

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

J. RANDOLPH BECKER, CHAIRMAN  
ROBERT W. LEVY, VICE CHAIRMAN  
DAVID G. SHEFFIELD

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EXECUTIVE SECRETARY  
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(781) 431-1019 EXT. 2208

WALTER B. ADAMS  
DEREK B. REDGATE  
RICHARD L. SEESEL

ZBA 2021-42 - Amended  
Petition of Geraldine Jarvis  
26 Harris Avenue

At a business meeting of the Board on August 5, 2021, David Himmelberger, Esq. appeared on behalf of Geraldine Jarvis to request that the Board make a determination that a proposed change to the expiration date of the approved special permit, ZBA 2021-42, that was granted on July 15, 2021, to a new expiration of December 31, 2021, is a minor modification that does not require a public hearing.

The Board voted unanimously to make a finding that the proposed change is a minor modification that does not require a public hearing and to amend the decision, as follows:

Condition 11 of Special Permit, ZBA 2021-42 is hereby amended to read:

1. This Special Permit shall expire on December 31, 2021 and is not renewable.

2021 AUG 19 P 1:02  
WELLESLEY ZONING BOARD OF APPEALS

ZBA 2021-42 - Amended  
Petition of Geraldine Jarvis  
26 Harris Avenue

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.

*J. Randolph Becker*  
J. Randolph Becker, Chairman

*Robert W. Levy*  
Robert W. Levy

*Richard L. Seegel*  
Richard L. Seegel

2021 AUG 19 PM 1:02  
TOWN OF WELLESLEY  
GENERAL PLANNING BOARD  
WELLESLEY, MASSACHUSETTS

ZBA 2021-42 - Amended  
Applicant Geraldine Jarvis  
Address 26 Harris Avenue

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

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ZBA 2021-42

Petition of Geraldine Jarvis  
26 Harris Avenue

2021 JUL 15 P 12:51

Pursuant to due notice, the Special Permit Granting Authority held a Remote Public Hearing on Thursday, May 6, 2021, at 7:30 pm, on the petition of Geraldine Jarvis requesting renewal of a Special Permit pursuant to the provisions of Section 2A 8 (h) and Section 25 of the Zoning Bylaw to allow her to use a portion of the premises at 26 Harris Avenue, in a Single Residence District, for the purpose of a home occupation, namely doggie daycare for no more than 15 dogs between 7 am and 7 pm and no more than 10 dogs between 7 pm and 7 am. All parking is on the premises.

On March 18, 2021, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Present at the public hearing on behalf of the petition were David Himmelberger, Esq. and Geraldine Jarvis. Mr. Himmelberger said that Ms. Jarvis came before the Board on nine separate occasions to renew a special permit for a home occupation. He said that the special permit was amended in 2017 to allow for up to 15 dogs during the day and 10 at night. He said that Ms. Jarvis never heard about any concerns and was surprised when a letter was submitted by her neighbor across the street. He said that Ms. Jarvis submitted a reply to the Board that rebuts and refutes most of the neighbor's letter. He said that since viewing the letter, several residents in the neighborhood wrote to the Board to express their opinion that their experience of Ms. Jarvis' home occupation did not square with the representations in the letter from Ms. Bae. He said that although she retired a month ago, Sue Webb, Animal Control Officer, made routine visits to the site, in compliance with the special permit, and never reported any issues. He said that, as a client himself, he has never seen any issues.

Mr. Himmelberger said that one of the issues discussed in the letter of opposition was smaller dogs in the front yard, which neighbors at 19 and 21 Harris Avenue reported they enjoy seeing. He said that Ms. Jarvis is willing to no longer bring the small dogs to the front area.

A Board member discussed concerns about the gradual expansion of the home occupation over the years. He said that the bylaw provides that there shall be no activity as a result of the home occupation that disrupts or disturbs the customary nature of the residential neighborhood.

Julie Bae, said that her family lives diagonally across the street and has always had a cordial relationship with Ms. Jarvis. She said that they are cognizant that this is her business and livelihood and have tried to be supportive. She said that in recent years the business has gotten bigger. She said that her parents can hear dogs barking 24 hours a day, which is very disturbing to them. She said that she understands that workers may need to raise their voices to control the dogs but it carries across the street. She discussed

issues with traffic and queuing in front of the house. She said that it would be helpful if the owners be required to keep their dogs on leash at all times. She said that currently dog owners are letting their dogs run rampant and the dogs are coming onto her parents' property to relieve themselves on the grass. She said that the sound has become the primary issue and it has increased over the years.

Kelly Chow, 16 Harris Avenue, said that she lives a couple of houses away and has seen a lot of cars on the street many times a day. She said that the increase in traffic has magnified during the pandemic. She discussed concerns about public safety for a number of kids and elderly people who walk in the neighborhood. She said that she has observed drivers passing by to drop off and pick up dogs who do not follow the speed limit and do not always stop for the school bus. She said that the Applicant stated that she was no longer taking new business but someone rang the Chow's doorbell in April looking for the doggy daycare. She said that the woman's husband stepped into her garage with their dog and rummaged through their mailbox, which was disturbing. Mike Chow said that the business changed from a 7 am to 7pm to a 7pm to 7am business. Ms. Chow said that she appreciates that it is a business but this is a residential neighborhood and the business appears to be growing and is causing public safety and traffic concerns.

Christian Chow, 16 Harris Avenue, said that he hears the dogs barking and people yelling. He said that he sees cars queue in the street and next door in the circle. He said that he has noticed an increase in traffic over the past few years, with cars coming as early as 5 am. He said that there is a disconnect between the business owner and the doggy daycare clients. He said that he knows that Ms. Jarvis has been reminding her clients to be cognizant of the neighborhood but some of them are not driving safely. He said that the demographics of the neighborhood have changed a lot with elderly, children and disabled people.

Yu Yu Ong, 20 Harris Avenue, discussed concerns about traffic and having so many cars on the street.

Mr. Himmelberger described a typical day and night at the doggy daycare and the average number of dogs during those times. A Board member said that dogs are not allowed to be dropped off until 7 am.

The Board discussed continuing the petition to allow Ms. Jarvis time to meet with her neighbors to try to come up with acceptable protocols.

Ms. Jarvis said that health care workers come to the property who are unrelated to the business.

Ms. Bae said that she and her parents have mentioned their concerns about noise to Ms. Jarvis. She said that she had a list of dates. She said that Ms. Jarvis' Facebook ad lists 6 am drop off.

The Board voted unanimously to continue the petition to July 1, 2021.

July 1, 2021

The Chairman said that the Board received correspondence from Mr. Himmelberger about his initial request to continue the petition. He said that the Board gives credit to what members of the public say and unless it is proven wrong, the Board does not question its veracity. Mr. Himmelberger said that he

took exception to members of the public questioning his representations and felt that it was important to lay it out on the record. He said that Ms. Jarvis was not able to attend the public hearing but he was mindful of the neighbors' concerns and was prepared to go forward.

The Chairman said that the Board received additional submittals today, including a 50 page document which none of the panel members have had an opportunity to review. He said that, as a result, the Board would not consider it tonight. He said that the hearing would have to be continued if the Board was to consider the materials that were submitted late today.

Mr. Himmelberger said that he reached out to the neighbors and sent a letter inviting all interested parties to meet at Ms. Jarvis' home on Saturday, June 12, 2021 at 1 pm. He said that Ms. Jarvis was taken to the hospital that morning by ambulance. He said that he appeared at the meeting that was attended by 10 to 15 neighbors. He said that he listened to their complaints and concerns and suggested a number of additional conditions to the special permit, including a restriction and enforcement of no pick up and drop off before 7 am or after 7 pm.

Mr. Himmelberger discussed proposed conditions requiring clients of the business to drive less than 10 miles per hour on the street, pull into the driveway for drop off and pick up, and keeping their dogs leashed when out of the car. He said that his client has decided that it is time to draw the business to a close. He suggested a condition that limits the special permit to one year to allow for transition out of the doggy daycare business.

Mr. Himmelberger said that are a number of neighbors who have written in support of the doggy daycare and a number of neighbors who have voiced complaints. He discussed circumstances during the past year that prevented Ms. Jarvis from supervising operations of the business more. He said that she has taken steps to correct that.

The Chairman said that the special permit has been renewed several times since 2004 and there were never any objections until now. He questioned whether this was a result of something changing in the operation of the business or with more people being home with Covid.

Hyui Bae, 29 Harris Avenue, read a letter that discussed dogs barking and car parking that has been very stressful for himself and his wife. He said that the Board asked for neighbors' input at the previous hearing. He discussed accusations of lying and bullying. He said that they have supported Ms. Jarvis for a long period of time but now is the time to speak up.

Glen Kim, 53 Emerson Road, said that Ms. Jarvis has mislead the town and the Zoning Board of Appeals. He said that the number of dogs has exceeded the limit of 15 dogs during the day with up to 50 dogs. He said that the count on former Animal Inspector Sue Webb's Report listed 62 and was signed off by Ms. Jarvis. He asked that the Board terminate the permit and not consider it for renewal.

Yu Yu Ong, 20 Harris Avenue, said that as of last Sunday, the hours posted on the website were from 6 am to 7:30 pm. She said that is now changed. She said that she has a camera and her husband counted 16 cars from 6:55 am to 8:55 am this morning.

Julie Bae, 29 Harris Avenue, said that she and her parents are very compassionate with Ms. Jarvis' situation but the magnitude of the business is out of control. She said that a Google search for Absolutely Pawsitive shows many reviews because the client base is enormous, which is not suitable for a residential area. She asked the Board to consider the impact of 50, 30 or even 10 dogs for 24 hours a day, seven days a week. She said that they do not want Ms. Jarvis to shut down her business but it is not suitable for the residential street and would be better if it was moved to a commercial location. She said that she does not live at her parents' house but with Covid the increase in the number of dogs and traffic has become more evident over the past 18 months because people are home more. She said that the business has grown exponentially over the years. She said that they did not receive notice of the hearings, which is why there was never anything on record.

Yetwah Chow, 16 Harris Avenue, said that there are three major points that are of utmost importance. She said that there is noncompliance with the special permit, based on the number of dogs and vehicles traveling down their street. She said that there is evidence of that in the former Animal Control Officer's report. She said a second issue is idling as clients go in and out of the business, which violates the State law and has environmental impacts. She said that the third issue is public safety. She said that she and her son are working from home and see a lot of vehicles come down the road at high speed. She said that her son was almost hit. She said that the dynamics of their street is no longer safe haven, as it has become more of a commercial district. She said that the entire street has to deal with one person holding a business.

Jane Bae, 53 Emerson Road, said that the nature of the home occupation is that it is basically an exterior dog park in the neighborhood. She said that a lot of dogs are kept outside during the daytime. She said that while it is a lovely facility for the dogs, there is a fair amount of noise, which is a health and stress issue. She said that some things get lost in translation in terms of how the site is set up and how it differs from a traditional home occupation.

The Chairman discussed home occupation versus business operation. He asked Michael Grant, Zoning Enforcement Officer, if any complaints had been filed with him. Mr. Grant said that he had not received any formal written complaints about 26 Harris Avenue. The Board said that neighbors should call Mr. Grant with concerns about restrictions not being followed or the Police Department if people continue to speed on the street or idle when they park.

Mr. Kim discussed Massachusetts Law, RE 16 RC 13, noise pollution and detrimental effects on health. He said that the Baes report that the home occupation is causing them a lot of anxiety, which is a public health issue. A Board member discussed enforcement of State and Federal statutes.

#### Statement of Facts

The subject property is located at 26 Harris Avenue, in a Single Residence District.

The Petitioner is requesting renewal of a Special Permit pursuant to the provisions of Section 2A 8 (h) and Section 25 of the Zoning Bylaw to allow her to use a portion of the premises at 26 Harris Avenue, in a Single Residence District, for the purpose of a home occupation, namely doggie daycare for no more

than 15 dogs between 7 am and 7 pm and no more than 10 dogs between 7 pm and 7 am. All parking is on the premises.

Letters to Zoning Board of Appeals, dated 6/25/21 and 6/30/21, from David J. Himmelberger, Esq., and 15 emails from the public, dated 5/6/21 to 7/1/21, were submitted.

On June 30, 2021, the Planning Board reviewed the petition and recommended that renewal of the Special Permit be granted.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. A home occupation is not a by-right use in a Single Residence District.

It is the opinion of this Authority that the requested use of her premises by Geraldine Jarvis for the home occupation of Doggie Day Care is in compliance with the requirements of Section 2 A 8 (h) of the Zoning Bylaw, and will neither disturb nor disrupt the customary character of the neighborhood.

Therefore, renewal of a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for the petitioner to use a portion of her premises at 26 Harris Avenue for a home occupation, subject to the following conditions:

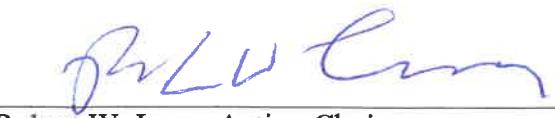
1. There shall be no more than 15 dogs on the premises between 7 am to 7 pm and no more than 10 dogs on the premises between 7 pm and 7 am.
2. No dogs shall be dropped off after 7 pm or prior to 7 am.
3. All vehicles related to the home occupation shall be parked in the driveway of the premises, and no vehicle related to the home occupation shall be parked on Harris Avenue or on any adjacent street.
4. There shall be no idling of vehicles in violation of State or Federal Regulations or Town Bylaws.
5. Travel related to the doggy daycare business shall not exceed 10 miles per hour on Harris Avenue.
6. All dogs shall be leashed when in any public area.
7. All dog waste shall be properly disposed of.
8. There shall be no excessive noise from the doggy daycare business.
9. The Animal Control Office shall make an inspection in six months.
10. All conditions of this Special Permit must be provided to all customers.
11. This Special Permit shall expire one year from the date time stamped on this decision and is not renewable.

2021 JUL 15 P 12:58  
ZONING BOARD OF APPEALS  
TOWN OF HANOVER, NH

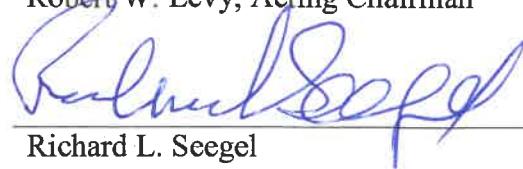
ZBA 2021-42

Petition of Geraldine Jarvis  
26 Harris Avenue

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN THE  
OFFICE OF THE TOWN CLERK.



Robert W. Levy, Acting Chairman



Richard L. Seegel



Derek B. Redgate

2021 Jul 15 PM 12:58

ZBA 2021-42  
Applicant Geraldine Jarvis  
Address 26 Harris Avenue

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm