

Special Permit Amendment #97-14
363 Main Street
September 14, 2015



Zoning Board of Appeals

TOWN OF ACTON
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AMENDMENT OF DECISION

#97-14

363 Main Street
Special Permit

September 14, 2015

GRANTED with CONDITIONS

Decision of the Acton Zoning Board of Appeals (hereinafter the Board) on the application of Daphne Flessas (hereinafter the Applicant) for property in Acton, Massachusetts, owned by Karen Geissert of 363 Main Street, Acton, MA 01720. The property is located at 363 Main Street and shown on the Acton Town Atlas as map and parcel F3-56 (hereinafter the Site).

This Decision is in response to an application for an amendment to Special Permit #97-14 dated November 26, 1997 (the Original Decision) pursuant to Section 8.2.3 of the Acton Zoning Bylaw in effect in 1997.

The Applicant presented the subject matter of the special permit to the Board at a duly noticed public meeting on September 14, 2015. Board members Mr. Jonathan Wagner (Chair), Ms. Suzanne Buckmelter (Alternate) and Mr. Richard Fallon were present throughout the meeting. The minutes of the meeting and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

- 1.1 Items and documentation consisting of:
 - A Letter from Daphne Flessas, DVM, requesting an amendment to Decision #97-14, dated August 5, 2015;
 - Original Decision #97-14, filed with the Town Clerk, November 26, 1997;
 - Minutes of Hearing #97-14, filed with the Town Clerk, October 29, 1997;
 - Request for Extension of Special Permit Decision #97-14, filed with the Town Clerk, September 30, 1999;
 - Letter from property owner Karen E. Geissert, dated August 12, 2015.
- 1.2 Interdepartmental communication received from:
 - Acton Planning Department, dated September 3, 2015;
 - Building Permit #17178, issued October 24, 2000;
 - Plot Plan Depicting total area used for Animal Hospital, dated September 27, 2000.

Exhibit 1.1 is referred to herein as the Application.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located within the Residence 2 (R-2) zoning district.
- 2.2 The Applicant requests an amendment for a change in ownership as required by the Original Decision.
- 2.3 The Original Decision granted the current property owner, Ms. Geissert, a special permit under section 8.2.3 of the Zoning Bylaw, as in effect in 1997, to operate a veterinary care/animal hospital at the Site and renting to a tenant the existing residence. Previously the veterinary business had been operated by the resident owner and as such appears to have been a legal conforming home occupation.
- 2.4 The Original Decision limited the veterinary care/animal hospital to less than 50% of the square footage of the entire built structure on the Site and required the residential use to be greater than 50% of the total square footage of the entire built structures on the Site.
- 2.5 In 2000, the Town of Acton Building Department issued a building permit to expand the Animal Hospital use area by 432 square feet, which resulted in the veterinary care/animal hospital taking up more than the 50% allowed under the Original Decision.
- 2.6 The Animal Hospital has been operating in the expanded area consistently since 2000 as shown on the plot plan dated, September 27, 2000.
- 2.7 The 6 year statute of limitations under Massachusetts General Law Chapter 40A Section 7 has lapsed; the Zoning Enforcement Officer deems the expanded Veterinary care/Animal Hospital use legal non-conforming.
- 2.8 The Board finds the request for change in ownership meets the mandatory findings under Zoning Bylaw Section 10.3.5.
- 2.9 The Board has received comments from the Planning Department, which is listed in Exhibit 1.2 above. The Board considered these comments in its deliberations, made

them available to the Applicant, and incorporated them into this decision as deemed appropriate.

3 BOARD ACTION

Therefore, the Board voted to **GRANT** the requested amendment for change in ownership at 363 Main Street subject to and with the benefit of the following conditions and limitations.

3.1 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render the special permit amendment granted with this decision null and void. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

- 3.1.1 There shall be no further expansion of the Veterinary care/Animal Hospital use.
- 3.1.2 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full.
- 3.1.3 The Applicant shall record this Decision at the Middlesex South District Registry of Deeds.

3.2 LIMITATIONS

This special permit shall be limited as follows:

- 3.2.1 The foregoing conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw.
- 3.2.2 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.2.3 The Board hereby reserves its right and power to modify or amend the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, its designees or assigns, or upon its own motion.

4 EFFECT AND SCOPE OF THIS AMENDMENT DECISION

This Amendment Decision only responds and decides on the limited matters before the Board as outlined herein. Except as herein specified, the Original Decision shall remain in full force and effect.

Town of Acton Zoning Board of Appeals

Jonathan Wagner
(Chairman)

Richard Fallon

Suzanne Buckmelter

Copies furnished:

*Applicant - Building Commissioner
Town Manager*

*Engineering Department
Assistant Assessor*

*Town Clerk
Owner*