



# TOWN OF NORWELL

345 MAIN STREET, P.O. BOX 295  
NORWELL, MASSACHUSETTS 02061  
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OFFICE OF  
BOARD OF APPEALS

## FINDINGS AND DECISION OF THE NORWELL BOARD OF APPEALS

File No. 13-14

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A PUBLIC HEARING(s) was held on December 4, 2013 and January 15, 2014, by the Norwell Zoning Board of Appeals under Massachusetts General Laws, Chapter 40A, Sections 6 and 9, at the Norwell Town Offices, 345 Main Street Norwell, MA on the application of:

A Fox & Hounds Pet Care, Inc.  
12 Grove Street  
Norwell, MA 02061

For a Special Permit under Section 2334(f) of the Norwell Zoning Bylaws "operation of a business between the hours of 2:00 a.m. and 5:00 a.m." The applicant is seeking to obtain a special permit regarding the overnight boarding of dogs. The property is located at 12 Grove Street, Business District B, and shown on Assessor's Map 5D, Block 20, Lot 8, Land Court Cert. #108468.

The Public Hearing for this application was duly noticed in The Patriot Ledger and The Norwell Mariner on November 18 and 28, 2013, respectively, and posted by the Town Clerk, as required by the Open Meeting Law.

The Applicant and representatives were in attendance at the hearing to present the application. There was significant voiced and written opposition. The applicant is operating a doggie day care and pet care operation and boards dogs overnight. This application deals solely with the boarding of dogs between the hours of 2:00 a.m. and 5:00 a.m.

The applicant presents two arguments in favor of its application. First, the applicant contends that it is not subject to the special permit requirements because it is not operating a "business" between the hours of 2:00 a.m. and 5:00 a.m. since no significant business operations or transactions take place during this time period. Generally, the business boards between 10 and 15 dogs overnight. Dogs are sleeping; dogs are not being dropped off and business transactions related to the business do not occur. Moreover, the dogs are contained within the building during this time period. Second, the applicant contends that even if a special permit is required, it meets all the criteria for a special permit.

The abutters contend that the building inspector has stated that operations are limited to day time hours only and that the overnight boarding of dogs is in violation of the

Kennel license requirements of G.L. c. 140, sec. 137A and Article XV, sec. 11 of the Zoning Bylaws. The abutters also contend that the special permit requirements for the Aquifer Protection District apply.

The Board received the following information into its files:

1. Copy of the legal notice for The Norwell Mariner
2. Abutters List
3. Application, completed and signed by the applicants, date-stamped on November 13, 2013, by the Town Clerk
4. Assessors Card print-out for the lot
5. A letter dated November 13, 2013 to the ZBA from Bruce A. Issadore, counsel for the applicant
6. A business summary for A Fox & Hounds Pet Care prepared by Robin A. Fox
7. A letter dated November 14, 2013 to the Building Inspector from W. Prescott Golding, counsel for George and Marynel Halatsis and Ramona A. Caruso, who maintain they are aggrieved persons under the Zoning Act
8. A copy of Building Permit #15866 for tenant fit up for 12 Grove Street
9. A letter dated January 8, 2013, to the ZBA from Bruce A. Issadore
10. A letter dated January 8, 2013, to the ZBA from W. Prescott Golding

#### FINDINGS:

1. A Fox & Hounds Pet Care provides dog day care and play groups, dog training, dog grooming and overnight lodging for dogs. It also provides transportation and intends to offer specialty retail products to its customers. The business lists its hours of operation as between 6:30 a.m. and 7:00 p.m. on Monday through Friday and 9:00 a.m. and 5:00 p.m. Saturday and Sunday.
2. The dogs are not allowed outside between the hours of 2:00 a.m. and 5:00 a.m. and there is no evidence that there is noise from barking dogs during that time period. The only evidence presented is that the dogs are asleep between 2:00 a.m. and 5:00 a.m.
3. The Board finds that there are no significant business operations being conducted by A Fox and Hounds Pet Care between the hours of 2:00 a.m. and 5:00 a.m. The business does not meet customers during that time period, the business is not selling pet care products during that time period, the business does not provide grooming services during that time period, and the business does not typically have employees on sight during that time period.

#### DECISION OF THE BOARD:


Based on the application and evidence presented and its findings above, upon a motion duly made and seconded, the Board **VOTED** unanimously to deny the **Special Permit** because A Fox & Hounds Pet Care, by providing overnight lodging for dogs, is not operating a business between the hours of 2:00 a.m. and 5:00 a.m. It therefore is entitled to continue to do so without the need for a Special Permit.

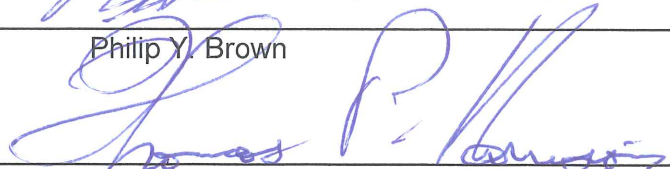
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**NOTICE OF APPELLATE RIGHTS:** Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.