

**ZONING BOARD OF APPEALS**

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ZBA 2020-32
Petition of B. Cullen Realty, LLC
159 Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, October 1, 2020 at 7:30 pm, on the petition of B. Cullen Realty, LLC requesting a Special Permit pursuant to the provisions of Section 13, Section 14G and Section 25 of the Zoning Bylaw to allow dog daycare, training, grooming and services, and overnight boarding for up to 20 dogs, with two staff members from 8 pm to 8 am, at 159 Linden Street (Pampered Puppies), in an Industrial and the Linden Street Corridor Overlay District, which is a use not allowed by right.

On March 10, 2020, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication. In accordance with Chapter 53 of the Acts of 2020, the hearing was scheduled for October 1, 2020.

WITHDRAWN WITHOUT PREJUDICE

Present at the public hearing were Michael and Kim LaRoche, co-owners of Pampered Puppies. Mr. LaRoche said that the owner of the property, Bill Cullen, was listening the hearing online.

Mr. LaRoche said that they opened Pampered Puppies at this location in April of 2019. He said that it is a dog services business where they provide daycare, grooming, training and retail for dogs. He said that the request is for a special permit to allow them to board dogs on site overnight, using the same facility and most of the same clients that currently use the daycare. He said that many of their clients have asked for the boarding services.

Mr. LaRoche said that they have a kennel license. He said that they are asking to board up to 20 dogs overnight. He said that the place is self-enclosed with everything indoors and soundproofed. He said that they have good relationships with the other businesses and there have been no noise complaints. He said that after 8 pm there is no one else in the building. He said that the property is zoned Industrial and is located at the edge of the Linden Square shopping district.

The Chairman said that the application was very sparse. He said that there was no plan of the inside or how the operation is set up. He asked if a permit was needed from the Health Department. Mr. Laroche said that he spoke with the Health Department and Animal Control and was told that they were covered by the kennel license. He said that there are no plans because there will be no change to the footprint or operations. He said that all of that was done when they opened the business a year and a half ago. Mr. Levy said that the Board does not have the plan because it was not involved in opening the business.

The Chairman said that he searched the Zoning Bylaw for kennels. He said that he found a provision in Section 9C, Wellesley Square Commercial District, relating to boarding kennels that are accessory to veterinary hospitals or other medical institutions for the care of animals. He said that there was no specific use allowed for boarding. He read an excerpt from Section 9C of the Zoning Bylaw.

The Chairman said that he was troubled by the fact that the website is already advertising dog boarding. Mr. LaRoche said they just paid someone to modify the website to include other updates.

The Chairman said that this is a very built up area in town with no green space. He asked how waste from 20 dogs is disposed of. Mr. LaRoche said that today they had 33 dogs on site in the daycare facility, 18 dogs in grooming and 6 in training. He said that dogs come in for daycare from 8 am to 6 pm and do not go outside. He said that they built a 1,000 square foot daycare room for larger dogs and an 800 square foot room for smaller dogs. He said that capacity in the small dog room is limited to 20 and is limited to 14 in the large dog room. He said that they have equine grade rubber flooring that is sealed. He said that accidents on that floor are cleaned up immediately, disinfected, deodorized and then tossed away in the rubbish. He said that if the waste is solid, it is picked up with a baggy and put in a dedicated flushing system which is acceptable for dog waste. He said that each room has a built up platform with artificial turf with a drainage system underneath. He said that they train the dogs to use the platform. He said that when the dog is done with its business, the platform is immediately washed down, deodorized and disinfected with a solution that is made for artificial turf and dogs. He said that everything is hosed down, vacuumed and cleaned up at the end of the day. He said that once a week they do a deep clean by hosing down the artificial turf and the floors are mopped with a concentrated solution that deodorizes and disinfects.

Mr. LaRoche said that boarding would use the same facilities that are used from 6 am to 8 pm. He said that after 8 pm they will use holding crates that are used for other purposes during the day. He said that dogs will be limited to under 60 pounds because of the size of the crates. He said that people who have been asking for boarding are primarily small dog owners.

Mr. LaRoche said that they are looking for a larger lot of land west of Route 495 to build a larger facility with dog runs. He said that clients would drop their dogs off at Linden Street and the dogs would be transported to the other facility.

Mr. LaRoche said that the request is for a special permit to allow them to have up to 20 dogs sleep in the crates at night, in addition to what they currently do.

The Chairman confirmed that there are drains in the floor. He asked if there will be a limit on the number of consecutive nights. Mr. LaRoche said that they offer financial incentives for a dog to stay a week. The Chairman asked if the dogs will be inside for 7 days. Mr. LaRoche said that the plan is to offer a walk outside on leash for two dogs at a time up and down Linden Street at mealtimes, early in the morning from 5 to 6 am and in the evening from 6 to 8 pm. He said that they installed a dedicated potty area in front of the building. The Chairman discussed concerns that there will be no green space for the dogs who could be there for up to a week. Mr. LaRoche said that their indoor dog parks are fairly large and have enough room for dogs to run and play. He said that some of their clients have their dogs come every day of the week for daycare. He said that the entire facility is 3,750 square feet, with daycare, grooming and retail at just over 3,000 square feet.

Mr. LaRoche said that the Dog Officer, Sue Webb, comes to the facility frequently. He said that they have known her for many years. He said that they started their business grooming dogs in their garage. He said that he and his wife retired from the corporate world to start this business a couple of years ago. The Chairman said that it is a laudable goal and he applauded them for their entrepreneurialism but questioned whether this is the right place in town for it.

A Board member said that for the Board to make a determination for a special permit, it needs to find that the proposed use is similar to one or more authorized uses in the district, which could be Linden Square Overlay District, Industrial or Business District. He said that the only thing that he found in any of those districts is a veterinary hospital. He said that he was not convinced that it is an allowed use in this district. The Chairman said that there are no other 24 hour or overnight uses in the district.

Mr. LaRoche said that they would expect to have an attendant spend the night on site. He said that the dogs will never be left unattended, there are no residential areas close by, no one else in the building at night and there will be no additional traffic. A Board member asked where the closest residence is. Mr. LaRoche said that there are some townhomes behind the Citgo Station. A Board member said that there are some residences above the CT Paint Store.

A Board member said that doggy daycare may not have been considered when the bylaw was written. He said that doggy daycare is a business that has a great unmet demand in Wellesley. He said that the term kennel implies many animals in cages in close proximity. He said that this facility has a lot of interior open space. He said that kennel may not be a good comparison to what is in the bylaw but it is the closest that the Board has. Ms. LaRoche said that it will be night care in their daycare rooms.

Mr. LaRoche said that there is a large demand for the business. He said that they started a year and a half ago with one client out of their garage and today they have over 1,500 human clients and over 1,800 dog clients. Ms. LaRoche said that they had 80 new clients last month.

The Chairman read the Planning Board recommendation.

The Chairman Levy said that the initial issue is whether the Board has the authority to grant a special permit for this particular use. He said that if the Board can get past that determination, he would want to see a letter from the Dog Officer and the Board of Health saying that they have no objections. A Board member said that there should be some documentation about the things that the Board heard about tonight. The Chairman said that he would like to see a floor plan and a description of the operation of the business.

The Chairman said that it is a great use and there is a great need but he questioned whether this is the right place for it. He said that dogs should be able to go outside and get fresh air and run.

Brian Menna, 30 Cottage Street, said that his mother, who lives in Brookline and family friends, who live in other cities and towns, use similar services where greenspace is limited. He asked that the Board keep in mind that similar places exist where daycare is converted for night and kennel care in the same facility where it is more densely populated and there is less greenspace.

A Board member said that the issue is that when you look at the other allowed uses in the Business District and the Industrial District, there is nothing in the bylaw that allows for 24 hour operations. He

said that for lack of a specific authorization for the use, it was difficult for him to determine that the proposed use is similar to another use. He said that he understands the need for it but that is not the issue. He said that the fundamental issue is whether the Zoning Bylaw allows this use. He said that he could not find that. Mr. LaRoche asked if it was prohibited anywhere in the Zoning Bylaw. The Board member said that the bylaw lists the allowed uses. The Chairman said that the only time he saw boarding or kennel mentioned in the Zoning Bylaw was for the Wellesley Square Commercial District.

The Chairman said that approval would require a unanimous vote of the Board. He discussed allowing the petition to be withdrawn without prejudice. Mr. LaRoche requested that the petition be allowed to be withdrawn without prejudice.

The Board voted unanimously to allow the petition to be withdrawn without prejudice.