

**GREEN TOWNSHIP ZONING BOARD OF ADJUSTMENT
RESOLUTION MEMORIALIZING THE DENIAL
OF A USE OR *SPECIAL REASONS* VARIANCE
PURSUANT TO N.J.S.A. 40:55D-70(d)(1), TO
APPLICATION NO. BA 1313
DOGGIE CHALET, LLC
(BLOCK 34, LOT 11.02)**

WHEREAS, application having been made on August 27, 2013, by the Doggie Chalet, LLC, a limited liability company constituted of property owners Nicholas and Adriana Bradley, to the Green Township Zoning Board of Adjustment seeking use or *special reasons* variance approval on an after-the-fact basis for the subsisting use of the subject property, known and designated as Block 34, Lots 11.02, on the Green Township Tax Map, said property being commonly known as 282 Decker Pond Road, Andover, NJ, to use (as stated in the application form): *to operate a dog kennel/daycare on the premises*; and,

WHEREAS, in support of the application for the use variance, as aforesaid, the applicant having submitted the following:

- A completed *Application for an Appeal or Variance Request*
- A completed *Administrative Checklist*
- A signed permission for Board members to enter and inspect the subject property
- *An Affidavit of Ownership*
- A Certification of taxes paid through the third quarter of 2013
- *An Addendum to Green Township Zoning Board of Adjustment Application*
- An aerial photograph specifically denoting the subject property
- A photocopy of a portion of the Green Township Tax Map showing the subject property
- A series of (four) aerial photographs showing the subject property and its relationship to adjoining properties
- A State of New Jersey Business Registration Certificate issued to the Doggie Chalet, LLC
- A manufacturer's description of the proposed fencing system to be utilized
- A manufacturer's description of the proposed sound proofing to be utilized in the garage
- A series of (8) photographs of the subject property
- A copy of the applicant's advertising brochure including overview description, services, requirements for dogs and dog owners
- A property survey prepared by Christopher J. Lantelme, P.E., L.S. dated April 18, 2011

WHEREAS, hearings were held upon the application at the regular meetings of the Board of Adjustment convened on November 7, 2013; February 6, 2014 and March 6, 2014; and,

WHEREAS, at the hearings held upon the application, the applicant's principals, Nicholas and Adriana Bradley, appeared and were represented by counsel, to wit, Michael Selvaggi, Esq.; and,

WHEREAS, the applicant having presented the testimony of the following witnesses:

- Applicant/principal **Nicholas Bradley**.
- Applicant/principal **Adriana Bradley**.
- **Joseph Golden**, the applicant's professional engineer and professional planning consultant.
- **Pamela Sleppin**, a realtor.
- **Robert Heffernan**, the applicant's professional real estate appraiser.

WHEREAS, the following objectors, supporters and parties interested in the application appeared before the Board and testified at the March 6, 2014 hearing:

- **Gabriella Cook**, a co-owner of a similar business enterprise known as *Doggone Farms*.
- **Stuart Feldstein**, a resident located at 275 Decker Pond Road.
- **Richard Zeckendorf**, a resident at 299 Decker Pond Road.
- **Jeff Wilson**, a resident at 288 Decker Pond Road.
- **Christine Marcantonio**, a resident at 299 Decker Pond Road.
- **Jerry Jensen**, a resident at 278 Decker Pond Road.

WHEREAS, the Board having solicited site inspections, reports and the testimony of John Miller, P.E., P.P., the Township and Zoning Board of Adjustment engineer, and the reports and testimony of Jessica Caldwell, P.P., the Zoning Board of Adjustment professional planning consultant; and,

WHEREAS, the Board having determined, based upon the review of the proof of service and proof of publication conducted and provided by the applicant and reviewed and confirmed by the Board of Adjustment secretary, that the applicant had provided proper, timely and adequate notice of the relief being sought before the Board by having provided notice thereof, by certified mail, return receipt requested, to all property owners located within 200 feet of the subject property and to other agencies, persons and entities required to be provided with notice and the applicant having published, once, in the official newspaper of the Township of Green, a notice of said application and, accordingly, the Board was vested with jurisdiction to hear the application and take Official Action with respect thereto; and,

WHEREAS, as a result of the application made to it, the Board's review of same, the hearings held thereon at the regular meetings of the Board convened on November 7, 2013; February 6, 2014 and March 6, 2014, the Green Township Zoning Board of Adjustment herewith describes the application as follows, basic **FINDINGS OF FACT**:

1. The applicant is Doggie Chalet, LLC, a limited liability company, in which (presumptively) Nicholas and Adriana Bradley are principals.

2. The subject property, which is owned by Nicholas and Adriana Bradley, is known and designated as Block 34, Lot 11.02, on the Green Township Tax Map. The subject property is commonly known as 282 Decker Pond Road, Andover, NJ 07821.
3. The subject property has frontage upon, existing driveway access to and is located on the southerly (actually, southeasterly) side of Decker Pond Road.
4. The subject property is an irregularly-configured parcel having a width, measured along the edge of the right-of-way of Decker Pond Road, of 245 feet; having an easterly side line length of 541.25 feet (total of both sidelines on either side of the *angle point*); has a westerly side line length (only a portion generally perpendicular to Decker Pond Road) of 331.39 feet and contains a total area of 4.7 acres or 206,328 sq. ft. as shown on the Christopher J. Lantelme, P.E., L.L.S. survey dated April 18, 2011.
5. Presently located upon the subject property and as shown on the Christopher J. Lantelme survey plat dated April 18, 2011 are the following improvements:
 - A macadam driveway intersecting the frontage of the subject property near the westerly corner thereof traversing, in a semi-circular direction, to the left (east) to a parking and turn around area located along the westerly side of the dwelling house.
 - A one-story frame dwelling house known as 282 Decker Pond Road and having a front yard setback of 148.6 feet; an easterly side yard setback of 59.9 feet; a westerly side yard setback of 104.7 feet and a rear yard setback of (undimensioned).
 - Located to the rear (southerly portion) of the dwelling house is an attached (by means of a *breezeway*) structure labeled “garage/kennel”. It is that structure and a portion of the subject property to be enclosed by a chain-link fence which are the specific subjects of this use variance application.
 - There is an *open shed* located to the rear (southerly of the dwelling house) and in proximity to the westerly property side line.
 - There is a frame shed located well to the rear of the dwelling house.
6. Application has been submitted to the Board of Adjustment pursuant to the provisions of the Municipal Land Use Law, particularly N.J.S.A. 40:55D-70(d.)(1) to permit, on an after-the-fact basis, the applicant to: *operate a dog kennel/daycare on the premises.*

7. This application for after-the-fact use variance approval has apparently been *precipitated* by a *Zoning Violation/Cease Operations* notice issued by (former) Zoning Officer Patricia Fischer by letter dated August 6, 2013.
8. That *Zoning Violation/Cease Operations* notice provides in part that:

Currently you are in violation of the municipal code at Sections 30-5.9c, Issuance of Zoning Permits, 30-34.1, Permitted Principal Uses in the AR & R Zone, and 30-34.2, Permitted Accessory Uses in the AR & R Zones.

Therefore, at this time you are to cease all dog related kennel/daycare operations on the property located at 282 Decker Pond Road. This must be accomplished within 30 days of the date of this notice or by September 6, 2013 in order to avoid summons being issued without further notice. Please contact me on or before September 6 in order to arrange an inspection of your property for compliance.
9. Particularly, it appears from the applicant's marketing brochure submitted and from the testimony of Nicholas Bradley provided, under oath, at the Board of Adjustment hearing held on November 7, 2013, that the *dog kennel/daycare* operation on the premises has been on-going for two and one-half years last past.
10. That operation consists of an existing kennel located in the applicant's garage and the utilization of *dog runs* established on the subject property.
11. The prior owner of the subject property, who sold same to the present owner, Nicholas and Adriana Bradley, was Carol Thorson.
12. The testimony of the applicants and that of interested parties who appeared before the Board was to the effect that Ms. Thorson previously operated some form of kennel or dog run, although it was not clear from the testimony whether that was in support of dogs owned and showed by her or whether it included housing dogs owned by third-parties.
13. Applicant, Nicholas Bradley, testified at the November 7, 2013 hearing that approximately 85-90% of their business is generated in the Glen Ridge/Montclair, NJ area, leaving only the difference (10-15%) representing business from either Green Township or areas in closer proximity to Green Township.
14. Applicant, Nicholas Bradley, testified that they (he and his wife) have established a *dog limitation* at ten (10) which does not include the three (3) dogs personally owned by the Bradleys.
15. The applicant presented the testimony of Pamela Sleppin, who testified at the February 6, 2014 Board of Adjustment hearing.

16. Ms. Sleppin's testimony was that she is a licensed real estate broker and was involved in the listing and sale of the subject property when Carol Thorson was the owner thereof.
17. Ms. Sleppin further testified that she had *analyzed* a subdivision constituted of a number of new homes located in Byram Township which were in close proximity (with at least one being contiguous) to a dog kennel operation. However, the potentially most significant *comparable sale*, i.e., the residence located contiguous to the dog kennel, was not analyzed or at least the results of the analysis were not testified to.
18. Ms. Sleppin's conclusion was that, after her analysis of ten sales in Byram Township (with the exception of the adjoining residence not analyzed), there appeared to be no *negative influence* on the residential market created by the proximate dog kennel operation.
19. The applicant also presented the testimony of Robert Heffernan, a well-credentialed and well-known real estate appraiser.
20. Mr. Heffernan's primary *comparable sale* (although others were presented) was the residence adjoining the subject property (located to the left side thereof) and known as 288 Decker Pond Road.
21. Mr. Heffernan's conclusion was that neither the sales price, nor the *market time* of that adjoining *comparable sale*, were negatively influenced by the kennel operation then conducted by Carol Thorson.
22. Mr. Heffernan's testimony was that his conclusions were based upon the fact (or assumption) that the kennel operation on the Carol Thorson property was active and on-going at the time of the sale of 288 Decker Pond Road and that the purchaser of 288 Decker Pond Road knew or, through the exercise of reasonable diligence, should have known that the kennel existed and was in operation, yet neither the market value nor market time were negatively impacted.
23. However, Mr. Heffernan made no mention and, accordingly, it is unclear whether he was even aware that the former kennel operation conducted by Carol Thorson was never approved (by the Board of Adjustment), was in violation of the Township Zoning Ordinance and does not appear to have been a licensed facility.
24. However, Jeff Wilson, the owner and resident at 288 Decker Pond Road (Mr. Heffernan's primary *comparable sale*), testified that he was entirely unaware that there was any kennel operation in existence on the Thorson property when he purchased his property there was no kennel in operation at that time and the

- property, including the residence, was vacant. Additionally, Mr. Wilson indicated that if he were aware of such a kennel operation, he would not have purchased the subject property at all, let alone for the sales price he paid.
25. The applicant presented the testimony of Joseph Golden, the applicant's professional engineer and professional planning consultant.
 26. Mr. Golden's testimony included, but was not limited to, the suggestion that there is an unsatisfied *community need* for this dog kennel/dog boarding operation based upon some market research conducted by his wife.
 27. Mr. Golden further testified that, with respect to site suitability, the property itself and the structure (the applicant's residence) were *ideally set up* for this use for considerations which included, but were not limited to, the subject site being wooded.
 28. However, Mr. Golden was unable to do more than estimate (as opposed to specifically quantify) the grade of the driveway which, based upon the report of John Miller, P.E., the Board of Adjustment engineer is in excess of the maximum 15% permitted by the Green Township Driveway Ordinance, nor was Mr. Golden able to specifically quantify the total rise in elevation from the driveway intersection of Decker Pond Road to the *landing* contiguous to the applicant's detached garage.
 29. However, the Board of Adjustment engineer, John Miller, P.E., reported to the Board (by report dated October 21, 2013) that, in order to satisfy the grade requirements (limitations) of the Class II driveway reconstruction plan and profiles driveway (the existing driveway being devoted to a residential and **commercial** use is classified as a Class II driveway) would require massive earthwork and tree removal and significant realignment to construct a conforming (to Class II driveway requirements) driveway.
 30. The Board of Adjustment was concerned that, despite the fact that the applicant's professional engineer had been involved in this application which was on-going before the Board of Adjustment from at least November 7, 2013 (the date of the first hearing thereof) through March 6, 2014 (the date of the last hearing and decision) no site plan, driveway reconstruction plan and profiles (existing or proposed), nor any sight distance analysis of the existing intersection nor driveway proposed realignment/construction plan had ever been generated, nor had any engineering specifics and particulars, as to the feasibility and estimated cost thereof (in order for the Board of Adjustment and the applicants to determine feasibility for such a commercial operation) had ever been provided. Such specific plans would have enabled the Board to evaluate the nature and extent of tree removal necessary to construct the realigned (and conforming) driveway and

the visual consequence of such tree removal to the neighbors, neighborhood and streetscape.

WHEREAS, as a result of the foregoing basic **FINDINGS OF FACT**, the Green Township Zoning Board of Adjustment hereby makes the following ultimate **CONCLUSIONS BASED THEREON**:

- a. The subject property is located within the AR-5/2 Agricultural Residential Zone District wherein, by virtue of the provisions of Chapter XXX Land Use Regulations, Article XIII, Section 30-34.1 *Permitted Principal Uses*., are as follows:
 - Keeping and raising of horses or other large animals on properties constituted of a minimum of 3 ½ acres.
 - Single family detached dwellings.
 - Public parks, recreation areas and open space areas.
 - Municipally owned or operated facilities.

- b. By virtue of the provisions of Section 30-34.2, the *Permitted Accessory Uses* areas follows:
 - Private garages.
 - Normal residential storage structures.
 - Other normal residential structures...
 - Barns, silos and other customary structures in connection with permitted agricultural uses.
 - Off-street parking areas...
 - Signs...
 - Home occupations.
 - Not more than two (2) roomers or boarders per dwelling unit.
 - Rooftop solar arrays...
 - Ground-mounted solar arrays...

- c. By virtue of the provisions of Section 30-34.3, *Conditional Uses* are as follows:
 - Churches or similar places of worship.
 - Public an private schools, colleges and academies.
 - Private or commercial recreational facilities...
 - Public utility facilities.
 - Commercial greenhouses and nurseries.
 - The office of a professional person residing on the premises.
 - Cemeteries.
 - Hospitals.

- Wind production systems.
 - Solar production systems.
 - Small wind energy systems.
- d. Accordingly, the proposed use, to wit, a *dog kennel/daycare on the premises*, is neither a permitted principal, accessory nor conditional use in the AR 5/2 Agricultural Residential Zone District, thereby requiring the grant of a use or *special reasons* variance pursuant to N.J.S.A. 40:55D-70(d.)(1)
- e. The use variance application is made pursuant to the provisions of the Municipal Land Use Law, particularly, N.J.S.A. 40:55D-70(d.)(1), which provides that one of the categories of use variances is a *use or principal structure in a district restricted of such use of principal structure*.
- f. N.J.S.A. 40:55D-70(d) vests in the Zoning Board of Adjustment the power to: *In particular cases and for special reasons, grant a variance to allow a departure from regulations pursuant to article 8 of this act*. The foregoing are the so-called *positive criteria* attending use variance applications.
- g. The so-called *negative criteria* which must be satisfied are that: *No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance*.
- h. To be successful and secure the grant of a use variance, an applicant must demonstrate and the Board of Adjustment must find that sufficient and compelling *special reasons* exist. *Special reasons* mean that the granting of the application would have a benefit beyond that confined, exclusively, to the applicant, only.
- i. *Special reasons* mean, generally, that the granting of the application will promote the purposes of the Municipal Land Use Law, the purposes of the Green Township Master Plan, the purposes of the Green Township Zoning Ordinance or would have some public purpose, public significance or public benefit.
- j. One of the leading if not **the** leading case on use variances was decided by the New Jersey Supreme Court in 1987 and is **Medici v. BPR Co.** (107 N.J. 1).
- k. The New Jersey Supreme Court in **Medici** undertook to re-educate boards of adjustment as to their rights and obligations in administering use variance applications, emphasizing the need to strictly adhere to the statutory standards attending such variances.

- l. The New Jersey Supreme Court, in Medici, found that a "course correction" was required with respect to the way boards of adjustment were commonly granting use variances despite a lack of demonstration of the applicant's statutory entitlement to same.
- m. The Court, in Medici, held as follows with respect to the use variance administration process:
 - i. If the use for which a variance is sought is **not** one that inherently serves the public good, the applicant must prove and the board must specifically find that the use **promotes the general welfare** because the proposed site is **particularly suitable** for the proposed use.
 - ii. An **enhanced quality of proof**, as well as clear and specific findings by the board of adjustment that the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance, are required.
 - iii. Such proofs and findings must satisfactorily reconcile the grant of a use variance with the ordinance's continued omission of the proposed use from those permitted in the zone, thereby providing a more substantive basis for the typically conclusionary determination that the variance *will not substantially impair the intent and purpose of the zone plan and zoning ordinance*.
 - iv. The foregoing requirements apply to all use variance cases thereby effectuating the Legislature's apparent objective of encouraging municipalities to make zoning decisions by ordinance, rather than by variance.
 - v. Although certain commercial uses may inherently serve the general welfare in a particular community, the typical commercial use can be better described as a **mere convenience** to its patrons than as an inherent benefit to the general welfare.
- n. Consequently, it is required that a successful applicant for a use or *special reasons* variance must satisfy the so-called *positive criteria* and the so-called *negative criteria*.
- o. That is, the applicant must demonstrate, in order to secure the grant of the use or *special reasons* variance, the following:

- i. That the use **promotes the general welfare** because the proposed site is **particularly suitable** for the proposed use.
 - ii. By **an enhanced quality of proof** that the grant of the use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance.
 - iii. That the proposed use will not result in any **substantial detriment to the public good**.
- p. The showings outlined and required by paragraphs ii. and iii., above, must be **entirely independent** of the demonstration of *special reasons*, i.e. the demonstration of *special reasons*, in view of the June 30, 1997, amendment to the Municipal Land Use Law use variance provisions (N.J.S.A. 40:55D-70) accomplished by Ch. 145, P.L. 1997, gives an applicant no advantage or presumption, whatsoever, with respect to satisfaction of the *negative criteria* that *the granting of the variance sought will not result in substantial detriment to the public good nor in substantial*.
- x. The Board is not satisfied that the applicant (the applicant LLC, the applicant's principals, Nicholas and Adriana Bradley, nor any of the applicant's witnesses, either jointly or severally) have established the existence of *special reasons* which would allow and justify the granting of the use variance sought.
- y. Additionally, the Board is not satisfied that the applicant has demonstrated the variance sought can be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the Zone Plan and Zoning Ordinance of Green Township.
- z. Rather, it appears to the Board of Adjustment that *special reasons* do not exist or at least have not been demonstrated to exist and it is the applicant's burden to do so.
- aa. It appears to the Board of Adjustment that the subsisting use (proposed to be *legitimized* by an after-the-fact basis use variance grant) is, as stated in **Medici**, *a typical commercial use... better described as a mere convenience to its patrons than as an inherent benefit to the general welfare*.
- bb. Accordingly, the Board finds and concludes as follows:
- The use has not been demonstrated to promote the general welfare because the proposed site is *particularly suitable* for the proposed use.

- The applicant has failed to demonstrate, *by an enhanced quality of proof, that the grant of the use variance is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance* of Green Township.
- The proposed use will, in fact, result in *substantial detriment to the public good.*
- Particularly, the Board is of the opinion and herewith finds and concludes, that the continued operation of a kennel, with its visual and audible negatives and potential (at least not demonstrated as **non-potential**) negative influence on adjoining and proximately located residential properties, with respect to sales prices and enhanced market times will result in *substantial detriment to the public good.*

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Green that, as a result of the foregoing basic **FINDINGS OF FACT** and ultimate **CONCLUSIONS BASED THEREON** the following **OFFICIAL ACTION** is taken with respect thereto:

USE or SPECIAL REASONS VARIANCE APPLICATION NO. BA 1313, being the application of **NICHOLAS AND ADRIANA BRADLEY T/A DOGGIE CHALET, LLC**, seeking, on an after-the-fact basis, use variance approval to facilitate the continued operation of a *dog kennel/daycare on the premises* on property owned by the applicants, said property known and designated as Block 34, Lot 11.02, on the Green Township Tax Map and said property being commonly known as 282 Decker Pond Road, **BE** and same is herewith **DENIED**.

**GREEN TOWNSHIP ZONING BOARD
OF ADJUSTMENT**

EUGENE BAMBARA, CHAIRPERSON

DESIREE L. DUNN, SECRETARY

I hereby certify the foregoing Resolution to be a true and complete memorialization of the Official Action taken by the Green Township Zoning Board of Adjustment at its regular meeting held on March 6, 2014 by a motion and vote as follows:

**MOTION TO DENY THE USE OR SPECIAL REASONS VARIANCE TO
APPLICATION NO. BA 1313 – DOGGIE CHALET, LLC – 282 DECKER POND ROAD
(BLOCK 34, LOT 11.02):**

IN FAVOR: Chairperson Bambara; Mr. Roller; Mr. Neilan; Ms. Mullen, Mr. Fox;
Mr. Tommaso.

OPPOSED: None.

ABSTAIN: Mr. Muller.

ATTEST:

DESIREE L. DUNN, SECRETARY

Revised: May 6, 2014 with revisions to Page 5: 17.; 18; new 23. and additional language to new 30.

Dated: May 1, 2014

DoggieChaletLLCDenial.Reso

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Application No. BA 1313

Doggie Chalet, LLC
Denial of Use or Special Reasons Variance

Prepared by: Lyn Paul Aaroe, Esq.
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