



Planning Department

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MEMORANDUM

To: Zoning Board of Appeals **Date:** September 3, 2015

From: Roland Bartl, AICP, Planning Director *R. B.*

Subject: **Special Permit #97-14, 363 Main Street
Ownership Change/Amendment**

The subject property is located in the R-2 (single-family residential) zoning district. In 1997 the Board of Appeals issued to Ms. Geissert a special permit under section 8.2.3 of the zoning bylaw¹ for a veterinary use. From the record, it appears that the veterinary use had previously existed as a legal and conforming home occupation². The special permit granted Ms. Geissert (the proposed new owner at the time) permission to expand the veterinary use and continue to conduct the business, but not as a home occupation. That made it a use that no longer conformed to the bylaw. The understanding of the Board of Appeals appears to have been that the residential quarters in the building would be maintained and continued under residential use and occupancy, presumably as a rental unit. The special permit requires that:

1. The accessory use (Veterinary care/ Animal Hospital) be less than 50% of the square footage area of the entire built structures on the site.
2. The residential use be greater than 50% of the square footage area of the entire built structures on the site.
3. If the property changes hands after Dr. Geissert, the Special Permit will require review before this Board.

While it is unclear how section 8.2.3, as then written, could have been construed to convert a conforming use into a non-conforming use in a residential zoning district, the special permit as issued has not been in question ever since.

Now, Ms. Flessas intends to purchase the property, and requests permission pursuant to condition 3 of the 1997 special permit to continue the veterinary practice under the same terms and conditions.

¹ In 1997 section 8.2.3 read: "Extending a Non-conforming USE - In a Residential District a nonconforming USE may not be extended in area. In all other Districts a nonconforming USE may be extended in area by special permit from the Board of Appeals." Section 8.2.3 has been modified since then.

² Attorney Gould's statement in this regard, as captured in the minutes, appears incorrect. The facts are blurred by a reported divorce situation.

The importance of maintaining and continuing the residential use on the property has been underscored by the more recent attempt to commercialize the immediately surrounding residentially zoned area with an oversized Next Generation child care facility across the street. It appears that the Board of Appeals in 1997 was also concerned about the commercialization of this area and of the subject property in particular. The recall & review provision in the special permit (condition 3) clearly indicates and intent to provide an opportunity for review and verification of compliance with the special permit.

Where this special permit is now 18-year history, Planning staff does not oppose the continued use arrangement under the new owner. However, after review of the 1997 special permit record, and cognizant of the more recent Next Generation episode, it is critical under the provisions of the zoning bylaw, and of the special permit as constructed, that the veterinary practice remains secondary and subordinate to the residential use. Therefore, we recommend:

- a) That Ms. Flessas shows reasonably satisfactory evidence that the residential use on the site has in fact continued through all the years since the special permit was first issued and that it is indeed present today occupying more than 50% of the square footage of the entire built structures on the site; and
- b) That the Board amends its original decision to condition more clearly that the entire space that is set aside for residential use, i.e. more than 50% of the square footage of the entire built structures on the site, shall be actively maintained and continuously occupied as a residence except for brief vacancies as may be necessitated during changes of residents' tenancies.