

Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Benjamin Kaufman, Clerk

OWNERS OFFICE
361-375 BOYLSTON ST

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0025
375 BOYLSTON STREET

Petitioner 361-375 Boylston Street LLC applied to the Building Commissioner for permission to convert a building from office use to a veterinary clinic. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 28, 2022, at 7:00 p.m., virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board, and to all others required by law. Notice of the hearing was published on April 14, 2022, & April 21, 2022, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on Thursday, April 28, 2022 at 7:00pm
Registration Link: <https://bit.ly/3NCWAQQ>

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

Petitioner: 361-375 Boylston Street LLC **Address:** 375 Boylston Street
Zoning: L-0.5 **Precinct:** 6
Description: Change use to veterinary clinic

The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary):

§4.07 – TABLE OF USE REGULATIONS, USE #20A
§5.09.2.A – DESIGN REVIEW
§8.02 - ALTERATION OR EXTENSION

ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to **Polly Selkoe** (pselkoe@brooklinema.gov). All plans and submissions may be found at: <https://brooklinema.gov/DocumentCenter/Index/2352>.*

Public testimony will be taken during the hearing as normal.

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@brooklinema.gov, or by checking the Town meeting calendar at: www.brooklinema.gov.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 4/14/2022 & 4/21/2022

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 375 Boylston Street, Case #2022-0025, to July 7, 2022, without discussion.

On July 7, 2022, the Zoning Board of Appeals held a public hearing. Present at the virtual hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Paul Bell. The

case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Michael Schornack, MD Architects, 6470 N. Shadeland Avenue, Suite A, Indianapolis, Indiana.

Zoning Board of Appeals Chair Geller called the virtual hearing to order at 7:00 pm. Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen presented the case for the Petitioner stating that the Petitioner has operated the VCA animal hospital location at 678 Brookline Avenue for more than thirty years and added that the Petitioner seeks to move its business operation to the building at 375 Boylston Street. He continued that the site at 375 Boylston is currently unoccupied, that it is in an L-0.5 zoning district, and that it was formerly used as an administrative office space for Brigham and Women's Hospital. Attorney Allen noted that the proposed location would bring the animal hospital closer to its employees, seventy percent of whom already walk or utilize public transportation to reach work, and to its desired clients.

Attorney Allen continued that an impact statement addressing the items required under **Section 5.09** of the Zoning By-Law had been submitted, including an acoustical study, a letter from an HVAC engineer, a summary of the veterinary practice and the services offered, total employee counts broken down by weekday and weekend, plans for the hours of operation and the receipt of shipments, and security measures for pharmaceuticals. He continued that all planned changes were interior, with the exception of some boarded windows on the east side of 375 Boylston that the Petitioner plans to re-open. Attorney Allen noted that the Health Department has

given its support to the Petitioner after the latter made changes requested by the former, including installing a concrete pad beneath the dumpster and installing a new hose connection to wash the area as needed. He concluded by stating that the Petitioner plans to lease 12 parking spots at the proposed location for use in connection with the business operation and that the petitioner will discontinue its practice of boarding pets overnight.

Chair Geller then inquired into how the number of leased parking spots was calculated and how the parking lot would function. Attorney Allen responded that the proposed parking situation represents an improvement over the Petitioner's existing parking lot, which, he noted, contains just eight spots and without an increase in the number of employees, clients or other occupants. Mr. Schornack reiterated that the new location would enable more than 70% of the Petitioner's employees to commute to work by foot or public transport.

Board Member Meiklejohn inquired into the total number of parking spots and their locations in relation to the proposed location of the Petitioner's business. Attorney Allen responded that 12 total parking spots are planned and, in reference to a digital presentation, identified the parking spots' location as on the wall that intersects the north side of 375 Boylston. Board Member Bell then inquired as to whether the Petitioner is the tenant or owner of the building. Attorney Allen responded that the Petitioner is a tenant.

Attorney Allen then reviewed the requested zoning relief, stating that special permits were required under three sections of the Zoning By-Law. First, he stated that because the building is located in an L-0.5 zoning district and because the proposed use is for an office or clinic of a licensed veterinarian for the treatment of animals, a special permit is required under **Section 4.07**, Table of Use Regulations 20A. Attorney Allen continued that the Petitioner had submitted the aforementioned professional reports required under for an impact statement under that section to

the Zoning Board of Appeals. Second, Attorney Allen noted that a special permit was needed under **Section 8.02**, as the Petitioner plans to make minor exterior modifications to the structure by removing wooden boards from windows on the east side of the building.

Attorney Allen then stated that a third special permit was needed upon design review under **Section 5.09.2.A**, given the proposed lot's proximity to Beacon Street. Attorney Allen then reviewed the special permit requirements enumerated in **Section 9.05**, stating the followings: 1) Specific site is an appropriate location for such use: The property is located in a L-0.5 local business district, the proposed use is for a business, and the area consists of similar-sized single-story commercial buildings. 2) Use will not adversely affect the neighborhood: Reports have been submitted relating to HVAC, noise, health and safety, and other concerns, and no adverse effects are expected. Moreover, no opposition to the proposed use has been made public, and, after making requested changes, including installing a concrete pad beneath the dumpster and installing a new hose connection to wash the area as needed, the Petitioner has received the support of the Health Department. Additionally, the Petitioner is proposing to move just one-half mile from its current location, where it has operated for thirty-two years without apparent adverse effect, and it plans to discontinue the overnight boarding of pets. 3) No nuisance or serious hazard to vehicles or pedestrians: There would be no change to the circulation for vehicles or pedestrians typical for the site when it is occupied. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Chair Geller then called for public comments in support of or in opposition to the Petitioner. No public comments were submitted.

Chair Geller then called upon Planner and Zoning Coordinator Madison Anthony to present the Planning Board report.

FINDINGS

Section 4.07, Table of Use Regulations, Use #20A: Office or clinic of a licensed veterinarian for treatment of animals, including laboratories and holding facilities. Studies by recognized experts shall be submitted to insure, to the satisfaction of the Board of Appeals, that the use will be constructed so as to safeguard nearby properties against undue noise, odor, and improper waste disposal.

Section 5.09.2.A, Design Review: Section 5.09 states that Design Review is required for any alteration to a structure which is located on or within 100 feet of Boylston Street. This project falls under this category, and therefore requires Design Review. The applicant has submitted an Impact Statement as required by §5.09.3.C, which describes how the project satisfies the Community and Environmental Impact and Design Standards of §5.09.4.

Section 8.02 – Alteration or Extension

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Staff is supportive of the proposal as the use is appropriate in this commercial section of town. She continued that the applicant has demonstrated through various technical reports that the proposed veterinary clinic will not have an adverse impact on surrounding properties, and that the reports include an analysis of acoustics, odor and waste and that the Department is satisfied with the findings. Ms. Anthony added that a review of the application by the Health Department has been requested by Planning staff and a response has been received. She continued that the requests of the Health Department related to dumpster management have been incorporated into the conditions of the decision, and that the Planning Department also recommends a condition that requires other control measures be undertaken in the future should noise levels be excessive, or odor or waste concerns arise in the future.

PLANNING BOARD RECOMMENDATION

Ms. Anthony stated that the Planning Board is supportive of this proposal. She added that the Board feels that the use is appropriate in this location and that the applicant has adequately demonstrated that the activities of the vet clinic will not have an undue impact on surrounding

properties. Ms. Anthony noted that, while the Board also suggested that the applicant explore adding a ramp at the rear of the building to allow clients to walk into the building directly from the parking area in the rear with their pets, the Board recognizes that the topography of the site could preclude this option.

Therefore, Ms. Anthony stated that the Planning Board recommends approval of the site plan by J Webby Consulting LLC, dated 1/18/22, architectural plans by MD Architects, dated 1/25/22, and supporting documents from Spencer Engineering LLC, dated 3/23/22, and Unison Acoustics LLC, dated 3/15/22, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Dumpsters shall be enclosed from public view and placed on a concrete pad. A hose bib shall also be provided to wash down the concrete pad(s) when needed. Further control measures shall be undertaken if such background noise levels are exceeded during the operation of the facility, or other odor or waste complaints arise in the future.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair Geller then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department concurred with the Planning Board analysis and added that, should the Board grant the requested relief, the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes. Ms. Anthony added that the Building Department requests an additional condition, specifically that "prior to the issuance of a certificate of occupancy, the applicant shall

submit a trash-management plan for review by and approval of the Health Commissioner or designee.”

In response to Chair Geller’s inquiry, Attorney Allen stated that the Petitioner was amenable to including the additional condition.

In deliberation, Board Member Meiklejohn suggested changing the language in the second condition of the Planning Board’s recommendation to make it clearer. Board Member Meiklejohn concluded that the use is appropriate to warrant relief under **Section 4.07**, that the proposal met the requirements for design review under **Section 5.09.2.A**, and that he would vote to approve the relief as requested.

Board Member Bell concurred with the statements of Board Member Meiklejohn and also voted to grant the requested relief.

Chair Geller then stated that he believed the proposal met the requirements of **Section 9.05** for design review and that he would also vote in favor of the proposal, subject to revision of the conditions.

The Board then determined by unanimous vote that the proposal met the requirements for a special permit under **Section 4.07**, Table of Use Regulations, Use #20A, to allow an office or clinic of a licensed veterinarian for the treatment of animals, under **Section 5.09.2.a**, for design review, and under **Section 8.02**.

In addition, the Board made the following specific findings under said **Section 9.05** based on the evidence submitted at the hearing and the Board’s deliberations:

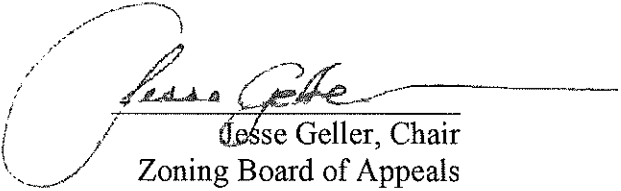
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low- and moderate-income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a certificate of occupancy, the applicant shall submit a trash-management plan for review by and approval of the Health Commissioner or designee. Said plan shall provide dumpsters that are enclosed from public view and placed on a concrete pad and a hose bib to wash down the concrete pad(s) when needed.
3. During the operation of the facility, if odor or waste complaints are submitted, the Petitioner shall undertake further control measures, subject to review by and approval of the Health Commissioner or designee.
4. During the operation of the facility, if background noise levels exceed the maximum permitted under the Noise Control-Law, the Building Commissioner or designee shall require the Petitioner to provide additional sound attenuation mitigation or other measure to comply with the Article 8.15, or its successor.
5. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

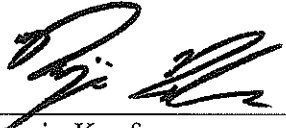
Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 7/20/2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals