordinance in order to make sure that this was done right.

Mr. Padberg, to make things clear, noted the PC is not saying it is eliminating pet shops and dog grooming; however, the PC is eliminating the kennels from them.

Mr. Webb stated number 17 was being eliminated.

Mr. Praino stated pet shops were going.

Mr. Webb agreed.

Mr. Simmons noted if the PC wanted to leave pet shops as a CUP that can be done.

Mr. Padberg wanted to make sure they were somewhere.

Mr. Praino asked if WalMart would be considered a pet store if in the store they had gold fish and hamsters.

Ms. O'Dell stated that was not a pet shop, it would be a WalMart.

Mr. Praino asked if the pet shop, was part of WalMart, comes under the auspice of big box or does it have a name.

Mr. Padberg did not think it had a name. More importantly, when Billy Bob wants to put in a pet shop what zone is it put in. He did not think Council would want pet shops eliminated.

A brief discussion was had at the dais between Mr. Padberg and Mr. Praino while Mr. Webb reviewed his copy of the zoning ordinance about leaving pet shops and removing the language, including boarding kennels on the premises.

Mr. Russell asked if pet shops were going to be left in for needing a CUP what issues would need to be addressed. Are the concerns the same that were just discussed about the veterinary clinic?

Mr. Praino indicated it would be addressed when it came in.

Ms. Waggy indicated there would not be a licensed veterinarian.

Ms. O'Dell did not think that was something that had to be addressed now.

Ms. Johnson, IT Manager, asked the PC to have one Member speak at a time.

Mr. Webb understood.

Mr. Russell noted, to keep it simple, all the PC is doing is moving veterinary clinics with boarding kennels to a by-right. He questioned including the words licensed veterinarian since State code requires .

Mr. Webb indicated that by State code they have to be owned and operated by a licensed veterinary doctor.

Mr. Russell asked again whether the language needed to be included in the zoning ordinance.

Mr. Webb indicted it did.

Ms. O'Dell explained it is to keep the kennel issue from coming up.

Mr. Russell understood.

Mr. Webb, in order to make this simple, the PC was talking about removing under 70-247(B), uses allowable pursuant to a CUP, number 23, veterinary hospitals and boarding kennels and then add 52. The PC could leave in 17, pet shops, including boarding kennels on the premises. Under 247(A), number 15, dog grooming, without indoor or outdoor kennel facilities could be left in. He asked if dog grooming had to be done by a veterinary hospital.

Ms. O'Dell stated it did not.

Mr. Webb stated most of them are not. He stated again the PC would be removing number 23, veterinary hospitals and boarding kennels from 247(B), adding a number 52 to 70-247(A) with the verbiage he will read in a second. He indicated it was that simple. That way things are not being taken out that really do not need to be.

Mr. Simmons noted with the way Mr. Webb outlined it, it makes perfect sense.

Mr. Praino suggested if the PC was going to leave pet shops that the language be removed, including boarding kennels on the premises.

Mr. Webb noted number 17, pet shops, including boarding kennels on the premises could be removed completely, leave dog grooming in, and then go forward with adding a number 52 to the allowable uses.

Mr. Padberg was okay with the changes as long as pet shops are put back in somewhere later. He did not want to be facing Council. He reminded the PC about the bicycle thing. He noted it was just a basic thing and it needed to be somewhere.

Mr. Webb asked everyone to hold on a couple of minutes while he writes up what he would like and maybe the PC could take care of everything. He was going to talk out loud so people could understand what he was writing down.

"Section 247(A), add, and I am just going to call it number 52, alphabetically it would be something different, but right now to add it in there the next number is 52, State licensed veterinary hospital and indoor boarding kennels, and outside run."

Mr. Webb made sure it was okay with Ms. Waggy and Ms. Miles.

Mr. Simmons asked for clarification as to whether the PC wants it to say licensed veterinary hospital **and** indoor boarding kennels or **with**.

Mr. Webb noted it should be with.

Mr. Simmons asked for further clarification whether there was a better term for outdoor run to describe the area.

Dr. Nichols noted exercise area or exercise run.

Mr. Simmons suggested with allowable exercise run.

Mr. Praino stated all it needs is outside exercise run.

Mr. Webb noted he had the following. "State licensed veterinary hospital with indoor kennels with outside exercise run."

Mr. Praino questioned whether the kennels needed to be called boarding kennels.

Mr. Webb did not think it made any difference.

Mr. Simmons deferred that to the PC. He thought it would address what the PC wants to do which is regulate kennels.

Mr. Praino did not know whether it had to be specified. He used the example of boarding a dog for a couple of days versus a sick animal that is kept for observation that is taken care of as part of the clinic. He did not think kennels would have to be addressed because they would be part of the business. Boarding kennels would cover the whole nine yards

Mr. Simmons agreed.

Mr. Webb noted the change. He asked under 247(B), number 17, pet shops, including boarding kennels on the premises whether it would be left the same or be just pet shops

Ms. O'Dell stated no. She told the PC to get rid of the boarding kennels too.

Mr. Webb stated number 17 would just be pet shops.

Ms. Waggy indicted the PC was not addressing that right now.

Mr. Webb stated it was all part of the package. Pet shops, which would remove the verbiage.

Mr. Praino including boarding kennels on the premises.

Mr. Webb agreed.

Mr. Padberg stated pet shops would become a by-right use in the B-1.

Mr. Webb indicated it would not. It would still be a part of 247(B), uses allowable pursuant to a CUP. He asked if the PC wanted under 247(A), allowable uses, number 15, dog grooming and remove the language, without indoor or outdoor facilities.

Mr. Simmons pointed out that with dog grooming the dog is still placed in a kennel for a short period of time.

Mr. Webb suggested just striking the word outdoor.

Mr. Padberg stated boarding would probably need to be struck. The point that Mr. Praino brought up earlier was that with a veterinary hospital, he expects there are two things going on with pets in a cage. The first one is the staging of an animal in between treatment and an owner picking it up after anesthesia wears off. The second is a for hire boarding where he is going to go to the beach for the weekend and leaves his pet to be taken care of.

Mr. Webb noted that was taken care of.

Mr. Padberg noted the PC does not want to allow boarding at the dog groomers.

Mr. Webb explained that is why number 15 would read, dog grooming, without outdoor kennel facilities or it can read dog grooming with indoor kennel facilities. He thinks he has the verbiage correct. He did not think he could go over it right this minute; however, the PC would go ahead and vote on it. He would work on the verbiage this week and get it to Ms. O'Dell, Mr. Simmons, and copy the PC Members on just exactly what it is. In addition, this way if the Town Clerk does not understand exactly what the motion is, she will have it in writing.

Mr. Webb stated he had a motion and a second. He asked if there was any further discussion. Seeing none, he took a voice vote. Motion carried with all ayes.

### **Public Hearing for Zoning Text Amendment to B-2 Zoning District, Section 70-282(B) Residential Amenities, and Consideration of the Amendment**

Ms. O'Dell noted the text amendment was initiated to resolve the issues of a clerical error in which language was not codified as part of a zoning text amendment in 2013. The ordinance will allow up to 10 percent of the ground floor area to be used for residential amenities.

Mr. Webb thought that basically when this went before Council there was a section of this left off about the residential amenities allowable on the first floor. This will put that back in the zoning ordinance. It will read the same as the existing did. He went to read it and realized it was left out. He asked Ms. O'Dell if she had the exact verbiage that is being put in the code.

Ms. O'Dell stated it is Section 70-282(B), subsection (a), subsection 14, Residential, multifamily, located above a commercial, retail or office use on the ground floor (a) Up to 10% of the ground floor may be dedicated to residential amenities. Residential amenities shall not

be located adjacent to Main Street. Residential amenities shall be located at the rear of the building. No residential amenities are permitted in single story buildings.

The public hearing was opened to public comments.

There being no comments the public hearing was closed.

Mr. Padberg moved, seconded by Mr. Praino, to forward to Town Council the text amendment with the recommendation to approve.

Mr. Russell recommended that the Town adopt a definition of what residential amenities are.

Mr. Webb clarified that was not part of the motion but a recommendation to put that in as quickly as possible.

The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, yes; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

**Adjournment**

Mr. Padberg moved, seconded by Mr. Praino, to adjourn the regular meeting. The motion carried by the following voice vote: Mr. Arshad, yes; Ms. Miles, yes; Mr. Padberg, yes; Mr. Praino, yes; Mr. Russell, yes; Ms. Waggy, yes; Mr. Webb, yes.

Minutes submitted by

Approved by

\_\_\_\_\_  
Dawn Hobgood  
Town Clerk

\_\_\_\_\_  
John Webb  
Chair