April 25, 2012

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, April 19, 2012 at 7:00 p.m. in the 3rd Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. and the following actions were taken:

Commissioners in attendance:

Wayne Chorney, Acting Chair
Fran Nelson
Bill Reynolds
Elaine Dove
Andrew Houlding, sitting for Jeff Vita

Staff in attendance:

Dan Kops, Assistant Town Planner
Tim Lee, Assistant Town Attorney
Stacy Shellard, Commission Clerk
Lisa Raccio, Stenographer

Mr. Chorney called the meeting to order at 7:01 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

A. Public Hearing:

1) **12-6453** 3540-3550 Whitney Avenue, Requesting variances of the following: Section 626.3.a to permit a 14,144 square foot lot where 20,000 square foot minimum is required for a animal grooming facility. Section 626.3.b to permit a rear yard setback of 3 feet where 20 feet is required. T-3.5 Zone, Allyson Eliason, Applicant

Ms. Allyson Eliason, Applicant, addressed the Commission and stated that she currently has a dog grooming business in Cheshire. She reviewed the application and the site. She said that she lives in Hamden and would like to relocate her business to Hamden.

Mr. Chorney asked what the hardship is. Ms. Eleanor Aloi, addressed the Commission and stated that the hardship is the size of the property.

Mr. Nelson asked if the store was previously used for retail and Ms. Eliason replied yes. Mr. Nelson asked if the property is currently zoned for commercial and retail and Ms. Eliason said yes.

Mr. Dan Kops, Assistant Town Planner, advised the Commission that there is also a bicycle shop located on the property. Mr. Nelson said that the property is small and congested. Ms. Eliason said that because the property is small this creates the hardship. Mr. Kops explained that the zoning regulations require 20,000 square feet for dog grooming and it was assumed that dogs would be kept outside.

Mr. Chorney stated that the rear yard does have physical barriers because it is sloped.

Mr. Houlding asked how many parking spaces would be needed. Ms. Eliason said that she did not expect more than three cars because people drop off their dogs and then return at a later time to pick them up.

Mr. Nelson asked if there would be any outdoor pens and Ms. Eliason stated no.

Ms. Dove asked how many dogs would be on the premises. Ms. Eliason said between 10 to 13 dogs would be on the premises at one time.

Mr. Nelson asked Mr. Kops if a clothing store would be able to go into this building without a variance. Mr. Kops stated yes that a retail business could use this space and reviewed the zoning regulations for dog grooming.

Mr. Chorney asked if there was sufficient parking. Mr. Kops said there is sufficient parking for both of the uses on the property.

Mr. Houlding asked if Ms. Eliason would be renting the location and she replied yes.

Mr. Chorney asked if Ms. Eliason required a license from QVHD. Mr. Kops said that both QVHD and GNHWPCA would need to approve the location. Ms. Aloi submitted a copy of the approval from QVHD and the correspondence from RWA.

Mr. Chorney asked for comments in favor or against the application. There were none.

Mr. Chorney closed the public hearing.

2) **12-6455** 1930 Shepard Avenue, Requesting a variance of the following: Section 530.2.2.c to permit two rear lots where none are allowed. R-2 Zone, CMRE, LLC, Applicant

Mr. Ryan McEvoy, Professional Engineer, addressed the Commission and reviewed the site He explained that in 2007 a 4 lot subdivision was approved. The subdivision would have septic systems and be served by public water. An approval was received from IWC. A feasibility plan was approved by QVHD. The subdivision was approved but was never filed on the land records and does not technically exist. Mr. Ryan stated the application is for the approval of 3 lots, two of which would be rear lots with 25 foot access strips in lieu of a town road. The request of variance is to lessen the density with the access ways. There would be a reduction in the impervious surface and the new plan would also increase the distance from the wetlands. The use of access ways instead of a roadway would require no Town services. Mr. McEvoy submitted and read into the record a letter from Mr. George Mihae, 1904 Shepard Ave, which states that he has no objections to the proposed development. Mr. McEvoy explained that the variance for two rear lots is being requested because of the limited frontage on Shepard Avenue relative to the parcel. Mr. McEvoy said that due to the economic conditions and developing the property without constructing a road makes sense.

Mr. Nelson asked how long the road was going to be with the previous application and Mr. McEvoy replied 400 feet. Mr. Nelson asked how long the access ways would be with the new proposal and Mr. McEvoy replied approximately 250 to 300 feet.

Mr. Chorney asked Mr. Kops to review the zoning regulations for rear lots. Mr. Kops reviewed the previous and amended zoning regulations for rear lots. Mr. Chorney asked what the regulation allows for the length of a rear lot driveway and Mr. Kops replied that the maximum length is 400 feet. Mr. Chorney asked if the applicant receives approval for the 3 lots could another rear lot be developed at a later date. Mr. McEvoy stated that there are steep slopes and wetlands located on the 1.8 and another access way would be needed and he does not feel that another parcel could be achieved. Mr. Chorney discussed with Mr. McEvoy the possibility of recreating the subdivision with a roadway as previously approved.

Ms. Dove asked what happened to the existing house and Mr. McEvoy stated that it was demolished. Ms. Dove asked why the variance is being requested instead of putting a street in. Mr. McEvoy explained that the work required for a street is not financially beneficial. Ms. Dove stated that the zoning regulations for rear lots has been included for a reason and the Commission can not consider financial hardships as a reason for the variance. Mr. McEvoy said that there would be less environmental impacts and cost to the Town if a street is not developed. He discussed the location of the lots and shape of the property with the Commission.

Mr. Houlding asked if the house to be constructed would be larger with this proposal. Mr. McEvoy stated that proposed plan show a larger house to be conservative and it also shows the feasibility of the property. He advised the Commission that QVHD has given an approval for the septic system.
Ms. Dove feels that most of the houses in the neighborhood are small and she asked how this plan differs. Mr. McEvoy stated that the proposed houses will be three bedroom houses and will be approximately one third of the size shown on the plan. Mr. Nelson stated that the houses could also be larger.

Mr. Reynolds said that the previous approval was for four lots with a Town street and he asked what the hardship would be because the request is only for three now. Mr. McEvoy stated that the rear lot configuration would suit the shape and nature of the parcel because there is limited frontage. He said that the hardship is the shape of the parcel to develop a rear lot. Mr. McEvoy explained though the previous approval was for 4 lots if only three lots are developed it would require a smaller foot print and the need for Town services would be less.

Mr. Nelson asked what the topography numbers were from the street going back into the property. Mr. McEvoy reviewed the site and said there is a rise in the parcel. At the road the rise is about 10 feet and drops down as you move towards the rear of the parcel. It drops back approximately 5 to 10 percent going back to the wetland. He further reviewed the topography of the site with the Commission.

Ms. Dove asked what the conditions of approval were when the approval was received in 2007. Mr. McEvoy stated that he was not involved in the project when it received the original approval. He feels that the proposed plan before the Commission is a better approach to developing the parcel.
Mr. Chorney feels that the hardship cannot be the zoning regulation prohibiting rear lots and the cost of developing a road cannot be a factor. Mr. McEvoy said that the cost to construct a driveway vs. a roadway would be higher. Mr. Nelson asked if the driveways would be paved and Mr. McEvoy replied yes.

Mr. McEvoy said that the hardship as stated is the shape of the parcel and the issues of developing the 4 lots vs. the 3 lots is the constructability and the ease of moving forward. Mr. McEvoy further discussed the hardship with the Commission. Mr. Nelson said that a single lot develops and by subdividing would create its own hardship. Mr. McEvoy said that a previous approval for a subdivision was approved. Ms. Dove asked if the previous approval could be used to develop the lot or would a new approval be needed. Mr. Kops explained that the State Statute allows 180 days to file the subdivision map and if it is not filed within the allowed time than the subdivision is null and void. Mr. McEvoy said the IWC approval is still valid and the P&Z Commission had previously approved the application but it was not acted on. Mr. Lee said that the P & Z Commission would have the discretion to deny the application if it did not meet the requirements of Planning & Zoning and they would be compelled to approve it if the plan meet the qualifications.

Mr. Chorney feels a roadway could be put in with two lots placed in the rear with a turn-a-round. Mr. McEvoy said that from a financial perspective it is not clear cut and from the Town's perspective the cost to maintain a roadway maybe more. There are also more benefits beyond developing the parcel including environmental impacts and the use of the school system. Mr. Chorney asked Mr. Kops to discuss the benefits of the use of a double driveway vs. putting in a roadway. Mr. Kops explained that the regulations encourage rear lots if properly sub-divided with a road. A roadway can also be developed if there is not a rear lot.
Mr. Chorney asked for comments in favor of the application.

Mr. Harold Bosward, 1950 Shepard Avenue, addressed the Commission and said that he boarders the property on the north side. He asked for clarification of where the proposed house would be on the site. Mr. McEvoy reviewed with Mr. Bosward and the Commission where the houses would be placed. Mr. Bosward asked if after the lot is developed could there be additional homes be built in the future. Mr. Lee said that if approved for 3 lots theoretically someone could back and ask for a variance to create a third rear lot or road to be developed through the property. Mr. Bosward asked for clarification of where the house to be on Shepard Avenue would be placed. Mr. Bosward reviewed the proposed placement of the house on Shepard Avenue. Mr. Bosward stated that he feels that persons living in the area would favor the proposed plan instead of one that would include more houses. He explained that there are wetlands to the rear of the property that are very nice and a lot of wildlife in the area. Mr. Bosward feels it would be a shame to cut into the area by creating yard. Ms. Bosward said that a pond is also located in the rear of their yard. Mr. Bosward stated he has no objection to the plan.

Mr. Richard Stubbs, 309 Hillfield Road, addressed the Commission and stated that he is concerned about the pond and the wildlife. He feels that the turtles in the area will be disturbed. Mr. Stubbs said that the area is a quiet spot and the wildlife should not be disturbed. Mr. Lee asked Mr. Stubbs if he had a preference to the proposed plan vs. a 4 lot plan. Mr. Stubbs said that the disturbance should be kept to a minimum and the Commission should go and observe where the wildlife is.

Ms. Pamela Bosward, 1950 Shepard Avenue, addressed the Commission and stated that she is concerned with the amount of noise and asked if the 3 houses would be built at the same time. Mr. McEvoy said is unable to determine when and if the houses would be built at the same time. He said that if the variance is approved and the applicant receives P&Z approval, they would like to build as soon as possible.

Mr. Chorney asked for comments against the application. There were none.

Mr. Nelson asked who owns the property. Mr. McEvoy stated that the owner of the property is Mr. John Guerra and CMRE is the applicant. Mr. Nelson asked if CMRE is going to purchase the property. Mr. McEvoy said if approval is approved then CMRE will purchase the property.

Mr. McEvoy addressed the concerns stated by the neighboring property owners with regards to the impacts on the wetlands. He said that the proposed plans would move the development 100-120 feet away from the wetlands creating a greater buffer than the previous plan. Mr. Chorney asked about the upland review area required by IWC. Mr. Lee explained that the applicant would need to go back to the IWC for approval of the proposed plan.

Mr. Chorney closed the Public Hearing.

3) **12-6456** 1016 Benham Street, Requesting action under Section726.1.1 Appeal of Zoning Enforcement Officer's decision dated 3/9/12 ordering the discontinuance of the operation of a kennel, R-2 Zone, James Swaine & Marilyn Tuesley, Applicant

Mr. James Swaine, Property Owner, addressed the Commission and reviewed the Decision of the Zoning Enforcement Officer's decision. He stated that the decision indicates that he is subject to certain conditions of the zoning regulation 626 which says that they were found to be operating a commercial boarding kennel. Mr. Swaine reviewed the Connecticut State Statute 22-327. He said they have had since 2003 pure breed English Toy Spaniels and are known as a hobby or show kennel in the dog show world. Mr. Swaine said that they breed occasionally with the last breeding in 2010. He said that when purchasing the property he reviewed the zoning regulations 610 and 626. Zoning regulations 626 applies to only boarding kennels. Mr. Swaine stated that in his position that zoning regulation 610 is a chart that states if you are going to have certain uses you must apply for a special permit or variance under certain circumstances. There is a reference under the 610 chart to section 626 that talks about animals and it is a specific reference to all the sub sections under 626 that are set forth writing by the Hamden Zoning Commission. He reviewed zoning regulation 626 and how it references the sub sections. He said that the zoning regulations of Hamden only deal with boarding kennels. Mr. Swaine said that he is not a boarding kennel

but is a show or hobby kennel. He feels that the zoning regulations do not control his use of the premise. Mr. Swaine stated that he holds a Hamden Kennel License from the Town since 2003. The property has been inspected by the Hamden Control Officers since 2003 to insure that the animals are properly taken care of and properly housed. Mr. Swain explained that complaints were filed against him in March, 2011 and litigation followed. The complaints were filed with the animal control officer and the planning office. He said that no violations were found. The recent complaint originally found that they were not in violation then it was reconsidered and a notice of violation was issued. Mr. Swain stated that there is no provision in the zoning regulation for a kennel such as what he is allowed under the State Statute. Mr. Swain further reviewed the zoning regulations and in his opinion that the because he is not a boarding kennel and all dogs are owned by him, registered by the AKC and cannot be held by section 626. Mr. Swain feels that the reading of 610 is in error and only talks about boarding kennels. He feels that the ZEO's finding is inaccurate because he is not a boarding kennel and is free to continue the use because the Hamden Regulations on control boarding kennels.

Mr. Tim Lee, Assistant Town Planner, stated that the zoning regulations 626.5 deals with boarding kennels. He further stated that based on Mr. Swaine's representation to the ZBA shows that they are not a boarding kennel and finding that Mr. Swaine meets the definition of a boarding kennel would be difficult. The issue to whether they are a kennel and the town has the right to regulate. Mr. Lee reviewed the definition of a kennel as defined in the zoning regulations and section 610. He advised the Commission that it is the Town's position that the property owner needs to submit an application for a Special Permit for a kennel. Mr. Lee said that the applicant does not need to comply with section 626.5 because he is not a boarding kennel.

Mr. Nelson asked how do you define monetary gain because if Mr. Swaine's dog's are shown and win they receive money. Mr. Swaine said occasionally you do receive an award of money and occasionally he will sell a dog. Mr. Swaine stated that he disagrees with the Town's interpretation of Section 626 and 610 and discussed his interpretation of the regulations.

Mr. Lee said that the issue of monetary gain is to be determined by the Commission. Mr. Lee said there is no provision in the regulations that govern boarding kennels vs. kennels. He further stated that there is no provisions in the regulations which authorizes kennel use as engaged by the applicant. Mr. Lee reviewed section 210 with reference to a residential zone. He said that uses are either specifically authorized or prohibited under section 610.

Mr. Houlding asked if there is any case law that interprets a commercial kennel. Mr. Lee said that he has not researched it, but if the Commission would like to keep the application open he would do the research.

Ms. Dove reviewed section 210 and feels that the definition uses the word "or" sold for monetary gain.

The Commission had a lengthy discussion with Mr. Lee, Mr. Kops and Mr. Swaine about the interpretation of Section 610 and 626 and if the keeping of the dogs on property was as a boarding kennel vs. kennel and if there was monetary gain. Mr. Swaine explained to the Commission that they currently have 18 dogs, and he reviewed the process of moving the dogs if there is a litter. He stated that the raising and breeding of the dogs is a hobby and they do not directly advertise the litters, but that they do have sales. The discussion continued to determine if the housing provided for the dogs was within the zoning regulations definition of housing animals.

Mr. Swaine reviewed a report from the Animal Control Officer that was submitted with his application.

Ms. Marilyn Tuesley, 1016 Benham Street, addressed the Commission and stated that the garage was converted to house the dogs. There is air conditioning and heat in the garage. The dogs are primarily kept in the house, but they sleep in the garage. Ms. Tuesley said that there has been only one dog sold in the last four years and it was to be a therapy dog. A dog primarily has one to three puppies and she only breeds when she needs to show .

Mr. Chorney asked Ms. Tuesley if she offered a stud service and Ms. Tuesley said yes. Ms. Tuesley reviewed her website and does not advertise the puppies for sale. She said the dogs are placed for show and not for monetary reasons. Ms. Tuesley stated that it is a huge expense to show dogs. Mr. Chorney asked if this appeal is denied can

the applicant apply for a special permit. Mr. Kops said that if this appeal is denied that can appeal through the Superior Court or file for a special permit for a kennel. The Planning & Zoning Commission would need to determine if there is an adverse impact on the health, safety and welfare of the neighboring impact. Mr. Lee said that the applicant is appropriately before the ZBA and appealing the cease and desist order. The applicant is claiming that the cease and desist order should not apply because they do not fall under the zoning regulations. The Commission needs to determine whether the cease and desist should be upheld or denied. If denied the applicant can continue to run their operation. The Commission further discussed with Mr. Kops, Mr. Lee, and Mr. Swain the actions that can be taken with regards to the notice of violation and how it can be applied to the zoning regulations.

Mr. Swaine said if the ZBA upholds the notice of violation he feels it contains erroneous information. He would appeal the decision because he is not a boarding kennel which section 626 is not applicable to anything but a boarding kennel. Mr. Lee said that the board could theoretically find that Mr. Swaine is in violation of section 610.

Mr. Chorney asked for comments in favor of the application. There were none.

Mr. Chorney asked for comments against the application:

Ms. Katherine Macaione, 450 Main Street, addressed the Commission and stated that her house was built in 1963 and called it home in the interim. Until eight years ago she had peace and solitude in her home. In the last 7 years everyday between the hours of 5:00 a.m and 6:30 a.m she hears barking (even with windows closed. Ms. Macaione said that yesterday during the day there was continuous barking and a female voice yelled “shut up” and the dogs continued to bark. She feels that the value of her property is being reduced and that the area is zoned to be rural and not zoned for business purposes.

Mr. Michael Alberino, Attorney representing Vincent Wren, 425 Main Street, and he stated that the interpretation of application by Mr. Swaine and Mr. Lee of section 626.5 as it applies to boarding kennels only is narrow and literal. The interpretation guts the regulation of its practical and intended purpose of protecting the public and environment from noise, pollution and property values. He read a statement which questioned the interpretation of the regulation as it relates to the health, safety and welfare of the public and the environment. Mr. Alberino stated that there are wetlands nearby and with 18 dogs on the site he is concerned with the possibility of runoff of waste products. Mr. Alberino said that there has not been a discussion as to whether the operation also acts as a training facility and if it does it would be in violation of section 626.2.

Mr. Lindsay Graichen, 495 Main Street, addressed the Commission and stated that he lives 250 to 300 yards away for the property in question. There are 18 dogs that constantly bark and cannot enjoy his yard. Mr. Graichen over said that it is unfortunate that he cannot enjoy the yard he works so hard to maintain.

Mr. Vincent Wren, 425 Main Street, addressed the Commission and stated that during the daylight hours for three seasons of the year there is continuous barking. Mr. Wren said that fence was installed on the property and extends into the wetland area and the dogs are not only contained in patio and garage area.

Mr. Swaine stated that there was never any intention to cause harm to anyone. He said that with the issues raised at this meeting the zoning regulations should be interpreted narrowly and literally. The abutting neighbor on Benham Place has never approached him to complain. The dogs do bark, mostly when they go in and out for feeding. The dogs are not kept outside at night and are brought in for health reasons. The dogs do bark in the garage sometimes, but never more than a minute or so. Mr. Swaine said that there are no kennels built and the portable fencing was approved by the IWC and allows for the dogs to get some exercise. The dogs are kept on concrete runs as required by the State. Mr. Swaine stated that the report from the Animal Control Officer which observed the times and length of the dogs barking. Of late the dogs have been in the house because of construction being done at the house. Mr. Swaine would like to resolve the issues with his neighbors, but it is not the issue being addressed at this meeting. Mr. Swaine disagrees with councel's interpretation of the zoning regulations. Mr. Swaine said that when

a neighbor was interviewed by Animal Control she complained about the frog peepers noise coming from the wetlands.

Mr. Bob Macaione, 450 Main Street, addressed the Commission and stated that the Commission needs to take action because there are 18 dogs being kept in a garage. The zoning regulations should be amended to address this issue. Mr. Chorney explained that the Planning Department does listen to what happens at this meeting and can modify the zoning regulations as situations change. The zoning regulations are currently being amended and many changes are based on comments from the public.

Mr. Chorney closed the Public Hearing.

4) **12-6457** 67 Putnam Avenue, Requesting a variance of the following: Section 620.d to permit an accessory dwelling unit in a basement where no walls open to grade. R-4 Zone, Yanhua Xie, Applicant

Ms. Yanhue Xie, Applicant, addressed the Commission and reviewed the application. She is currently a research scientist at the Yale School of Medicine. She said that she is from China and lives alone in the house with her child. She would like to have an additional person live in the house in case of an emergency. Ms. Xie would like a private living space and does not want to rent a bedroom to someone. Ms. Xie submitted a Google map of the property (exhibit 1) and pictures of the property (exhibit 2). She reviewed the neighbor hood and the different uses within the neighbor hood. Ms. Xie said that previous to her purchasing the house in 2010 it was rented by students. She explained that the basement does not have an entire wall that opens to grade. There is a window on each wall that can be used as an emergency exit. Ms. Xie submitted (exhibit 3) and reviewed pictures of the basement. Ms. Xie discussed with the Commission the entry/exit into the apartment and she stated that she has spoken with the Building Department to determine what would be necessary to bring the exit/entry in to compliance.

Mr. Chorney asked if the work has already been done and Ms. Xie replied yes. Mr. Chorney asked if the deck and sheds existed prior to Ms. Xie purchasing the home and she replied yes. Ms. Xie reviewed with the Commission what would be done to bring the accessory dwelling into compliance as required by the building code and the zoning regulations. Mr. Kops advised the Commission that Ms. Xie will need to receive a zoning permit and building permit. Ms. Xie said that all outside structures existed prior to her purchasing the house. The rear yard allows for parking of three cars. Mr. Chorney is concerned with the amount of impervious surface and the curb cut into the driveway. Ms. Xie stated that she would work with the Planning Office to resolve any issues with the parking or impervious surface.

Ms. Dove questioned the hardship and said that it could not be a child in the home. Ms. Dove asked Mr. Kops if the apartment would make the dwelling a two family house. Mr. Kops replied that it is a limited accessory apartment. The Commission discussed if the existing apartment should be considered a multi-family dwelling and if there is a hardship. The Commission discussed if the need for an egress can be a hardship. The Commission discussed the existence of the apartment not being a legal dwelling. Ms. Xie said that she understands that she must live on the premises because it is an accessory dwelling. Ms. Dove said that an accessory dwelling requires the owner of the house to live on the premise. She also feels if the house is sold and the owner does not live in the house that it would be considered a two family house. Ms. Dove said that the regulations for accessory dwellings where put in place for a reason because they do not want all houses being allowed to be two family houses. She does not feel that the issue of safety because of a child living on the premises qualifies as a hardship. Ms. Xie said she is alone in the U.S. with her child and wants someone in the home for an emergency. Ms. Xie also feels that she is doing everything asked of her to comply with the zoning regulations. Ms. Dove feels said that if an exception is made for Ms. Xie then it would have to be made for everyone . She understands that Ms. Xie is from another country and Ms. Dove said that Ms. Xie has many qualifications. She does not feel that Ms. Xie is lost in the mass of America with no one here for her. Mr. Reynolds stated that he feels Ms. Dove was out of line with commenting on Ms. Xie status and that the applicant is doing everything necessary to comply with the regulations and building codes.

Mr. Chorney questioned if the intent of Zoning Regulations will be met once Ms. Xie complies with all the requirements of the Building Department.

Mr. Chorney asked for comments in favor of the application. There was none.

Mr. Chorney asked for comments against the application:

Ms. Pat Donahue, 81 Putnam Avenue, addressed the Commission and stated that the previous owner had his daughter and three other students living in the house and they did not live in the basement. She said that 30 years ago there were several houses in Whitneyville that converted to two and three family houses. The houses are close together and there is not a lot of parking available. The residents of Whitneyville had the zoning regulations changed to allow only one family houses. Ms. Donahue said this was the wish of the residents then and is still their wish now. She feels that many multi houses are ill kept. While walking today she noticed a one family house with two doorbells and was in disrepair. Ms. Donahue stated that if this application is allowed to become a two family house it will not revert back to a one family house. Ms. Donahue feels that Ms. Xie has other options to help care for her child. Ms. Donahue is against the application.

Mr. Chorney asked Mr. Kops to explain the difference between a two family house and an accessory dwelling. Mr. Kops reviewed the zoning regulation for section 620.d.

Ms. Dove asked how many square feet the apartment would be. Ms. Xie said that it is approximately 300 square feet. Ms. Dove said the egress to grade was put in the zoning regulations for a reason. Mr. Chorney said the owner must live on the premises and Mr. Kops said yes. Ms. Xie said she has worked with the Zoning Enforcement Officer to determine what variance was necessary to be in compliance with the regulations. Mr. Chorney asked about parking on the site. Mr. Kops replied that the applicant must meet the regulations or receive a variance. He said that the Assistant Zoning Enforcement Officer has been to the property. It was determined that the only variance she needed was in the application, if a variance is needed for the parking the applicant would not receive a zoning permit. Mr. Kops said that the Commission should look at the requested variance and its merit. If it is determined by the Zoning Enforcement Officer that additional variances are needed the applicant will need to submit another application.

Mr. Chorney closed the Public Hearing.

B. Regular Meeting

a. Discussion and voting on Public Hearing items.

<u>12-6453</u>

Ms. Dove made the motion to approve Application 12-6453. Mr. Reynolds seconded the motion. Ms. Dove stated that the piece of property slopes to the rear and inhibits the use and the required setback. The 14,000 lot where 20,000 lot is required will be adequate for a grooming facility. ***The motion passed unanimously.***

<u>12-6455</u>

Ms. Dove made the motion to deny Application 12-6455. Mr. Reynolds seconded the motion for discussion purposes. Ms. Dove said that the zoning regulations were put in place for a reason. Rear lots can cause difficulties that could allow the owners to put in subdivisions in the future. Ms. Dove feels that the hardship to put in a roadway vs. a driveway is questionable and being done for financial reasons and should not be considered. She further stated that the rational that building three houses is better than building four is a way to go around the zoning regulations in order to approve this application to approve two rear lots. Mr. Reynolds said that he does not understand the hardship because the applicant stated that a roadway must be built for four houses but decided not to and would only put in three houses. He does not see a hardship in the presentation for the request. He understands

the residents' concerns for the wildlife. He feels that ruling on the hardship would only be for financial reasons. Mr. Chorney said that wetlands have their only regulations and whether three houses or 4 houses there would be no impact on the wetlands. Mr. Houlding said the hardship was not established for approval. He said that in order to obtain a variance the applicant must prove the hardship and this was not done.

The motion to deny was approved unanimously.

12-6456

Mr. Chorney said that the Commission should determine Section 626 and Section 610 separately.

The Commission discussed at length with Mr. Lee if the application falls under Section 626 as defined in the zoning regulations for a kennel.

The Commission discussed at length with Mr. Lee if the Applicant has had monetary gains as defined by Section 610 in the zoning regulations and the testimony that was provided.

Mr. Houlding made the motion to sustain the Appeal of the Zoning Enforcement Officer's decision. Mr. Nelson seconded the motion.

Mr. Houlding said that based on the fact that section 626 is not a boarding kennel. He stated that under Section 610 the requirement to proof that the applicant had a commercial venture was not made by the testimony provided and did meet the requirements of the regulations. Mr. Houlding feels that if the appeal is not sustained then it could be overturned by an appeal in Superior Court. Mr. Chorney said there is a matter of the degree of profit. He said that there is a transaction made because they do occasionally sell a dog, but the question would be whether there is a profit made. Ms. Dove agrees that there is a transaction when a dog is sold. Mr. Nelson asked if monetary gain is selling the dog or if money is being made. The Commission discussed what the definition of monetary gain as defined in the zoning regulations and if monetary gain was determined by the testimony given.

Mr. Houlding, Mr. Reynolds, Mr. Nelson and Mr. Chorney voted in favor of the motion to sustain the Application to Appeal the Zoning Enforcement Officer's Decision. Ms. Dove abstained.
The motion passed 4-0-1.

12-6457

Mr. Nelson made the motion to approve Application 12-6457. Mr. Houlding seconded the motion. Mr. Nelson said the hardship is the zoning regulation that requires one wall and need for egress as a safety factor. The applicant proved that there are two means of egress. The Building Inspector advised the applicant what was needed to be done to bring the area to meet the requirements and she understands that it must be owner occupied. Mr. Chorney said that the applicant can meet the spirit of the regulation by having one wall to the rear and provide egress. He said that the ZEO will review the site for a zoning permit and the Building Department will inspect the site for safety. ***Mr. Houlding, Mr. Reynolds, Mr. Chorney and Mr. Nelson voted in favor of the motion. Ms. Dove voted against the application. The motion passed 4-1-0.***

b. Approve Minutes of March 15, 2012

Mr. Houlding made the motion to approve the Minutes of March 15, 2012 as written. Mr. Nelson seconded the motion the motion passed unanimously.

c. Old Business

There was none.

d. New Business

There was none.

e. Adjournment

Mr. Nelson made the motion to adjourn. Mr. Houlding seconded the motion. The motion passed unanimously.

The meeting adjourned at 9:52 p.m

Submitted by: _____
Stacy Shellard, Clerk of the Commission