



TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT

Petco Animal Supplies Stores, Inc. Major Project Site Plan Special Permit AMENDMENT OF DECISION October 6, 2020

500 Dedham Ave
Needham, MA 02492
781-455-7550

PLANNING

Application No. 98-04 (Original Decision dated May 18, 1998)

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts of 2020)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Petco Animal Supplies Stores, Inc., 10850 Via Frontera, San Diego CA, (hereinafter referred to as the Petitioner) for property located at 163 Highland Avenue, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan No. 74 as Parcel 23 containing a total of 182,584 square feet in the Highland Commercial-128 and Mixed Use-128 Zoning Districts.

This decision is in response to an application submitted to the Board on September 25, 2020, by the Petitioner for: (1) a Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law) and Section 3.2 of Major Project Special Permit No. 98-04, dated May 18, 1998; (2) a Special Permit under Section 3.2.5.2(n) of the By-Law for a veterinary office and/or treatment facility including convalescent stays but not the boarding of animals in the Highland Commercial-128 Zoning District; and (3) a Special Permit under Section 3.2.6.2(h) of the By-Law for a veterinary office and/or treatment facility and/or animal care facility, including but not limited to, the care, training, sitting and/or boarding of animals in the Mixed Use-128 Zoning District. The requested Major Project Site Plan Special Permit Amendment, would, if granted, permit the Petitioner to construct a portion of the space to be occupied by a veterinary service. No additional square footage for the Petco store is being proposed. The Veterinary Office hours of operation would be from 7:00 AM to 7:00 PM daily. No animals will be housed overnight or during non-business hours. Spaces shown as Kennels will be for temporary use while animals wait for pick-up. Only 1 Veterinarian will be on staff at a time.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted, and mailed to the Petitioner, abutters, and other parties in interest, as required by law, the hearing was called to order by Chairperson, Jeanne S. McKnight, on Tuesday, October 6, 2020 at 7:20 p.m., via remote meeting using Zoom ID 826-5899-3198. Board members, Jeanne S. McKnight, Paul S. Alpert, Ted Owens, Martin Jacobs, and Adam Block were present throughout the October 6, 2020 public hearing. The record of the proceedings and the submission upon which this decision is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation prior to the close of the public hearing were the following exhibits:

- Exhibit 1 - Completed Application Form for Amendment to Major Project Site Plan Special Permit dated September 25, 2020.
- Exhibit 2 - A letter from Stephen Hartley, SBLM Architects, dated September 4, 2020.
- Exhibit 3 - Floor Plan with note "Previous Floor Plan, Before Remodel; reference only" undated.
- Exhibit 4 - Plan entitled "Petco, Tenant Improvements in Existing Petco Store," prepared by SBLM Architects, 33 Walt Whitman Road, Suite 300A, Huntington Station, NY, consisting of 4

sheets: Sheet 1, Sheet A0.1, entitled "Code Data, Project data," dated May 17, 2019, revised June 25, 2019, July 2, 2019, July 10, 2019, September 6, 2019, January 10, 2020 and April 6, 2020; Sheet 2, Sheet A7.1A, entitled "Large Scale Floor Plans," dated May 17, 2019, revised June 25, 2019, July 2, 2019, July 10, 2019, September 6, 2019, and April 6, 2020; Sheet 3, Sheet A2.1, entitled "Floor Plan," dated May 17, 2019, revised June 25, 2019, July 2, 2019, July 10, 2019 and September 6, 2019; Sheet 4, Sheet A4.1, entitled "Exterior Elevations," dated May 17, 2019, revised June 25, 2019, July 2, 2019, July 10, 2019 and September 6, 2019.

Exhibit 5 - Inter Departmental Communication (IDC) to the Needham Planning Board from the Department of Public Works, Engineering Division, Thomas Ryder, Assistant Town Engineer, dated October 6, 2020; IDC to the Needham Planning Board from the Needham Fire Department, Chief Dennis Condon, dated September 30, 2020; and IDC to the Needham Planning Board from the Health and Human Services Department, Public Health Division, Tara Gurge, Assistant Public Health Director, dated September 30, 2020.

Exhibits 1, 2, 3 and 4 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board found and concluded that:

- 1.1 The Petitioner is seeking to modify Major Project Site Plan Special Permit No. 98-04, issued to Richard S. Epstein and Kenneth P. Epstein, Trustees of the Highland Nominee Trust, 161 Highland Avenue, Needham, Massachusetts, dated May 18, 1998, as well as Determination of approval for a change to Staples by memo dated June 25, 2019: to construct a portion of the space to be occupied by a veterinary service. No additional square footage for the Petco store is being proposed. The Veterinary Office hours of operation would be from 7:00 AM to 7:00 PM daily. No animals will be housed overnight or during non-business hours. Spaces shown as Kennels will be for temporary use while animals wait for pick-up. Only 1 Veterinarian will be on staff at a time.
- 1.2 The Petitioner is requesting this modification because the original permit specified that the first floor which totals 40,503 square feet be used entirely as retail space; however, the Petco store now wishes to add a veterinary use, which is a specially permitted special permit use in the Highland Commercial-128 and Mixed Use-128 Zoning Districts.
- 1.3 The Petitioner proposes to reallocate a certain amount of first floor space to the veterinary use within the existing approved retail space of Petco.
- 1.4 The veterinary component of the facility is expected to operate from 7:00 AM to 7:00 PM, seven days per week. On a typical day there is 1 receptionist, 1-2 vet techs and 1 veterinarian. On a busy day the vet tech count may increase to three (3). The maximum number of staff in the veterinary component of Petco at any one time will be five (5).
- 1.5 The proposed use can be identified in the Table of Required Parking, Section 5.1.2 of the By-Law, as "Medical, dental and related health services structure or clinics". Said use category requires one space for every 200 square feet. Accordingly, the required parking for the veterinary use of 1,679 square feet is 8.4 parking spaces, or 9 spaces. The previous requirement for the entire retail and warehouse uses permitted was 135 spaces for the 40,503 square foot retail component (1 space per 300 square feet of retail) and 5 spaces for the 3,500 square feet of mezzanine space (1 space per 800 square feet of warehouse) for a total of 140 parking spaces. With 1,679 square feet now being allotted to veterinary use, the new total building parking requirement is as follows:

38,824 square feet of retail (1 space per 300 square feet) = 129.4 = 130
 3,500 square feet of mezzanine space (1 space per 800 square feet) = 5
 1,679 square feet of veterinary (1 space per 200 square feet) = 8.4 = 9
 Total required = 144 parking spaces

The original permit approved 168 parking spaces. Therefore, no waiver is required or requested for the new veterinary use.

- 1.6 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and site buffers, and preservation of views, light and air. The Petitioner proposes no change in building footprint, no change in site plans. The animals will not be boarded overnight or outside of business hours.
- 1.7 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets have been assured. There are presently 168 off-street parking spaces. No changes are contemplated for the parking layout or the current curb cuts. There is one door proposed to be added to the front elevation, but the pedestrian movement that will be altered by that addition is negligible. The proposed hours of the veterinary use begin slightly before the retail store opens according to the Petco website, at 7:00 a.m.; however, as the original permit did not specify hours of operation for the retail stores, the General By-Laws of the Town prevail, allowing the store to be open anywhere from 6:00 a.m. to midnight. Given the allowable retail hours, the proposed hours of the veterinary use are reasonable. The site has been designed to accommodate safe vehicular and pedestrian movement within the site and on adjacent streets.
- 1.8 Adequate parking exists for the proposed uses. The Petitioner is not seeking a waiver as there are more than the required number of parking spaces available on-site.
- 1.9 Adequate methods for the disposal of refuse and wastes will be provided. The site and building containing the Premises are already developed with infrastructure in place. There is an existing dumpster on site. Additionally, areas have been specifically designated for dog walking and a prefabricated pet clean-up station has been installed. Please refer to Plan Sheet A2.1, Note 8. Finally, the Petitioner has arranged for hazardous waste disposal to be handled by a 3rd party vendor per Board of Health requirements.
- 1.10 Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of the By-Law will be met. The site and the building containing the Premises are situated in a highly developed, commercial area. Moreover, the site itself is fully developed at present and whereas the Petitioner is not proposing any material expansion or fundamental changes to the existing building, other than a new door on the front façade, it does not anticipate any significant or material impact from the proposed use. Therefore, the proposed redevelopment, renovation and reuse of the Premises is not anticipated to significantly affect the relationship of the Premises to any community assets or any adjacent landscape, buildings and structures.
- 1.11 Mitigation of adverse impact on the Town's resources including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets will be met as there will be no adverse impact on the Town's resources. The site and building containing the Premises are presently fully developed and fully connected to Town infrastructure. Moreover, only interior modifications within an existing space are being proposed. Therefore, the Petitioner does not anticipate any significant or material change, or any adverse impacts to any Town resource.
- 1.12 The Board finds that all of its findings and conclusions contained in Site Plan Special Permit No. 98-04, dated May 18, 1998, issued to Richard S. Epstein and Kenneth P. Epstein, Trustees of the

Highland Nominee Trust, 161 Highland Avenue, Needham, Massachusetts, as well as its Determination of approval for a change to Staples by memo dated June 25, 2019, are applicable to this Amendment, except as specifically set forth in this Amendment.

THEREFORE, the Board voted 5-0 to GRANT: (1) the requested Major Project Site Plan Special Permit Amendment under Section 7.4 of the By-law and Section 3.2 of Major Project Special Permit No. 98-04, dated May 18, 1998; (2) the requested Special Permit under Section 3.2.5.2(n) of the By-Law for a veterinary office and/or treatment facility including convalescent stays but not the boarding of animals in the Highland Commercial-128 Zoning District; and (3) the requested Special Permit under Section 3.2.6.2(h) of the By-Law for a veterinary office and/or treatment facility and/or animal care facility, including but not limited to, the care, training, sitting and/or boarding of animals in the Mixed Use-128 Zoning District, subject to and with the benefit of the following Plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the Site relative to this Special Permit Amendment, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building Inspector shall not issue any building permit, nor shall he permit any construction activity on the Site to begin on the Site until and unless he finds that the Plan is revised to include the following additional corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Inspector. Where approvals are required from persons other than the Building Inspector, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Inspector before the Inspector shall issue any building permit or permit for any construction on the Site. The Petitioner shall submit nine copies of the final Plans as approved for construction by the Building Inspector to the Board prior to the issuance of a Building Permit.

- 2.1 The Plan shall be modified to include the requirements and recommendations of the Planning Board as set forth below. The modified plans shall be submitted to the Planning Board for review, approval and endorsement. The Petitioner shall meet all requirements and recommendations, set forth below.

- a) The Plan shall be modified to show the total square footage of the veterinary use.

CONDITIONS AND LIMITATIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.15 hereof.
- 3.1 The conditions and limitations set forth in Major Project Site Plan Special Permit No. 98-04, dated May 18, 1998, issued to Richard S. Epstein and Kenneth P. Epstein, Trustees of the Highland Nominee Trust, 161 Highland Avenue, Needham, Massachusetts, and a Determination of approval for a change to Staples by memo dated June 25, 2019, as further amended by this Amendment, are ratified and confirmed.
- 3.2 The Board approves the veterinary use of 1,679 square feet of the first floor of the building as conditioned herein.
- 3.3 The proposed veterinary use shall contain the floor plan and dimensions and shall be located on that portion of the locus, as shown on the Plan, as modified by this Decision, and in accordance with applicable dimensional requirements of the By-Law. Minor movement of fixed equipment, or interior partitions is allowed without further Board approval provided the use allocation and number of exam rooms as shown on the plan is maintained. Any changes revisions or

modifications other than changes deemed “minor movement” to the Plan, as modified by this Decision, shall require approval by the Board.

- 3.4 The maximum number of veterinarians on site at any given time shall not exceed one (1). The maximum number of staff persons specifically for the veterinary use present at any given time shall not exceed 5 (one veterinarian, three vet-techs and one receptionist).
- 3.5 The veterinary use may be open from 7:00 a.m. to 7:00 p.m. Monday through Sunday (daily).
- 3.6 The operation of veterinary use located at 163 Highland Avenue, Needham, Massachusetts shall be as described in Sections 1.1 and 1.3 of this Decision and as further described under the support materials provided under Exhibits 1, 2 and 3 of this Decision. No animals will be housed overnight or during non-business hours.
- 3.7 This Special Permit to operate the veterinary use at 163 Highland Avenue, Needham, MA is issued to Petco Animal Supplies Stores, Inc., 10850 Via Frontera, San Diego CA and may not be transferred, set over, or assigned by Petco Animal Supplies Stores, Inc., 10850 Via Frontera, San Diego CA to any other person or entity other than an affiliated entity in which Petco Animal Supplies Stores, Inc. has a controlling interest of greater than 50 percent, without the prior written approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient. For purposes of this section 3.7, a transfer or assignment of shares of stock of Petco Animal Supplies Stores, Inc. such that the current stockholders of Petco Animal Supplies Stores, Inc. as of the date of this decision no longer own or control more than fifty (50%) percent of the equity interests or no longer own or control more than fifty (50%) percent of the voting power of Petco Animal Supplies Stores, Inc. shall be considered a prohibited transfer or assignment.
- 3.8 The special permit and parking waivers granted herein are specifically premised upon the special characteristics of veterinary use of Petco located at 163 Highland Avenue, Needham, Massachusetts. In the event of any change in the use permitted hereunder which would result in a greater parking demand, further site plan review will be required, and the Planning Board shall be entitled to evaluate the parking demand of the building as a whole.
- 3.9 The proposed veterinary use shall contain the dimensions and shall be located in the building at 163 Highland Avenue, as shown on the Plan.
- 3.10 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:
 - a. The final plans shall be in conformity with those previously approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
 - b. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this decision granting this Special Permit and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
 - c. The Petitioner shall provide the Planning Board with seven copies of the modified plan as approved by the Board (two plans wetstamped).
- 3.11 The approximately 1,679 square feet of the building that is the subject of this Decision shall not be occupied until:

- a. There shall be filed with the Board and Building Inspector a Certificate of Compliance signed by a registered architect upon completion of the project certifying that the project was built according to the approved documents.
 - b. There be filed, with the Building Inspector, a statement by the Board approving the Certificate of Compliance, in accordance with said Decision.
 - c. There shall be filed with the Board an as-built floor plan.
- 3.12 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commission or other agencies, including, but not limited to the Building Commissioner, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.13 The portion of the building that is authorized for construction by this Approval shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Inspector.
- 3.14 The Petitioner, by accepting this Approval, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, and that this information is true and valid to the best of the Petitioner's knowledge.
- 3.15 Violation of any of the conditions of this Decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this Decision, the Town will notify the Petitioner of such violation and give the Petitioner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this Decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this Decision.
- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this Decision and to take other action necessary to determine and ensure compliance with the Decision.

- 4.3 This Decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.5 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.
- 4.6 This Site Plan Special Permit Amendment shall lapse on October 6, 2022, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to October 6, 2022. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.

This approval shall be recorded in the Norfolk District Registry of Deeds. This Special Permit Amendment shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry Deeds and until the Petitioner has delivered a certified copy of the recorded document to the Board.

The provisions of this Special Permit Amendment shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on the Plan, in full force and effect for the benefit of and enforceable by the Town of Needham.

Any person aggrieved by this decision may appeal pursuant to the General Laws, Chapter 40A, Section 17 within twenty (20) days after filing of this decision with the Needham Town Clerk.

Witness our hands this 6th day of October 2020.

NEEDHAM PLANNING BOARD

Jeanne S. McKnight
Jeanne S. McKnight, Chairperson

Paul S. Alpert
Paul S. Alpert

Martin Jacobs
Martin Jacobs

Adam Block
Adam Block

Ted Owens
Ted Owens

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

Oct. 9, 2020

On this 9 day of October, 2020, before me, the undersigned notary public, personally appeared Martin Jacobs, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

[Signature]
Notary Public

My Commission Expires: March 18, 2022

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the Amendment to Decision of the project proposed by Petco Animal Supplies Stores, Inc., 10850 Via Frontera, San Diego CA, for property located at the 163 Highland Avenue, Needham, Massachusetts, has passed,

 and there have been no appeals filed in the Office of the Town Clerk or
 there has been an appeal filed.

Date

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____
Design Review Board
Building Inspector
Conservation Commission

Select Board
Engineering
Fire Department
Police Department

Board of Health
Town Clerk
Director, PWD
Parties in Interest