

Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4390
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TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
24 MILFORD STREET

Applicant(s): James Murphy and Lori Ann Mosher Murphy
24 Milford Street
Medway, MA 02053

Location of Property: 24 Milford Street (Assessors' Parcel ID: 57-008).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs.

Members Participating: Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Christina Oster (Member)

Members Voting: Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Christina Oster (Member)

Date of Decision: April 21, 2021

Decision: **GRANTED WITH CONDITIONS**

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20 Day Appeal
May 19, 2021

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Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
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I. PROCEDURAL HISTORY

1. On March 26, 2021, the Applicants filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs.
2. Notice of the public hearing was published in the Milford Daily News on April 7, 2021 and April 14, 2021 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on April 21, 2021. The hearing was closed the same evening.
4. The Property is located in the Agricultural Residential II (AR-II) District. The front setback requirement is 35 feet, and the side and rear setback requirements are 15 feet. The minimum lot area requirement is 22,500 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Animal Control Officer.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.
7. The applicant, Lori Mosher Murphy, was granted a special permit on March 25, 2008 for a kennel on this property, limited to not more than five dogs on the premises at a time.

II. TESTIMONY

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform. All persons participated remotely.

Mr. Murphy and Ms. Mosher Murphy were present and shared a summary of their application. They have had a kennel license for up to five dogs since 2008. They explained that the rescue organization they work with is no longer active in Massachusetts, but they were recently contacted due to their connections with the rescue to take care of older dogs with medical conditions. Ms. Mosher Murphy went on to say that all the dogs are the same breed, Cavalier King Charles Spaniels, which are relatively small dogs. She noted that ten dogs are a lot, and

they would only need the expanded license for a few years.

Mr. White opened the discussion to the Board. In response to questions from the Ms. Oster, Ms. Mosher Murphy clarified that there is chain-link fencing already in place. She also stated that they currently have five dogs who are all sick. Mr. White stated that he lives near this property and did not realize there were that many dogs living there, which is a compliment to how well the applicants take care of the dogs. The Board was impressed with the letters of support both from Brenda Hamelin, the Animal Control Officer, and Healthy Paws Veterinary Center.

Ms. Saint Andre noted that Mrs. Mosher Murphy had mentioned a time limit for the special permit. She stated that this was a possibility, however, if the applicants want to continue with the kennel license for the higher number of dogs in the future, they would need to come back before the Board. She suggested the special permit have a condition that it would only be valid for these applicants. There was further discussion regarding potential conditions if the application were to be approved, including that there be a limit of not more than ten dogs, no kennel operation other than rescuing dogs, and that this permit would supersede and replace the previous special permit, and which of the Board's boiler plate conditions are applicable.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing and comments submitted by residents placed in the public record during the course of the hearings. The Board considered each special permit criterion separately.

A. Section 3.4 Special Permit Decision Criteria

- The proposed site is an appropriate location for the proposed use.*
There is currently a special permit for kennel operation for five dogs, the site is well managed and ten dogs cared for by the applicants could be handled on the site.
- Adequate and appropriate facilities will be provided for the operation of the proposed use.*
Animal Control comments show that the applicants have adequate facilities.
- The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
There is already fencing in place to prevent the dogs from leaving the property.
- The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
This is not a commercial kennel, so there will be no added traffic.

5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
There were no abutter or other comments suggesting that this would be an issue; the site is currently used as a kennel with no ill effects.
6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
The use is conducted so well that members of the Board were not aware that a large number of dogs live on this property.
7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
The zoning by-law allows for kennel operation in this district.
8. *The proposed use is consistent with the goals of the Medway Master Plan.*
The board believes the kennel will not be detrimental to the goals of the Master Plan.
9. *The proposed use will not be detrimental to the public good.*
There is already a kennel operation in place on this property.

The Board finds that the Applicants have demonstrated through the application and evidence submitted, including the plot plan and review of the proposed usage of the property, that they have met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw.

IV. CONDITIONS OF APPROVAL

1. This special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a new request.
2. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw. All conditions imposed by this Decision are mandatory, and any violation of a condition imposed by this decision may be a violation of the Medway Zoning Bylaw. Any violations of this Decision may prevent the issuance of a building permit and/or occupancy permit, or result in the issuance of a cease and desist order, noncriminal penalties, or fines, as further provided in Section 3.1 of the Zoning Bylaw. Please note that Section 3.1.F of the Zoning Bylaw provides:
 1. Anyone who violates a provision of this Zoning Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than three hundred dollars for each offense. Each day during which any portion of a violation continues shall constitute a separate offense.

2. As an alternative means of enforcement, the Building Commissioner may impose noncriminal penalties pursuant to G.L. c. 40, § 21D and Article XX of the Town's General Bylaws, in accordance with the following schedule:

First offense: warning (verbal or written)

Second offense: one hundred dollars

Third offense: two hundred dollars

Fourth and each subsequent offense per violation: three hundred dollars.

3. As provided in Section 3.4.E of the Zoning Bylaw, special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 30 days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested.

4. Not more than ten dogs are allowed on the premises at any one time.

5. No kennel operation is allowed other than the temporary fostering of rescue dogs as described by the applicants; a commercial kennel is not allowed.

6. Due to the personal nature of the kennel license for the applicants to use the property to care for these dogs, this special permit is valid only for the applicants, or either of them individually, but is not transferable and does not run with the land. The favorable letters provided for the applicants from the Animal Control Officer and Healthy Paws supported the Board's decision to grant this special permit for up to ten dogs specifically to these applicants.

7. This special permit supersedes and replaces the prior special permit for a kennel granted on March 25, 2008.

V. INDEX OF DOCUMENTS

A. The application included the following plans and information that were provided to the Board at the time the application was filed:

1. Hand Drawn Plot Plan, not dated

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Brenda Hamelin, Animal Control Officer on April 1, 2021
2. Email from Healthy Paws Veterinary Center on April 20, 2021

VI. VOTE OF THE BOARD

By a vote of 4 to 0 on a motion made by Gibb Phenegar and seconded by Christina Oster, the Zoning Board of Appeals hereby **GRANTS** the Applicants, James Murphy and Lori Ann Mosher Murphy, a **SPECIAL PERMIT** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for a Kennel License for up to 10 dogs for the property at 24 Milford Street (Assessors' Parcel ID: 57-008), in accordance with the application and subject to the **CONDITIONS** herein.

Member:	Vote:	Signature:
Brian White	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____
Gibb Phenegar	AYE	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws, chapter 40A, section 15.

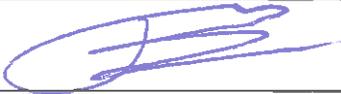
Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

In accordance with General Laws chapter 40A, section 11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty day period or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.

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