



CITY OF CAMBRIDGE

Community Development Department

To: Planning Board

From: Community Development Department (CDD) Staff

Date: August 13, 2021

Re: **Post-Operative Pet Care Zoning Petition**

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Overview

Petitioner: City Council

Zoning Articles: Section 4.30 Table of Use Regulations

Petition Summary: The proposed amendment would permit a "Veterinary establishment, kennel, pet shop or similar establishment" as an allowed use in all Residence zoning districts, provided that "no noise or odors are perceptible from adjoining lots" and "the use is restricted to one animal unless specifically increased by the special permit granting authority."

Planning Board Action: Recommendation to City Council

Memo Contents: Summary of the proposed zoning, background information on the topic of the Petition, and considerations and comments from staff.

Summary of Petition Effects

The Petition would permit a “Veterinary establishment, kennel, pet shop or similar establishment” as an allowed use in all Residence zoning districts, provided that “no noise or odors are perceptible from adjoining lots” and “the use is restricted to one animal unless specifically increased by the special permit granting authority.” Currently, such establishments are prohibited in all Residence zoning districts but allowed by special permit from the BZA in all non-residential zoning districts, except that in Industry B-1 and B-2 districts they are permitted as-of-right with limitations.

Background

This Petition appears to originate from a proposal by a resident of Blanchard Road to operate a service at their home providing “24 hour care for up to 2 weeks for 1 (one) canine at any given time in need of postoperative care after their orthopedic or specialty surgery” (case BZA-108452). It was determined that this proposal constituted a principal “Veterinary establishment” use, which is not permitted in the Residence B district, and the resident sought a use variance from the BZA.

The BZA held a public hearing on June 10, 2021 and heard testimony both for and against the proposal. Although some BZA members expressed sympathy for the applicant, the Board voted to deny the request upon finding that it did not meet the criteria for approval of a use variance. The City Council referred this zoning petition to the Planning Board and Ordinance Committee on June 28, 2021.

CDD staff have not been directly involved in this BZA case, but have received information about the BZA case and the Petition from the Inspectional Services Department and from members of the City Council.

Zoning Considerations

Technical Considerations

The Petition does not use the terminology in the current zoning for Retail or Consumer Service Establishments that was adopted by the City Council on June 7, 2021. The current Zoning Ordinance lists “Animal Services Facility” in Section 4.35-l. of the Table of Use Regulations, which is defined in Article 2.000 of the Zoning Ordinance as follows:

Animal Services Facility. A type of Retail or Consumer Service Establishment whose principal use is to provide services related to household pets where such animals are kept on the premises, including but not limited to veterinary care, grooming, shelter, kenneling, obedience training, pet day care, or interaction with pets housed on the premises.

The amendment adopted on June 7, 2021 did not substantively change the use regulations for an Animal Services Facility, but it did make some minor changes to the text of Footnote 29. Below is a comparison of the current and proposed text of Footnote 29.

Current Zoning (as adopted 6/7/2021)	Proposed Zoning
29. Provided that, in Business and Office Districts, all animals are kept indoors and that no noise or odors are perceptible from adjoining lots.	29. Provided that, in Residential and Neighborhood Business Districts, no noise or odors are perceptible from adjoining lots. In Residential districts the use is restricted to one animal unless specifically increased by the special permit granting authority.

The apparent intent of this change is to permit Animal Services Facilities in Residential districts as-of-right if only one animal is cared for at one time, but to allow for the care of more than one animal by special permit.

If this Petition were to be adopted, staff would suggest the following clarifying changes:

- Amend the Petition to make reference to “Animal Services Facility” as defined currently in the Zoning Ordinance.
- Retain the provision in current zoning that in Business and Office districts, all animals are kept indoors and that no noise or odors are perceptible from adjoining lots.
- Clarify that in Residence Districts, services may only be provided to one animal at a time on the premises except that the Board of Zoning Appeal may grant a special permit to allow the care of multiple animals on the premises.

Planning Considerations

During the study process leading to the recent retail zoning amendments, CDD staff did not recommend any substantive changes to the zoning for Animal Services Facilities, noting that there did not seem to be major impediments to their establishment. They are allowed throughout all non-residential zoning districts and tend to be dispersed across the city. In most districts, a special permit is required to ensure that potential site-specific impacts are controlled, but such a permit did not seem unreasonable to obtain. Home-based animal services were not identified as an issue during that study process.

Although the Petition is motivated by a proposal to provide home-based animal services, it would permit such uses as-of-right in residential zoning districts whether or not it is provided at a resident’s home. This change could have substantial unintended effects. For example, it could permit a non-resident to rent space in a residential building and operate it, for example, as a commercial veterinary clinic. Also, although the Petition restricts the as-of-right use to one animal, a commercial veterinary clinic could treat one pet at a time, but multiple pets over the course of the day. A non-resident could also rent space and operate a larger Animal Services Facility in a residential district by special permit. Although the City would be able to control some impacts through conditions on the special permit, a special permit is generally issued for uses that are consistent with the intent of the Zoning Ordinance, whereas the standard for the grant of a use variance is more stringent.

To avoid unintended consequences, it may be advisable to permit only home-based animal services in residential districts and to limit the number of animals over a duration of time, such as one animal over the course of a 24-hour period or 7-day period. A possible alternative approach would be to amend the Home Occupations section of Article 4.000 of the Zoning Ordinance (Section 4.21, Paragraph d.), which was also recently amended by the City Council on June 7, 2021 and currently reads as follows:

d. The following Home Occupations and other Home Occupations, provided that they are accessory and incidental to the principal residential use, shall be considered accessory uses, provided also that only residential occupants of the dwelling unit are practicing or employed on the premises at any one time unless otherwise specified below, that all activities take place entirely within a building, and that no offensive noise, vibration, smoke, dust or other particulate matter, heat, humidity, glare, or other objectionable effects are produced:

(1) The office of a resident physician, dentist, attorney-at-law, architect, landscape architect, engineer, or member of another profession, in which case up to three persons may practice or be employed on the premises at any one time including persons who are not residential occupants but are employed to assist a primary practitioner residing on the premises;

(2) The salon of a properly licensed massage therapist;

(3) The studio of an artist, performing artist, craftsperson, graphic designer, photographer, or similar creative professional; and

(4) A Retail Residential Kitchen permitted to produce Cottage Food Products, as regulated by 105 CMR 590.001(C), as it may be amended.

Animal care is not explicitly listed above, but the Council could consider adding a line item to the above list to allow “the provision of animal services involving the temporary boarding and care of no more than one household pet on the premises.” The activity would still need to fall within the general Home Occupations criteria of being operated by a residential occupant, being contained entirely within a building, and not creating any specific objectionable effects. It is especially important that the activity would be “accessory and incidental” to the principal residential use, meaning that it is not separable from the residence and does not have characteristics that would be uncustomary for a residential dwelling.

Another planning consideration would be whether there should be any separate permitting or regulatory requirements that must be met for the activity to be allowed by zoning. For example, the text above indicates that home-based massage therapists and Retail Residential Kitchens are allowed only if they have the appropriate licenses and/or permits. It is not clear if a licensing or permitting process exists for home-based animal care, but that could be investigated further.