

**TOWN OF DEDHAM**  
COMMONWEALTH OF MASSACHUSETTS

James F. McGrail, Chairman  
J. Gregory Jacobsen, Vice Chairman  
Scott M. Steeves  
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®  
Jason L. Mammone, P.E.



Dedham Town Hall  
26 Bryant Street  
Dedham, MA 02026-4458  
Phone 781-751-9242  
Fax 781-751-9225

Associate Members  
Jessica L. Porter  
Jared F. Nokes, J.D.

Susan Webster  
Administrative Assistant  
[swebster@dedham-ma.gov](mailto:swebster@dedham-ma.gov)

**ZONING BOARD OF APPEALS**

**MINUTES**

**Wednesday, January 17, 2018, 7:00 p.m., Lower Conference Room**

**Present and Voting:** James F. McGrail, Esq., Chairman  
J. Gregory Jacobsen, Vice Chairman  
Scott M. Steeves  
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®  
Jason L. Mammone, P.E.

**Staff:** Susan Webster, Administrative Assistant

Mr. McGrail called the meeting to order at 7:00 p.m. The plans, documents, studies, etc. referred to are incorporated as part of the public record and are on file in the Planning and Zoning office. In addition, the legal notice for each hearing was read into the record.

<b>Applicant:</b>	<b>W. M. Salter, DVM</b>
<b>Property Address:</b>	<b>592 Providence Highway, Dedham, MA</b>
<b>Case #:</b>	<b>VAR-12-17-2290</b>
<b>Property Owner:</b>	Dedham Marketplace, LLC, c/o Acton Management, Inc., 69 Great Road, P.O. Box 2350, Acton, MA 01720
<b>Zoning District and Map/Lot</b>	Highway Business, Map 123, Lot 16
<b>Application Date:</b>	December 8, 2017
<b>Present and Voting:</b>	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E.
<b>Representative:</b>	<ul style="list-style-type: none"><li>• Peter A. Zahka II, Esq., 12 School Street, Dedham, MA</li><li>• W. M. Salter, DVM, 918 Providence Highway, Dedham, MA</li></ul>
<b>Legal Notice:</b>	To be allowed a Special Permit for a veterinary clinic
<b>Section of Zoning Bylaw:</b>	<i>Town of Dedham Zoning Bylaw Sections 3.1.3, 9.2, 9.3, Table 1</i>

Mr. Zahka explained that Dr. Salter will be relocating his veterinary practice to 592 Providence Highway because the building in which he is located is slated to be demolished. Dr. Salter has worked in Dedham for 29 years, of which three were on Elm Street, and 26 years at his present

location. He has approximately 6,000 clients and 9,000 patients. Approximately 4,800 clients are Dedham residents, and approximately 6,200 are cats and dogs owned by Dedham residents. He provides typical veterinary services including surgery and grooming. He currently has no boarding facility at the present location, and will have none at the new site. The new site is little over 2,000 square feet. As required under his lease, the area where the pet are held will be soundproofed. Dr. Salter said he will be paying for the soundproofing. He tried to get his architect to come to the meeting but he was unavailable. The soundproofing will go on the walls and upstairs. The lease also requires that the premises be properly ventilated. Dr. Salter has always prided himself on operating a very clean, sanitary facility, and will continue to do so. Both inside and outside areas at the current location are cleaned twice a day, and this will be the practice at the new location. In addition, all pet owners are required to inform the facility if there are “accidents” outside that require cleaning up. He has five employees, with four on site at any one time. His hours of operation are 8 a.m. to 5 p.m. on Monday, Wednesday, and Friday, 8 a.m. to 7 p.m. on Tuesday and Thursday, and 8 a.m. to 1 p.m. on Saturday. There are no night hours, and there are only very rare emergencies except during normal hours.

Mr. Maguire asked about boarding, and asked if he would keep a single animal overnight for medical issues. He understood that people could not board animals for vacations. Dr. Salter said they typically do not keep any animals overnight because there is no one there overnight, and it would be a liability for him. He normally does day surgery, i.e., spaying or neutering. He occasionally does more detailed, complex surgery, but he mostly refers that to either Tufts Emergency Vets, Angell Memorial Hospital, or BluePearl Hospital in Waltham.

Jessica Porter, 4 Willow Street, asked about soundproofing, saying it would be beneficial to the patients and to the neighbors. She asked if there would be an outdoor space. Dr. Salter said there would not. There would be an indoor space as well as a place for animals to toilet. Animals come in at 8 a.m. and leave by 2 p.m. Leanne Jasset, owner of Dedham Pharmacy and Medical Supply at 596 Providence Highway and member of the Town of Dedham Board of Health, was happy to hear that there would be soundproofing. She said her pharmacy welcomes animals and there is a veterinary pharmacist on staff. She said the parking lot is not as clean as the tenants would like. There is always debris and they have to call the landlord for someone to clean it up. She is concerned about the debris from the animals, and asked what would be done about it. Dr. Salter said the parking lot would be scoured, at a minimum, twice a day, usually at lunchtime and at 4 p.m. His clients are well trained in cleaning up their dogs’ mess, and the office provides doggie sacks for this purpose. They are very diligent and have never had complaints. Ms. Jasset also said there is a lot of traffic on the sidewalks with children and people with braces, etc., from Marathon Sports. This is a concern of hers, and she is happy to hear that he is proactive.

No one in the audience spoke in favor or against the petition.

Mr. Maguire moved to allow a Special Permit for a veterinary clinic at 592 Providence Highway, Dedham, MA, with the condition that the soundproofing be adequate and consistent with what is required in the lease. Mr. Steeves seconded the motion. The vote to approve was unanimous at 5-0.

**Applicant:** John R. Aplin, Trustee, Aplin Realty Trust  
**Property Address:** 331 Whiting Avenue, Dedham, MA  
**Case #:** VAR-12-17-2291  
**Property Owner:** John R. Aplin, Trustee, Aplin Realty Trust  
**Zoning District and Map/Lot:** General Residence, Map 128, Lot 105  
**Application Date:** December 8, 2017  
**Present and Voting:** James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E.  
**Representative:**

- Peter A. Zahka II, Esq., 12 School Street, Dedham, MA 02026
- Scott Henderson, P.E., P.O. Box 626, Lexington, MA 02420
- John R. Aplin, Applicant

**Legal Notice:** To be allowed a Special Permit for retaining walls with a maximum height of 9 feet (amending ZBA Decision # VAR-03-17-2205, dated April 19, 2017, granting a Special Permit for retaining walls with a maximum height of 6 feet).  
**Section of Zoning Bylaw:** *Town of Dedham Zoning Bylaw Sections 6.5.2, 9.2, and 9.3*

The Applicant was approved for six-foot retaining walls on April 19, 2017. The property is in the General Residence zoning district, contains 22,291 square feet of land, and has been occupied for a number of years for various commercial activities. Mr. Aplin has used it for a landscaping business and contractor's yard. At the Public Hearing in April 2017, there were a number of commercial garages and buildings on the property. Relief was received to demolish and consolidate these and construct a single building for the business use. Relief was requested for retaining walls at that time. There are a number of retaining walls, some of which will be replaced, and a few will be new. The ZBA decision provided that no retaining wall would be in excess if six feet. Due to some changes that were required by the Building Code, certain walls will now be nine feet high.

Mr. Henderson showed the plan and the location of the walls that they intend to rebuild. In constructing the new building, they realized through permitting that they would need an egress on one side of the building; they did not anticipate this. They had planned on raising the grade in the paved area behind the building and loop it around to keep the walls at six feet or less. However, as a result of meeting that egress and wanting to make sure that the area was graded so it does not drain toward the building, they are requesting a Special Permit to build the wall slightly higher. He said the maximum would be 8.5 feet, but they are asking for nine feet to be sure that is sufficient.

Mr. McGrail asked if the abutters would see the higher wall, and Mr. Henderson said they would not because the applicant's site is lower. No one from the south or west sides will see anything, nor will the abutter directly to the east. There is an existing fence that will remain the property line. They are proposing screening behind the building as part of the Planning Board permitting process. The only site that will see this wall is going to the nonresidential property to the west, and the building will screen most of that.

Mr. Zahka presented a letter from Andrew Weiss and Jane Tennihan Weiss, 335 Whiting Avenue, the direct abutters to 331 Whiting Avenue. The letter indicates that Mr. Aplin went to them and explained the nine foot retaining wall. Part of the wall is along their property line. This is the only piece of property involved. The letter stated that they are aware of this, and have no objection to the proposal (see attached).

Mr. Henderson said there is an existing retaining wall that encroached on the Weiss property. They will remove a good portion of that and regrade, but there is a portion that will be taken down and reconstructed exactly in place; this is on the Weiss' property.

Mr. McGrail asked how they could give relief to Mr. Aplin from a legal perspective since the property where they will build the retaining wall is in the Weiss name. Mr. Henderson said that a portion of the wall is on the Weiss property by about one foot. Mr. McGrail then asked if there should be an application in their name. Mr. Zahka asked if the neighbor could join the application. Mr. McGrail did not know and said this has to be checked. Mr. Maguire asked what the construction of the wall was. Mr. Henderson said it was modular block and it would be pre-cast. It is a fairly sizable block.

Edward Mahoney, 337 Whiting Avenue, asked where the wall is on the plans. Mr. Henderson said the wall will be about a foot off the property line. Mr. Mahoney then asked if there were going to be shrubs behind the wall. Mr. McGrail explained that the concerns of the neighbors were addressed in April 2017 when the applicant came before the Board for six foot high retaining walls. This was granted on April 19, 2017. This allowed Mr. Aplin to go to the Planning Board for site plan approval, which was granted in April 2017. Mr. Henderson explained that the planting plan for the wall was approved by the Planning Board. There will be plantings on Mr. Aplin's property on certain portions of the site, and he has also received permission from abutters for plantings.

Mr. Mahoney said he can see the wall from his property, which is two lots away. He also said that the people at 28 Oakdale Avenue "have no clue what's going on here." Mr. McGrail said they may have not known in April 2017, but they knew about this meeting, and they are not present. Mr. McGrail said they received notice; this was verified by Ms. Webster. In addition, there have been other meetings. Mr. McGrail reviewed the petition that Mr. Mahoney presented which said:

*"We the undersigned show our concerns of the development non conforming [sic] use of the property at 331 Whiting Ave. Dedham, MA. We are especially concerned with the plantings of the arborvitaes on the side and back of this property. Also the lighting that will be used in the evening to illuminate the area. Also our concerns are the operational hours of the work force."*

*(signed)*

*Mary and Ed Mahoney, 337 Whiting Ave.*

*David J. Kenney, Jr., 43 Fairview Street*

*Dale C. Meyer-Curley, 28 Oakdale Ave.*

*Walter Hayes, 12 Oakdale Ave.*

*Bill Manzi, 35 Fairview Street*

*Madeline Molina, 350 Whiting Ave.*

*Christos Nikou, 346 Whiting Ave.*

Mr. McGrail noted that the letter does not say that they are opposed. He also noted that several who signed the petition were not abutters to the property. This petition, in fact, was provided to the Planning Board prior to the landscaping plan presentation in June 2017. Mr. Zahka said they went through site plan review with the Planning Board, who looked at the landscaping and site layout.

Mr. Henderson said there is a wall back there, and the location has not and will not change. He showed the small area in the back corner stretching around the corner, and said this just needs to be taller. They were originally able to keep it at six feet, but the grade has been an issue and it needs to be taller. They will only be changing the bottom of the wall; the top of the wall cannot change. They have disassembled that part of the wall to be changed. The location will be excavated as far as they can w/o destabilizing the abutting property, and then they will construct a modular block wall. They do not need to pour anything toward the abutter properties. Nothing changes with regard to the top of the wall from a site perspective.

Mr. Jacobsen asked who owns the existing fence. Mr. Henderson said the Weiss family does, but Mr. Aplin is putting in a new fence. This is not being touched as part of the petition. Mr. Mahoney asked what type of fence it was, and Mr. Henderson said it was stockade in some areas and chain link in others. He showed the areas that will have the fence. Mr. Mahoney asked if there would be plantings in front of it. Mr. Henderson said the approved plans do not show any plantings. Mr. McGrail noted that the ZBA has nothing to do with plantings. Mr. Mahoney said he had a plan of the property. Mr. Henderson noted that it is a planting plan, and that permission was obtained from the various owners to go on their property to plant. Mr. Zahka noted that there is no change to the site plan at all. Mr. Mahoney said some the neighbors did not receive notification for the April 2017 meeting; Mr. McGrail said they received notification for this meeting. In addition, the abutters were notified of the Planning Board meeting. Mr. Mahoney said some of them did not receive notice because they were new owners. Mr. McGrail asked how he knew that, and Mr. Mahoney said he had a petition and they never saw it. Mr. McGrail said he told them about the meeting, so they should have come tonight. Mr. Mahoney said he did not tell them about this meeting.

The question before the ZBA is whether it has an issue with the proposal to have a retaining wall up to 9 feet in the area outlined in red on the plan. The applicant said that the visual will be no different to the neighbors than it was up to 6 feet, which was approved by the ZBA. They will be digging a hole so the wall needs to go down; it is not going up. This is what the Board will vote on. However, most of the wall is on the applicant's property, but some is on the Weiss' property; they have written a letter in support of the petition. However, the Weiss' name should be on the application. The question is whether their name could be added to the petition, or whether there should be a new application. Mr. Zahka will also research the ability to add their name and let the Board know. He is asking for approval of that part of the wall on Mr. Aplin's property, and then he would return with the neighbors' petition for the wall on their property. Mr. McGrail said the Board can vote on the pieces actually on the Applicant's property, then continue action on the pieces of property on the Weiss' property until the next meeting on February 21, 2018. If between now and then the issue of adding their name to the application is resolved, they will, and then act accordingly. If it cannot be added, it is up to the Applicant to submit a new application and the Board would act accordingly. Mr. Maguire said he does not want to approve only half of the wall without knowing what the second half would be. Something may be found out between now and then that does not permit the Board to

approve the 9 foot wall on the neighbors' property. Mr. Henderson said this was fair. He said that if there is one area that does not have to be nine feet or even six feet, it would be the corner area. The struggle is that there is an egress from the building, which is driving the finish grade down enough that it has to be taller. The finish grade along that property line is highest. The most critical component is one section. Once they get to the abutters' property, there is, in theory, enough space to be able to raise the grade approaching that wall and keep it at 6 feet or lower. If the Board voted to approve just what is on the Applicant's property and then it decided not to approve an application from the abutter, the Applicant could still be able to physically make it work. Mr. Maguire said that, based on the kind of wall that they want to build and what he understands, all they can do is put the blocks in. Most of the excavation could be done and then wait until the blocks go in. Mr. Henderson said that at this point, it is effectively excavated and the foundation is in.

Mr. McGrail said, for the sake of argument and hypothetically speaking, the Board voted on half of the project, and then the neighbors decided they do not want to do this or be part of the application, and refused to allow the wall on their property. He asked what the negative if the Board votes on only half. Mr. Henderson said that if they do half, they would not return to the Board. They could force the grade change to build a 6' wall and make it work. It is not, however, ideal, and is bad drainage practice, site grading, and is less functional. This application is to create the most sustainable, properly built wall. If they are forced to make that adjustment, they could do it and still comply with the regulations required for the extra egress. They would build a wall at 9 feet tall on Mr. Aplin's property only and make the adjustment. Mr. Maguire asked if it would be properly engineered. Mr. Henderson said that if they are forced to keep the wall at 6', the grade behind the building would be sloped toward the building, in which case water would flow toward the building, which is never a good idea. It will be properly engineered. The grade behind the building would be sloped toward the building. Water would flow toward the building, which is never a good idea. Making the wall taller enables them to sheet flow the water into the open parking area and into the storm water management system. The goal is to lower it so it will not go into the building. The building would be damaged, but it could be waterproofed. Currently, the foundation is in and grading has been done. A building permit has also been issued. It a prefabricated building, so it would hopefully be put up in the next few weeks.

Mr. McGrail asked the Applicant about waiting a month, and Mr. Henderson said this is not an issue. Mr. Maguire said that what will happen will be fine. Each individual plan the Board hears requires them to think about what it means on some other issue that comes before them. Mr. McGrail recognized that the Applicant has been before the Board, and has gone through a lot of the processes with the Town. No one on the Board wants to hold the project up. Mr. Henderson said another month will not have a big effect. It will not hold up financing. The best, cleanest way of handling this is to encompass everything all at once by amending the application by adding the Weiss family's name. Mr. Zahka said he could get a new application in to the Zoning Board of Appeals by next week, which would allow him to meet the deadline for the February 21, 2018, meeting. He will submit a new application so there is no question that both Mr. Aplin and the Weiss family is on it.

Mr. Mahoney asked what the height of the building is. Mr. McGrail said this is not part of the ZBA application. Mr. Henderson said it has not changed from what the Planning Board approved. It will be 23 feet; 25 feet was approved.

Mr. McGrail moved to continue the meeting to February 21, 2018, seconded by Mr. Steeves. The vote to approve the continuation was unanimous at 5-0.

**Review of Minutes:**

Mr. Jacobsen moved to approve the minutes of December 13, 2017, seconded by Mr. Maguire. The vote to approve was unanimous at 5-0.

Respectfully submitted,

Susan Webster  
Administrative Assistant

/snw  
Attachment