



BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Palermo

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0047
289 HARVARD STREET

Petitioner Small Door Vet applied to the Building Commissioner for permission to convert a building from a bank 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 August 18, 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 August 4, 2022, & August 11, 2022, in the Boston Globe, a newspaper published in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE – Zoning Board of Appeals

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing on

Date/Time: Thursday, August 18, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3J7xgR6>

Petitioner: Small Door Vet

Address: 289 Harvard Street

Subject: Convert interior tenant space to accommodate veterinarian use

Nature of Action/Relief:

§4.07 – TABLE OF USE REGULATIONS, USE #20A

Plans and submissions may be viewed online at

<https://brooklinema.gov/DocumentCenter/Index/2352>

Interested persons may provide comments at the public hearing or by submitting written comments by email to manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

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

Publish: 8/4/2022 & 8/11/2022

On August 18, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Neil Wishinsky 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.

Zoning Board of Appeals Chair Schneider called the virtual hearing to order at 7:00 pm. Chair Schneider 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. Attorney Allen stated that 289 Harvard Street is at the intersection of Harvard Street and Green Street. He stated that the proposal is to convert approximately 3,000 square feet of a portion of the former Webster Bank to a veterinarian clinic and added that the proposed conversion doesn't require any exterior modifications. He stated that the only zoning relief required was a special permit for the use under **Section 4.07**, Table of Use Regulations, Use #20A. Attorney Allen noted that letters were provided to the Board of

Appeals from an acoustical and HVAC engineer and added that the trash and waste management plan was reviewed and accepted by the Health Department.

Attorney Allen stated that a letter was sent to the abutters and there has not been any opposition to the proposal and added that the abutting businesses on either side of the proposed location provided written support.

Attorney Allen then stated that because the building is located in a G-1.75 zoning district and 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 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 G-1.75 general business district. 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, there is no record of opposition to the proposed use and the Petitioner has received the support of the Health Department. 3) No nuisance or serious hazard to vehicles or pedestrians: There would be no change to the current 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. As noted by the Petitioner's engineers, the designed space will not create noise or odor issues, and the Health Department has reviewed and is comfortable with the proposal. 5) Development will not have any effect on the supply on housing available for low- and moderate-income people.

Attorney Allen requested that the Board of Appeals modify the recommended Planning Board condition requiring a hose bib on Harvard Street. He stated that such a condition has not been imposed on previous veterinarian uses and noted that the facility does not provide boarding

overnight, so there is no concern of animal waste impacting the sidewalk. Attorney Allen added that the Department of Public Works has not reviewed the condition to determine whether it would create conflict with snow plowing.

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

Chair Schneider 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.

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. Furthermore, she added, the applicant has demonstrated through various technical reports that the proposed veterinary clinic will not have an adverse impact on surrounding properties. Ms. Anthony noted that the reports include an analysis of acoustics, odor and waste and the Health Department is satisfied with the findings. She added 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 COMMENTS

Ms. Anthony stated that the Planning Board was supportive of the proposal for the veterinary clinic on Harvard Street and noted that two direct commercial abutters (Otto's Pizza and Plant Burger) submitted support letters. One Planning Board member, she continued, was

concerned that dogs leaving the clinic would use the sidewalk to relieve themselves, and therefore the clinic should have the ability to hose off the sidewalk, when necessary. Ms. Anthony stated that a requirement was added to Condition #1 that there shall be a hose connection on the exterior facade.

Ms. Anthony, relayed that the Planning Board recommends approval of the architectural plans by Joe The Architect, dated 5/26/22, and supporting documents from Fiskaa Engineering, dated 6/27/22, and Unison Acoustics LLC, dated 6/22/22, the Planning Department recommends 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. Plans shall show a hose connection on the exterior façade, where a hose may be connected and used to clean the sidewalk, if necessary.
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.
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.

Chair Schneider then called upon Deputy Building Commissioner Campbell to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department had no objection to the requested relief and added that the Building Department would work with the Petitioner to ensure conformance with the Board's decision and all applicable building codes.

In deliberation, the Board agreed that requiring a hose bib as recommended in the Planning Board report, was unnecessary. Board Member Wishinsky noted that there would be other less invasive approaches to address concerns related to pet waste should the need arise. The Board acknowledged the support from the abutting restaurants and felt that satisfactorily ameliorated any concern about the veterinary use creating a nuisance to the food establishments. Board Member Wishinsky concluded that the use is appropriate and warrants relief under **Section 4.07**, and that he would vote to approve the relief as requested. Board Member Bell concurred and noted that adequate evidence was submitted that the proposal would not create undue noise, odor or waste disturbances, and voted to grant the requested relief.

Chair Schneider concurred and stated that she believed the proposal met the requirements of **Section 9.05**. She added that a new use would be a welcome addition to the commercial district and noted the letters in support provided, the noise and HVAC reports and the support of the Health Department. She further noted that the Board had not required a hose connection for other proposed pet-related uses.

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.

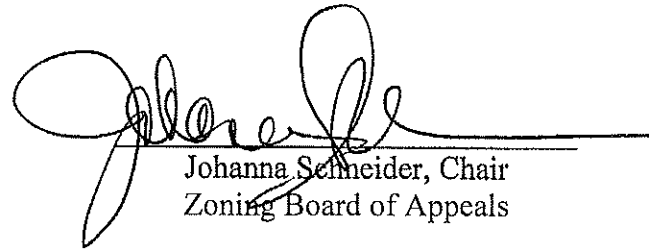
In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberations:

- 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.
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



Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 9/7/22

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals