



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

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Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0072

Petitioner, JMT Realty Trust/Beantown Bed & Biscuit LLC, applied to the Building Commissioner for permission to convert the existing gym into a veterinary clinic, and dog daycare and grooming facility at 310 Harvard Street. The application was denied and an appeal was taken to this Board.

On January 5, 2012 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed January 26, 2012 at 7:30 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 January 19 and 26, 2012 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

#### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **JMT Realty Trust/Beantown Bed & Biscuit LLC**

Owner: **JMT Realty Trust**

Location of Premises: **310 HARVARD ST**

Date of Hearing: **January 26, 2011**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit from:

1. **4.07; Table of Uses (dog day care, not listed), variance required.**
2. **4.07; Table of Uses, Use #20A (veterinarian including holding facilities), special permit required.**
3. **4.07; Table of Uses, Use #47 (noise, odors, refuse matter), variance required.**
4. **5.06.4.b.1; Special District Regulations, special permit required.**
5. **5.09; Design Review, special permit required.**
6. **8.02.2; Alteration or Extension, special permit required.**
7. **Modification, as required, of Board of Appeals case # 2475 dated 7-1-1981 that allowed the conversion of not more than 3300 sf of basement into office space.**

of the Zoning By-Law to construct a parking area to convert the existing gym into a veterinary clinic, and dog daycare and grooming facility at 310 HARVARD ST.

Said premise located in a **G-1.75(CC) business district.**

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Mark Zuroff and Christopher Hussey. The case

was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA 02445. Also in attendance was Richard Tuck, trustee of the building owner JMT Realty Trust, Adam Van Der Beek and Jonathon Cleveland, owners of Beantown Bed & Biscuit LLC, and Scott Learned, mechanical engineer for the property.

Mr. Allen described the property located at 310 Harvard Street, Brookline, Massachusetts as a 4,100 square foot basement space. The building is immediately adjacent to the Coolidge Corner Arcade Building and the Centre Street East public parking lot to the rear. A pedestrian passageway leading from the public parking lot to Harvard Street runs along the side of the building, the main entrance to which is located along this passageway. The applicant, Beantown Bed and Biscuit, wishes to convert the basement space that was previously used as a gym into a veterinary, grooming and dog daycare facility.

Mr. Allen described the applicant's business, which currently runs its operation in Somerville, as a luxury interactive daycare, overnight boarding and walking service for all varieties of dogs. The company is committed to providing dogs with a fun, loving, clean, and, most importantly, safe environment in which to socialize and play. The company strives to give customers peace of mind knowing that their pet is receiving the best care possible while away. The proposed business will include daycare, available from 6am-8pm weekdays and 10am-4pm weekends. Handlers will be onsite at all times. The majority of dogs will be picked up and dropped off by handlers in order to reduce the traffic impact in the area. The business will also provide overnight boarding: The facility's overall capacity is 50 dogs, with overnight capacity limited to 25 dogs. Onsite will also be a veterinary clinic which will incorporate two exam rooms and a lab room. The clinic will be designed to provide general canine wellness services. A veterinarian will be on call 24-hours a day, with onsite hours of 10am-2pm Tuesday thru Saturday.

The company will also provide onsite grooming services, available 10am-4pm, Monday thru Saturday.

Mr. Allen explained that the applicants have taken several measures to address issues of noise, odor and waste disposal relative to their services. He introduced Scott Learned, a mechanical engineer from Design Learned Inc., a design firm specializing in animal care facility engineering. Mr. Learned stated that he has designed over 200 similar animal care facilities and has designed a system that would be appropriate for this location. Regarding noise, there will be a Chicago Ceiling sound installation system installed that should render any canine noise inaudible to the abutting businesses. This system will also insulate noise from room to room within the premises. Regarding waste, the daycare exercise room will include a simple in-floor drainage system for liquid waste which allows for easy cleaning with antiviral/anti-odor disinfectant. Solid waste will be picked up and disposed of in a separate commode. All waste will flow into the sewer system and there will be no additional waste management issues beyond those created by any other business. Odor control and proper air quality/circulation are paramount priorities. The HVAC system will be completely overhauled to create proper circulation and disposal of air in the premises. Further, appropriate anti/viral/anti-odor cleaners will be used on a daily basis.

The Board inquired as to the veterinary facility, specifically safety issues and theft relative to controlled substances onsite. Mr. Learned stated that controlled substances would be onsite, but would be treated similarly to a pharmacy. The storage space would be locked and there would be a security system in place, along with video surveillance.

Mr. Allen discussed several zoning issues regarding the proposal. Under Zoning By-Law Section 4.07 (Table of Uses), dog daycare/kennel is not listed as a use. Mr. Allen stated, however, that Section 4.07 #20 allows a "clinic of a licensed vet for treatment of animals including holding facilities" by way of Special Permit. It is Petitioner's position, Mr. Allen argued, that Bylaw 4.07 is not applicable and the requested use falls under Use #20.. Mr. Allen stated that the Bylaws were drafted several

decades ago, at a time where modern wellness/daycare facilities for dogs did not exist and, furthermore, the Petitioner's proposed use likely falls under the categories described in Use #20. As stated in the Petitioner's proposal, the business plan includes a veterinary clinic, which is allowed by way of special permit. Further, indoor daycare and overnight holding of dogs falls under the "holding facility" use under the regulations and would not be subjected to the variance standard. Regarding Section 4.07 (Table of Uses) #47 for any use that is "noxious, offensive...by reason of odors, etc." Petitioner argues that this use is inapplicable to the petitioner's business operation and would conversely fall into the use described under Use #20. Mr. Allen asked the Board to draw their attention to Section 9.09.1.d where the Board may grant a use variance only on a lot that conforms to existence of a historically significant structure that is being preserved and restored in a manner that justifies the relief sought and is an important part of maintaining the property. The Landlord is on the record as saying this is tough space to rent out and with the taxes the income from this basement unit is necessary. Mr. Allen argued, however, that Section 4.07 #47 is more applicable to industrial use, such as refinery, human waste plant, or other such uses and, thus, a variance would be required. Here, a veterinary clinic and dog daycare should not be classified as an industrial use, as it more appropriately falls in line with Use #20. Use #20 allows by Special Permit "a clinic of a licensed vet for treatment of animals including holding facilities" and requires that "studies by recognized experts shall be submitted to insure the use will be constructed so as to safeguard nearby properties against undue noise, odor, and improper waste disposal." Mr. Allen stated that the factors for special permit were met and that the specific site is an appropriate location for such use, the use will not adversely affect the neighborhood, there is no nuisance or serious hazard to vehicles or pedestrians, adequate and appropriate facilities will be provided for the proper operation and proposed use, and development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Board member Hussey asked whether any other facilities existed in Brookline that provided dog daycare and overnight boarding. Mr. Allen answered in the affirmative, that there were four known facilities with similar services, however, no zoning relief was requested that he was aware of and, therefore, this issue has not been addressed before by the Board.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. Mr. Allen introduced Susan Goldwitz to speak on behalf of the applicant's clients, several of whom were in attendance. Susan explained that she was very much in favor of the proposal and reiterated the applicant's high standard of service and the demand for this business in Brookline.

Richard Tuck, trustee of the building owner JMT Realty Trust, then spoke in favor of the applicants' proposal. Mr. Tuck stated that he has been impressed by the professionalism and reputations of Mr. Van Der Beek and Mr. Cleveland and, while he was initially skeptical of the proposal, is now fully behind it and hopes to have a long lasting relationship with the young company.

No one rose to speak against the proposal.

Polly Selkoe, Planner, delivered the findings of the Planning Board.

**Section 4.07 – Table of Uses:** Dog daycare/kennel is not listed as a use in the Zoning By-law's Table of Uses. *Variance required.*

**Section 4.07 – Table of Uses, 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 the use will be constructed so as to safeguard nearby properties against undue noise, odor and improper waste disposal. *Special permit required.*

**Section 4.07 – Table of Uses, Use #47:** Any trade, industry, or other use that is noxious, offensive, or hazardous by reason of vibration or noise or the emission of odors, dust, gas, fumes, smoke, cinders, flashing or excessively bright light, refuse matter or electromagnetic radiation. *Variance required.*

**Section 5.06.4.b.1 – Special District Regulations:** All applications in the G-1.75(CC) District shall be subject to *Section 5.09, Design Review.*

**Section 5.09 – Design Review:** *Any application in the G-1.75(CC) District requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). The most relevant sections of the design review standards are described below:*

- *Circulation* – Most animals will be picked up and transported to the site by van in an effort to limit overall traffic. The applicant has indicated that the cost of daycare services will include transportation, and he expects most pet owners to take advantage of this service. All pedestrian access to the facility will be through the building’s side door on the pedestrian walkway. Loading and unloading of the van will occur in the Centre Street East parking lot.
- *Utility Service* – Utility services for the site are not expected to change. Waste from animals will be disposed of onsite through the existing sewer system.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure or use. This structure/use is nonconforming as to parking.

**Modification, Board of Appeals case #2475, 7-1-1981:** A modification of the previous Board of Appeals case limiting the basement space to 3,300 s.f. of non-medical office use is required. The current proposal involves 4,850 s.f. of finished space.

Ms. Selkoe reported that the Planning Board was supportive of this proposal. The Planning Board determined that relief requested fell under Section 4.07 Use #20A, the petitioners met the requirements for a Special Permit, and that a variance was not required for the proposal. Therefore, the Planning Board recommends approval of the proposal and the floor plan submitted by Beantown Bed & Biscuit and dated 11-13-2011, subject to the following conditions:

1. Prior to the issuance of a building permit, a final floor plan indicating all salient dimensions, including total square footage, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. All access to the facility shall be exclusively through the building’s side door along the pedestrian walkway.
3. All loading and unloading of animals shall occur in the Centre Street East parking lot and not on Harvard Street. All dogs shall be leashed during the loading/unloading process.
4. The applicant shall make all efforts to reduce noise and odor impacts on neighboring businesses, including but not limited to the install of an appropriate ceiling system for limiting noise transfer and quick cleanup and disposal of all animal waste.
5. All waste from the veterinary clinic and pharmacy/lab shall be disposed of appropriately and in

compliance with all applicable health regulations.

6. No more than 50 dogs may be onsite during the day, and no more than 25 dogs may be onsite and boarded overnight.
7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan stamped and signed by a registered engineer or architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard indicated that he was impressed by the applicant's proposal and that, while he first cited several zoning codes that may be relative to the request, that he was comfortable with the applicability of Use #20 requiring a special permit only. Mr. Shepard reported that the Building Department was supportive of the requested relief.

The Board, having heard all the testimony, deliberated on the merits of the application. The Chairman asked whether veterinary services would be open to the public and what the procedure was for pick up and drop off of the dogs. Bed & Biscuit owner Adam Van Der Beek stated affirmatively, that veterinary services would be available both for the general public and daycare clients. Regarding pickup and drop off, Van Der Beek stated that there is one drop off and one pick up per day – the company has keys for client's homes and are able to come and go regardless of the client's particular schedule. Board member Geller stated that this was clearly a migration of the uses stated under 4.07 #20 and, while he is not opposed to the proposal, he does not want to set a precedent with this proposal and feels that the code needs to be expanded. The Chairman stated that this was a stretch of the code, but was in favor of this specific proposal and how it relates to the table of uses. The Chairman reiterated that the Town of Brookline should revisit the table of uses and make appropriate changes if it saw fit.

The Board then determined, by unanimous vote that the requirements of 4.07 #20A, 5.06.4.b.1, Section 5.09 and Section 8.02.2 were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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.

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

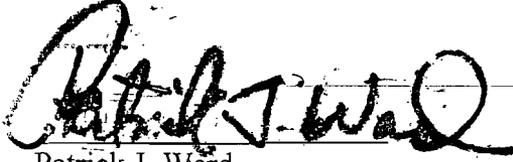
- 1. Prior to the issuance of a building permit, a final floor plan indicating all salient dimensions, including total square footage, shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. All access to the facility shall be exclusively through the building's side door along the pedestrian walkway.**
- 3. All loading and unloading of animals shall occur in the Centre Street East parking lot and not on Harvard Street. All dogs shall be leashed during the loading/unloading process.**
- 4. The applicant shall make all efforts to reduce noise and odor impacts on neighboring businesses, including but not limited to the install of an appropriate ceiling system for limiting noise transfer and quick cleanup and disposal of all animal waste.**
- 5. All waste from the veterinary clinic and pharmacy/lab shall be disposed of appropriately and in compliance with all applicable health regulations.**
- 6. No more than 50 dogs may be onsite during the day, and no more than 25 dogs may be onsite and boarded overnight.**
- 7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan stamped and signed by a registered engineer or architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of  
The Board of Appeals

  
Eric Starr, Chairman

Filing Date: February 15, 2012

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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