

# **TOWN OF LAUDERDALE-BY-THE-SEA**

## **PLANNING AND ZONING REGULAR MEETING MINUTES**

*Town Commission Meeting Room*

*Wednesday, May 18, 2011*

*6:30 P.M.*

### **I. CALL TO ORDER**

Chairman Alfred Oldaker called the meeting to order at 6:30 P.M. Members present were Chairman Alfred Oldaker, Vice Chair Yann Brandt, Ben Freeney, Lawrence Wick, Patrick Murphy and First Alternate Eric Yankwitt. Also present were Bud Bentley, Acting Director of Development Services, and Town Attorney Kathryn Mehaffey. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

### **II. PLEDGE OF ALLEGIANCE TO THE FLAG**

The Pledge of Allegiance was recited.

### **III. APPROVAL OF MINUTES - Planning and Zoning Meeting of April 20, 2011**

There being no additions, deletions or changes to the minutes, all voted in favor to approve the April 20, 2011 minutes as presented.

### **IV. PUBLIC COMMENTS**

There were no public comments.

### **V. NEW BUSINESS**

#### **Item #1: Conditional Use application for a pet shop in the B-1 Zoning District pursuant to Town Code Section 30-271 ( b ).**

Chairman Oldaker opened the public hearing regarding the application for Diamonds @ Doggies for the Conditional Use approval for Application #2011-CU-004.

Town Attorney Kathryn Mehaffey briefly went over the conditional use criteria since this is the first application that has come before the Planning and Zoning Board. Attorney Mehaffey said that basically it is a use within an area that would not be appropriate without certain restrictions to ensure that the land use is compatible with the surrounding area, the surrounding businesses and the surrounding zoning district.

So, through this procedure it would be the job of the Planning and Zoning Board and the Commission to ensure that any adverse impacts are completely mitigated in order to protect the surrounding neighborhood and to protect the public health, safety and welfare. Attorney Mehaffey went through the primary criteria that the Board and the Commission would consider in reviewing the application. The first one being "Land Use Compatibility" to determine if the proposed use is compatible and harmonious with the adjacent land uses. The second criteria is whether or not the site and the building are sufficient in size in the site specifications to accommodate the use. The third criteria requires that the application be compliant with the Code of Ordinances and is consistent with the Town's Comprehensive Plan and Land Development Regulations. The final criteria would be that the applicant has proposed proper use of mitigative techniques which would be things and conditions that the applicant are imposing or using in their operation to mitigate any adverse impacts. Attorney Mehaffey said that this information is in the Staff report and they would go over how this application addresses each of those factors. For this process, the applicant would open up with its presentation and then the public hearing would be opened up for people to speak for and against the application and then the item would be before the Board for consideration. The Board is required to make an affirmative vote either for approval, approval with modifications or denial. Attorney Mehaffey said that the Board members have the authority to ask any speakers questions throughout the public hearing.

Attorney Mehaffey said that there were five board members and one alternate present and that the alternate could participate in the discussion but was not eligible to vote.

Acting Director Bud Bentley said that Jeff Bowman, Zoning Official, was working next door on a Town project with a deadline for the following morning and was watching the hearing from his office. Mr. Bentley said that Jeff could immediately come over if anyone had any questions to address to him.

Mr. Bentley referred to the Staff report that was before the Board and reviewed the conditions that are required under the conditional uses to be evaluated. Mr. Bentley said that the first condition is Land Use Compatibility. Staff found that there is no residential use immediately adjacent to the property and with the mitigation of noise during the overnight kenneling and subject to the other conditions that are recommended, that the use would not have a negative impact on the surrounding neighborhood. The next condition is Sufficient Site Size, Site Specifications and Infrastructure and as noted in the memo, the use is in a proposed retail bay and there would be no change in the physical characteristics of the site or the structure and the size and the proposed layout of the store appeared to be adequate for the proposed use. Item #3 is - Compliance with the Comprehensive Plan and Code of Ordinances. The Staff report finds that the conditional use as proposed complies with the applicable regulations of the Code of Ordinances and is consistent with the Town's Comprehensive Plan and Land Development Regulations. Item #4 is - the Proper Use of Mitigative Techniques. Mr. Bentley said that this is the crux of the matter and in most if not all conditional uses, are the conditions proposed sufficient to mitigate what we would believe were potential negative elements that may impact others. Mr. Bentley said in the criteria we have the conditions that are recommended and are they sufficient to control what they are meant to control. But, then the other one is "What have we missed?" So, it is a two-part evaluation. Mr. Bentley said that he felt that Staff exhausted what was thought to be reasonable conditions. Mr. Bentley said that the applicant is proposing that the dogs on site would be house in an enclosed sound-proof sleep room that would have A/C and ventilation. The representation of this is that this would significantly reduce the impact of the proposed use as no noise would be detectable off site.

Mr. Bentley referred to page 3 of Staff's report that recommends the proposed conditional use with 12 conditions listed. Staff focused on noise, odors, the actual number of dogs on site, and the size of those dogs. For example, it is one thing to have 10 dogs on site that weighs less than 10 pounds and there would be quite a difference to have 10 dogs on site that may be a mix of Golden Retrievers, Dobermans and German Shepherds. If the number of dogs and the weight of the dogs were not controlled in a site that size, it could have an adverse impact fairly quickly. So, in the conditions, Staff specifies no more than 15 dogs and the dogs cannot be more than 10 pounds; there can be no odors detectable from the outside of the premises; the solid waste has to be removed to avoid any odor being detected from outside the premises and so on. Mr. Bentley concluded his comments.

Chairman Oldaker moved on to the presentation from the applicant.

Applicant Dominick Casale introduced himself and said that his daughter Dominique Casale is co-owner in the business. Mr. Casale said that they are not a pet shop and referred to the business as a puppy boutique and that they specialize in tea cups, toys and private breeds. Mr. Casale said that they do not use any dogs from puppy mills. Mr. Casale said they have had a store in South Beach for five years called "Les Petits Puppies". They won the most famous store in Dade County this November from Channel 2 and Channel 4. Mr. Casale gave the Board members a computerized site plan of the store and said that the puppies would be taken out of their cages every 2 hours and put in a play area for 20 minutes play time and then they sleep for 2 hours. Mr. Casale said that the dogs range from 1 to 4 pounds and the turnover of dogs ranges from 1 to 4 weeks. Mr. Casale said that he deals also with rescue dogs and for people that cannot afford dogs, they give away 3 or 4 dogs a month. Mr. Casale reiterated that all of the cages are air-conditioned and vented. Mr. Casale said that he has been in the jewelry business for over 30 years and that he is the most OCD person that he knew of as far as neatness and cleanliness and there would be no odor coming from the store and the garbage would be removed every day. Mr. Casale said that the largest dog they get would be a Bulldog and they are 8 to 10 pounds at birth and are usually sold in 3 to 5 days. Mr. Casale said that they would also be doing web-site sales of jewelry, puppy jewelry, puppy accessories and diamond watches. People on vacation for two weeks miss their dogs and it is so rewarding for them to come into the store to play with his puppies. Mr. Casale said that everyone's hands get sterilized before they touch the puppies. Mr. Casale said that they do not sell little dogs to people that have small children because sometimes they squeeze the puppy too tight and hurt them and that he cares more about the dogs that the people and the dogs are treated like they are part of his family. Mr. Casale said that the store would be in between Kilwin's and CoCo Yogurts and his store would be the most walked-in tourist spot and would generate business for the surrounding businesses. The jewelry industry told him that this was the first store of its kind. Mr. Casale said that Delray Beach and Boca Raton has this type of puppy store but not with jewelry.

Mr. Casale explained the layout of the store and said that each puppy cage would have a glass front and every cage would have a vacuum vent to suck out any heat and there would be a constant flow of air in the cages. Mr. Casale said that the other side of the store would be all jewelry and said that the 10 ft X 10 ft play area would be to the rear of the store. Mr. Casale asked the Board if they had any questions.

Chairman Oldaker asked how the sound-proof room fit into the plans.

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Mr. Casale said that the sound-proof room would be right behind his office and said that the walls were solid concrete and that foam would be used as another sound barrier. Mr. Casale said that the dogs mostly sleep at night because they are puppies and if there were any barking, no one would hear it because the stores would be closed.

Chairman Oldaker said that area is a busy area late into the night with music playing from the restaurants and wanted to know what affect that would have on the dogs.

Mr. Casale said that his other store in South Beach is right next to Club Med and the music has not had any affect on the dogs. Mr. Casale said that the music would be down the street and with two other stores in between his and then there is a Pizzeria, the noise would not affect his store at all.

Mr. Bentley asked Mr. Casale if he had ever constructed one of the sound-proof sleeping rooms.

Mr. Casale said that he had not constructed one but it would be easily done with an acoustical ceiling with insulation and sheet rock just like he built a sound-proof room in a townhouse.

Mr. Bentley referred to the condition in Staff's report that states that no sounds from the dogs located onsite shall be detectable from outside the premises and asked Mr. Casale if he was comfortable achieving that condition.

Mr. Casale responded that it would not be a problem and mentioned that there is a dumpster right behind the store and the only people that would be in that area would be delivery people.

Mr. Bentley said that the criteria is equal to people being in the back of the store and in front of the store - the condition being that there would be no sound from the animals detected from outside the store. Mr. Bentley said that alleyway is used as a pedestrian-way between some of the Town's parking lots and the entertainment district and also the beach.

Mr. Casale said that he would do whatever was needed to meet the conditional requirements for the sound and anything else the Board would like to see done.

Mr. Yankwitt referred to condition 2 that states "no odors from inside the premises shall be detectable from outside the premises". Mr. Yankwitt felt that the Town should be more specific and to not allow the store not to have any odor would be too restrictive for the applicant and that it should be defined more clearly.

Mr. Casale responded that he would have a girl there starting at 6:30 AM to 12:00 AM cleaning the store and the dogs.

Mr. Yankwitt also thought the 10 pound weight limit for dogs should be looked at and maybe allow him to have a weight limit of 150 lbs of dogs anyway he chooses to have them and did not understand the issue.

Mr. Casale said that a full-grown dog would be a little different. Mr. Casale said that they also order Siberians, Golden Retrievers and German Shepherds and at birth they would weigh about 12 pounds. These would be special orders and they come in and are gone in 3 to 4 days. All dogs would have State of Florida Board of Health Certificates, micro-chips, full vaccinations and would be de-wormed. These dogs are well taken care of and are expensive.

Mr. Yankwitt thought it would be hard to police the weight of the dogs and to say "no odors at all" he thought the Town should allow some.

Mr. Casale said that whatever the Town wanted him to do would be fine he would handle it and he knows how clean his business is and the conditions would not present any problem.

Mr. Yankwitt said that the Board's task is not to deny, it is to change any language that is omitted or otherwise confusing and he finds that looking at "no odors" as being confusing.

Mr. Wick said that he had a problem with the noise to the dogs themselves. Mr. Wick said that you would have loud music on Friday and Saturday evenings and there would also be driving traffic and asked if this would affect the dogs.

Mr. Casale said that the dogs would be inside the store on the east and west side of the building and said that even if the front door was left open, it would not carry into the store. Mr. Casale said that he would also have music in the store and the dogs that would be in the storefront window would be constantly played with in the play area in the back and they also sleep in the back of the store.

Mr. Wick said that this would not be his idea of putting a puppy store in between an ice crème store and a yogurt store and did not think it would be the best area for a puppy store.

Mr. Casale said that the air is all vented outside at the rear of the store and each cage would be vented and there would be no odor from the dogs. Mr. Casale said that if the Board visited his store in South Beach, they would think that they were in a hospital when they walked in. Also, they use a deodorizer called "Sand and Sea" that gives a beach and ocean smell.

Chairman Oldaker referred to an exhibit in the backup material and assumed that Mr. Casale was deviating from the pet grooming and pet daycare that was stated on the page.

Mr. Casale said that he was only doing grooming for his own dogs but stated that the grooming and veterinarian were allowed at that site. Mr. Casale said that Jeff Bowman told him that grooming and veterinarian were allowed but it did not matter since he was only grooming his dogs and he had to put down grooming because he needed a license for that for the Board of Health.

Chairman Oldaker asked if that would change the whole nature of the application.

Attorney Mehaffey said that the grooming for their own dogs would not affect the application and would be considered part of a pet store which is part of the application anyway and the conditions state that there is no outside grooming.

Jeff Bowman entered the meeting and concurred with the attorney.

Mr. Murphy asked Mr. Bowman what code required for a burn wall in between the businesses and thought that would mitigate some of the sound.

Mr. Bowman said that the Fire Marshall would have to answer that question but he thought it would be a 2 hour rating.

Mr. Murphy said that if that is a 2 hour burn rating, you could actually test the decimals for the sound of a barking dog and he did not think it would be an issue.

Mr. Casale said there is a big difference between a barking dog and the bark from a baby dog and that these puppies sleep most of the time.

Chairman Oldaker closed the presentation from the applicant and asked if there were any questions from the public they would like to address to the applicant.

There being no further comments or questions from the public or from staff, the public hearing portion of the Planning and Zoning hearing was closed.

Chairman Oldaker asked the Board for their comments regarding the application for the conditional use for a pet shop.

Vice Chair Brandt said that a couple of things to note was that the conditional use at hand was the selling of dogs with taking into account Staff's recommendations. Secondly, Mr. Brandt knew that this had been discussed at the Town Commission level and he thought it was necessary to identify the difference between what the Board is required to do from what the Town Commission does at their meeting. The Board purely looks at code, ordinances, Staff recommendations, and the Comprehensive Plan to see if all of those things match with the conditional use and do all of those things comply based on what is written into the code and that the Board does not make any policy decisions. Also, with saying that, the Board is a recommendation to the final Board.

Vice Chair Brandt said that in reviewing the application, two things drew his attention. One was Staff's use of Land Use Compatibility and referred to the last line that states "will not negatively impact the surrounding neighborhood". Vice Chair Brandt compared that to what the conditional use review of the ordinance requires that states it would "promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood". Vice Chair Brandt said that the key word in that phrase was "promote" and Staff's writing that it would not negatively impact does not comply with promote. The second part was in Sub-Section 3 of the conditional use review and that is that the conditional use "shall comply with environmental, zoning, concurrency and other applicable regulations of this Code of Ordinances". Vice Chair Brandt said that while it satisfies environmental and zoning and where he thought it did not comply was that he could not find a Comprehensive Plan portion of it that complied with the economic and redevelopment goals of the area. Vice Chair Brandt said that the main goal of the Comprehensive Plan centers around tourism and promoting the vitality of the seasonal residential and business areas in the matters sensitive to the overall businesses. Vice Chair Brandt said those were the things that he would like the Board to take a look at and felt that this would eventually come down to a policy decision. Vice Chair Brandt said that he even asked the Town Attorney if there wasn't a way for the Planning and Zoning Board to just pass it on to the Town Commission because at the end of the day this would come down to being a policy decision and would the Commission want a store selling dogs downtown. The Board would look purely at the code and whether or not it satisfies the code.

Chairman Oldaker interjected that the business was not just selling dogs.

Vice Chair Brandt said that was true but the conditional use is purely based on the selling dogs. Everything else does not require a conditional use and that the applicant could open a retail shop tomorrow and be able to get a business license through Development Services. What the Board is looking at purely centers around the dogs.

Mr. Casale was allowed to comment and responded to Vice Chair's comment regarding vitalizing the tourist area and said South Beach is one of the highest rated tourist areas and that he has more people in his store because of the dogs. Mr. Casale said that he gets at least 500 people a day and on a slow day 300 people come into the South Beach store. Mr. Casale said that he thought that in Town on a slow day he would get at least 200 people into the store only because of the dogs. Mr. Casale said that Delray Beach and Mizner Park both have puppy stores and are paying double the rent that he is paying and his store has a little bit of everything. Mr. Casale said that his store, Kilwins and Coco Yogurt would probably have 500 to 1,000 people coming in and out of these stores per night.

Vice Chair Brandt said that he owns a Tea Cup Yorkshire and said that he was not against dogs and that it really comes down that it would be a policy decision. Vice Chair Brandt said that if it was up to him, this application would not be in front of the Board and whether or not the store selling dogs should be downtown, his opinion wouldn't matter because it is a policy decision.

Mr. Wick said that he went to the internet to check the location of the South Beach store and noted that the adjacent stores were not food stores. Mr. Wick said that he was concerned that the pet shop would be in between two food stores and next to that there are restaurants. Mr. Wick said that if this goes through and all of a sudden there is a problem, you would have issues with the neighbors. Mr. Wick said that he also noticed a few unfavorable comments about the South Beach store. Mr. Wick said that he would not say what the comments were because they could be from one of the store's competitors. Mr. Wick said that he was not real big on the idea of putting a pet store next to Kilwins and Coco Yogurt.

Chairman Oldaker said that he thought the pet shop was a great idea and that it would bring a variety of people into Town and it would be something different other than food and T-shirts and would appeal to the smallest child and to the most elderly adult. Chairman Oldaker said that he thought that is what the Town wanted to do for the long-term and said that we were not a cookie-cutter Town and we were trying to be more imaginative to get people into Town.

Mr. Murphy concurred with Chairman Oldaker's comments and said that when you look up and down the streets you see a number of vacant stores and looking from a promotional standpoint, it is a unique way of trying to promote vitality to the area. Mr. Murphy said that if it creates a management problem he thought it could be manageable. Mr. Murphy said that to simply scoff at the idea and say that you just don't want this type of store, he thought we just had to try.

Mr. Freeny asked how the conditions recommended by Staff would be monitored over time to make sure they were complied with on a continuous basis.

Mr. Bentley said that it would be similar to how the Town monitors all code requirements and the reality of that would be usually by a complaint.

Mr. Freeny addressed the language on item 5 that states "The premises shall have a solid waste disposal container which shall be emptied as often as necessary to keep animal waste odors from the container undetectable", and said that we know that the solid waste would be emptied at least on a daily basis but how often would the dumpsters be picked up behind the store.

Mr. Bentley explained the main criteria in maintaining a dumpster and said that in this case, we were trying to produce a goal orientated condition rather than specify 3 days a week or every single day and what is recommended that the solid waste be emptied as often as necessary to keep animal waste odors from the container undetectable and that would depend on how they bag the solid waste. Mr. Bentley said that were focusing on the performance of the goal not the frequency of the removal.

Mr. Freeny said that during the applicant's presentation he heard a variety of maximum weight limits and he wanted more clarification and in the requirements it states that "Dogs will be no more than 10 pounds". Mr. Freeny said that he heard that some of the puppies could weigh up to 12 pounds.

Mr. Casale responded that Frenchies and English Bull Dogs could be anywhere from 7 to 12 pounds at birth and said that they would not be in the store for more than a week to two weeks and if it is during the rainy season, it could be 4 weeks. Mr. Casale said that after the puppies are in the store for four weeks, it affects their quality of life and they try to do something with them on another level such as sell them on a website or give them away as a charitable donation.

Mr. Freeny said that he understood that but he wanted to make sure it was covered in the language.

Mr. Bentley said that on this point, Staff took the information provided from the applicant and that Staff has no objections should the Board want to change that to a higher weight. Staff would oppose creating something like an average because it would allow great fluctuations in the weight of one dog verses what the representation would be.

Mr. Freeny said that he just wanted to make sure that whatever is sent through as a recommendation would be the best number to accommodate what would be needed.

Mr. Bentley said that the goal was to limit it to small dogs and that has been the representation consistently through the applicant's presentation and said that Staff has no objection to an adjustment and asked for clear direction from the Board.

Mr. Freeny said that he just wanted to make sure that if it is left at 10 pounds and an issue arises sometime in the future or someone makes a complaint, he wanted to make sure the operation was set up for it now.

Mr. Bentley said that Code Enforcement would follow up on complaints for conditional use violations and said that Staff would like the Board to recommend a number that is most appropriate for the applicant and asked if there would be any adverse impact on a 10 pound dog or a 12 pound dog or a 15 pound dog.

Mr. Wick said that he did not understand why this was being discussed because the applicant was happy with the 10 pound limit.

Chairman Oldaker said that the applicant mentioned "rescue" in his presentation and asked Mr. Casale to elaborate on the "rescue" portion of the business.

Mr. Casale said that he works with a company called "Dogs Rule" that runs out of Deerfield and they give a lot of dogs away to people that can't afford to buy dogs. Mr. Casale said that he does not have dogs in the store to give away and that he will have 4 dogs in the window and 10 in a case and usually one as an alternate like a Bulldog and there would be special orders. Mr. Casale asked the Board not to worry about the 10 pounds limit because most of his dogs weigh 1 to 4 pounds maximum.

Chairman Oldaker asked Mr. Casale if he was going to have any functions like "adoption day" where people bring in several other dogs.

Mr. Casale said that when the Town closes the street, maybe he would bring some dogs outside but for the most part people come in and out of the store with their own dogs that drives his dogs crazy.

Mr. Yankwitt said that the conditions say no odors and no sounds and he still thought that was too restrictive because you have odors and sounds from restaurants. Mr. Yankwitt said that maybe the condition should say "and no fowl odors" that are detectable or what about using a sound decimal.

Chairman Oldaker asked if there was an intent that could be interpreted to satisfy Mr. Yankwitt's concern.

Mr. Bentley said that Staff would prefer that any intent be totally eliminated as much as possible. When Staff wrote these conditions, Staff was focused on odors from animals and Mr. Yankwitt's suggestion is valid and if it is consistent with the Board's wishes, the language could be changed to state "no odors from dogs from inside the premises shall be detectable from the outside of the premises".

Vice Chair Brandt commented that this application is on the conditional use for being able to sell dogs and any restrictions would be on that conditional use not the rest of the store. So, if someone wants to walk into the store with a lot of perfume that would have nothing to do with the conditional use of this application. If it means noise, it would also be based on the conditional use "noise from the dogs".

Mr. Yankwitt said that all the applicant needed was to have one complaint from someone that came into the store and then all of a sudden he has a problem.

Vice Chair Brandt again stated that the Board is not a policy making board and they were there to clarify whether or not the conditional use application has compliance with the Town's ordinances and the Comprehensive Plan and that is it. At the end of the day, this is all going to be rehashed at the policy making board and asked that this be moved forward one way or another.

Mr. Bentley asked if it was the Board's consensus to modify that condition to insert the word "no odors from the dogs inside the premises shall be detectable from outside the premises".

Board Member Lawrence Wick made a motion to pass this on to the Town Commission with the Board's recommendation to approve the Conditional Use for a pet shop in the B-1 Zoning District pursuant to Town Code Section 30-271 ( b ) with Staff's conditions 1 thru 12 provided in the backup material. The motion was seconded by Board Member Ben Freeny.

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Board Member Lawrence Wick made an amendment to the main motion that Condition #2 in Staff's Memorandum be amended to state that "No odors from dogs from inside the premises shall be detectable from outside the premises". The motion was seconded by Board Member Ben Freeny.

In a roll call vote, all voted in favor of the amendment to the main motion. The motion carried 5 – 0.

Chairman Oldaker asked for a roll call vote to send the amended motion to the Town Commission with a recommendation to approve the Conditional Use for a pet shop in the B-1 Zoning District pursuant to Town Code Section 30-271 9 b ) with Staff's conditions 1 thru 12 provided in the backup material with an amendment to add language to Staff's Condition #2 that "No odors from dogs from inside the premises shall be detectable from outside the premises".

In a roll call vote for the amended motion, the motion carried 3 – 2. Mr. Wick and Vice Chair Brandt voted in the negative.

**VI. OLD BUSINESS**

**NONE**

**VII. UPDATES/BOARD MEMBER COMMENTS**

**VIII. ADJOURNMENT**

There being no further business to discuss, the meeting adjourned at 7:30 p.m., May 18, 2011.

ATTEST:

\_\_\_\_\_  
Chairman Alfred Oldaker

Date Accepted: \_\_\_\_\_

Colleen Tyrrell, Board Secretary

\_\_\_\_\_