



**MINUTES**

**DOUGLAS COUNTY BOARD OF ZONING APPEALS**

Training Room, Public Works/Zoning and Codes

3755 E 25<sup>th</sup> Street

**Monday, April 19, 2021**

10:00 a.m.

MEMBERS PRESENT: Charlie Thomas, Chair; Phil Metsker, Scott Eudaly, Jerry Wohletz, Rich Barr

MEMBERS ABSENT: N/A

STAFF PRESENT: Tonya Voigt, Zoning Director; Dre’Vel Taylor, Zoning Specialist; Ben Harris, Code Enforcement Officer

PUBLIC PRESENT: Aaron Damm (Applicant), Stan Ray, Dave Ross, Doug Flessing and Cheryle, Chad Tate, Paul Rossillon, Jake and Amanda Miller, John Underwood

Charlie called the meeting to order at 10:04 a.m.

Charlie called roll and a quorum was established.

**ITEM NO. 1: MINUTES**

Approve, revise, or approve with conditions the February 15, 2021 meeting minutes.

Phil Metsker moved to approve the January 2021 minutes, Jerry seconded. Motion carried 5-0.

**ITEM NO. 2: DISCLOSURE OF EX PARTE COMMUNICATIONS**

Chair asks Board members for disclosure of any ex parte communications on the items on the agenda.

Charlie asks, all members attest to no communication.

**VARIANCE REQUESTS**

**ITEM NO. 3: ON AN APPLICATION FOR ZBZA-2021-0006 – Bettinger, Richard, walker, Mark (Wingshooter Kennels) WITHDRAWN**

**ITEM NO. 4: ON AN APPLICATION FOR ZBZA-2021-0004: A VARIANCE under the terms of the Douglas County Zoning and Land Use Regulations of Douglas County, Kansas, an application from Aaron Damm, for a variance request for a 98’ reduction of the required 500’ setback for a dog kennel (breeding) operation, located at 1924 E 950 Rd.**

**APPLICANT/OWNER:** Aaron Damm and Megan Weatherman/David and Gina Weatherman

**LOCATION:** 1924 E 950

<b>AREA:</b>	15 Acre, 80 Acre combined
<b>DATE OF PUBLIC HEARING:</b>	April 19, 2021, 10:00 am
<b>DATE PUBLIC NOTICE PUBLISHED:</b>	March 20, 2021
<b>PRESENT LAND USE:</b>	AG-2, Transitional Agricultural
<b>DATE PUBLIC NOTICE PUBLISHED:</b>	January 29, 2021

**SECTION AND REQUIREMENT OF ORDINANCE PERMITTING VARIANCE:**

- 12-306-23.01a Any open pens, runs, cages or kennels shall be located at least 500 feet from any property lines.

10:06 Charlie Thomas introduced the item

10:07 Dre'Vel Taylor reads staff report

10:14 Ben Harris introduces code enforcement perspective. Discusses Midge Grinstead comments.

10:17 Rich Barr asks – What happens if Aaron Damm and Meagan Weatherman separate.

10:18 Scott Eudaly – How do we confirm those properties will be combined. Anticipation of owning property is not owning property today.

10:20 Tonya Voigt – We can file an affidavit on the property stating conditions that need to be met. Will be found by Title Company. We can add this if that would help the board feel more comfortable.

10:21 Rich Barr – Where the kennel is now is owned by David Weatherman.

Aaron has been compliant since notified in 2019. When did the building come in?

Tonya Voigt – discusses penalties for building without permit

Jerry Wohletz – asks how he would have been approved in 2019?

Tonya Voigt – Discusses that regulations were changed to be more restrictive in 2020. We added setback and residency requirements. The lack of residency posed numerous violations for neighbors and code enforcement to address. We have been working with the humane society to ensure conditions are humane and reasonable.

10:28 Charlie Thomas – Any other concerns from the board?

Rich Barr – If we add a fourth condition to ensure an affidavit is filed.

Scott Eudaly – Seconded.

Jerry Wohletz – Agreed with adding 4<sup>th</sup> condition.

Charlie Thomas asks for public comment.

Stan Ray 1885 E ? - Seems there are lot of questions. We are counting on this going perfectly. He is not confident that a title search will work. He is upset by the incessant barking previously on the site. It was annoying. Disregard for code in the past does not give him confidence in the future.

Dave Ross 1855 E 9? – Concerns that Aaron hasn't been a good steward, operates an illegal home business, where is diesel fluid and oil going? Dumped shingles in creek from a previous roofing business. He does not believe that anything will change.

Doug Flessing and Cheryle 978 N 1892 Rd – 34 yrs ago wife and he bought property. They share border with property in question. This is the third instance of an illegal business operating out here. Lawn care business went through CUP. Kaw Valley Diesel shutdown and moved to the country. They are carrying out an illegal lawn care business. We can't have windows open at night because of dogs barking. These are zoned Ag and residential. No assurance of ownership transfer. He believes the transfer of ownership should occur now. Road has a 1 lane bridge. Between lawn care, diesel business, and kennel the road is not sufficient.

Chad Tate 1877 E 950 – General Surgeon at hospital. GK Chesterton says, "Tolerance is a virtue for those who believe in nothing." Over the years there has been more and more noise pollution. Moved to the county to escape the noise. Dogs barking trigger the barking of other dogs. This is the first time I have attended a public hearing. Surprised staff would support a variance to upend standards they have worked to adopt.

Paul Rossillon 1892 Rd – Concerns about dogs barking. Constant noise from dogs, four wheelers, truck traffic. They do not slow down on the road.

Jake and Amanda Miller – 1886 E 964 Rd - South of property – Barking is crazy. Moved to country for peace and quiet.

John Underwood - 954 N 1895 Rd – All owners of the property do not appear to have signed the paperwork. That is a concern. There have been issues where they have grown apart and come back together. There are many animals in the barn. They are not doing what you think they are doing. We round their horses, dogs, cattle up for them. We try to call them and we do not get a response from them. They do not care. When 12 dogs run in a pack and attack, are they insured for it? They know zoning and decided they didn't want to follow the regulations. It's aggravating that they have no response when we try to get ahold of them.

Does the owner not have to sign the application?

Paul Rossillon – states that they do not take care of their own dogs.

Rich Barr – Is concerned that only Aaron Damm has signed and not legal owner.

Charlie Thomas – attempts to get comment from Aaron Damm.

Any other comment from public?

Scott Eudaly – Appreciate the neighbors taking the time to share comment. Does the truck business need to be separated from decision making. He believes property owners should be making the request.

Rich Barr – Believes it may be an invalid BZA application.

Tonya Voigt – Aaron can move the kennel to another location to meet the setback. You are not approving the kennel, only the variance.

Scott Eudaly – 98 ft will not solve the problems for the neighbors.

Aaron Damm – 98 feet will be further from your neighborhood. Dogs will then be inside in an insulated building and the kennels will be in the trees so that neighbors will not hear barking. Last night dogs were not from Aaron but other dogs that got his dogs worked up. Moving the building 98 ft. south will move it closer. All waste will go into a septic system that is health dept. approved. We have passed every surprise inspection, and have never had a complaint. We don't want neighbors to hear the barking. Megan does not have the option to work in town she has to stay onsite to care for child with epilepsy. We run your dogs from our property. He does not have any missed calls from the neighborhood.

10:58 - Charlie Thomas –Would anyone like to make a motion?

Rich Barr – Struggling with the information. Is it okay for Aaron to sign for Weatherman?

Aaron states that he filled out an owner authorization form.

Tonya Voigt confirms that Aaron has provided an owner authorization form.

Jerry Wohletz – We are approving only the 98' setback? Are there other options for the building?

Tonya Voigt – If this is denied, Aaron could move the building to meet the setbacks. The CUP process will consist of two more public meetings with the opportunity for public input.

Aaron Damm- There are other options for the building but he is trying to block the sound as much as possible. Moving south will direct noise to the neighborhood.

11:04 – Charlie Thomas – Any motions

Scott Eudaly – makes a motion to add fourth condition that an affidavit will be filed. Condition that lots will be combined.

Tonya Voigt - If they are not, he would need 3 variance instead of 1.

Charlie Thomas – no seconds so the motion dies.

Aaron Damm – I will move the building if I need to, but it will increase the sound for the neighborhood. That makes no sense. He can do it but would prefer not to. He will lose the natural buffer.

Charlie Thomas – You are building all the things for a kennel that had not yet been applied for. None of that has been approved yet.

Aaron Damm - believes if he could move them then the neighborhood would not hear the dogs. He didn't know he needed a kennel license until the county got ahold of him.

Charlie Thomas – We can only look at the 98' request. It is out of BZA control to determine if they will get CUP approval.

Aaron Damm – can't find where the rules are regarding kennels.

Tonya Voigt – It is challenging when we are notified after the fact. W

Rich Barr – Struggling with standard D. **The variance desired would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare**

Aaron Damm – Moving the building increases the impact. The state inspector has told them that they have one of the nicest kennels in NE KS. This is the best case scenario to minimize the sound. He also doesn't want to listen to the dogs. After the building is complete they will not hear the dogs.

Charlie Thomas – Reminds board the Kennel approval is out of the boards' control. If they approve the setback, they are not approving the kennel. Urges the board to just look at the variance.

Tonya Voigt – Explains process to neighbors. Why is kennel still operating if not approved? If there is an avenue for them to become permitted, we let them work through the process. If it is denied we work through the steps to remove the violation.

Jerry Wohletz – Living by the rule that it's easier to ask forgiveness is a poor argument. Not allowing the variance may impact the neighborhood more.

Scott Eudaly – Agrees with Jerry, would like to look for the best way out and a win for everyone. Letting this move to the CUP still gives the neighbors a voice.

Scott - Makes a motion.

Rich Barr – Still struggling with moving forward without Aaron and Megan having title to the property. The fact remains that it is not owned by Aaron and Megan. Aaron tries to inject. Rich Barr asks Aaron not to interject unless the chair asks for information.

Jerry Wohletz – It's hard to say that he would not sell the land if the right price came along.

Tonya Voigt – Conditional Use Permit runs with the land.

Charlie Thomas – Any other comment in regards to Jerry and Rich's concerns?

Rich Barr – Concerned that this is a variance for individuals who do not own the land.

Charlie Thomas – To Staff: Is this unusual or is this common practice to allow a non-land owner to speak for them.

Dre'Vel Taylor – Discusses instances where owners give people the right file building permits on their behalf.

Tonya Voigt – Discusses lease instances when an owner authorization is needed – They could file a deed of equitable interest.

11:34 Aaron Damm – If somebody came along and offered millions of dollars the kennel would be gone. He is trying to follow guidelines set forth by staff.

Phil Metzger – Calls for the question

Charlie Thomas – restates that the motion has died for lack of second.

11:37 - Dre'Vel Taylor – board has to vote to approve, deny, or table.

Scott Eudaly – makes a motion to table if they can give Aaron a direction to satisfy board.

Charlie Thomas – Are we asking for Mr. Weatherman to sign all of the paperwork, or a lease.

Aaron Damm – We have a lease that we could provide.

Charlie Thomas – In the past, the board has said that an owner authorization is legal. There will be ample opportunity for public to further voice concerns, there is also opportunity for ownership authorization conditions to be met through the CUP process. Rather than asking Aaron to come back he would ask that further documentation is provided during the CUP.

Rich Barr – If Scott will state original motion he would vote.

Scott Eudaly – Motion to approve if affidavit is filed for title search.

Tonya Voigt – Affidavit filed and recorded on all lots that is also reviewed by legal. Explains process to Aaron. This is filed to ensure combination of lots.

Rich Barr – Seconds motion

Phil Metzger – Deny

Scott, Jerry, Rich vote to approve.

Charlie Thomas – Passes 3-1.

Thanks neighbors for comments and informs

11:47 Motion to adjourn.

Dre'Vel – we have a couple of more comments. We don't always get the neighbor feedback. It means a lot and helps guide us.

Aaron will need to apply within the next 30 days for the CUP

Item # 6 for Brad Ochs asks to be tabled until May 16.

11:49 Tonya Voigt – Discusses easement on Brad Ochs property. Brad may not place anything in the easement unless it exists.

Dre'Vel – He could choose another location.

Application from **Matt Renyer** and Mark Walker have been withdrawn.

Roy Ingelse has removed the trailer.

Parish property is looking a lot better.

Scott Eudaly – Motion to adjourn.

11:53 - Jerry Wohletz – Seconds motion.