

Section 59-G-2.32(b)(2) provides: "Exterior areas used to exercise, walk or keep animals must be set back from any property line 200 feet and screened from adjacent residential properties. All exterior areas and runs must be fenced for the safe confinement of animals."

Mr. Kline noted that the property is adjoined to the north, south and east by Maryland State Highway right of way. The nearest residential property is more than 350 feet away, across Old Columbia Pike to the west. He further noted that the noise generated by the surrounding highways far exceeds any noise that might be generated by animals in the proposed outdoor exercise area.

Following the principle of parallel construction, Mr. Kline argued that the proper grammatical interpretation of Section 59-G-2.32(b)(2) is that the two requirements it contains, for setback and screening, both apply to residential properties.

The Board agrees with Mr. Kline's reading of the statute and further finds that the application presents a unique situation in that the subject property is surrounded on three sides by state highways. Therefore, on a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth and Catherine G. Titus, Chair, in agreement, and Stanley B. Boyd, necessarily absent, the Board adopts the Hearing Examiner's Report and Recommendation, with slight revision to Condition No. 5, and grants the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in the Hearing Examiner's report and in this opinion.
2. The special exception is limited to a maximum of 10 employees, consisting of three veterinarians and seven support staff on-site at any one time.
3. Hours of operation are limited to Monday through Friday, 7:30 a.m. to 7:30 p.m., and Saturday, 8:00 a.m. to 5:00 p.m.
4. Per §59-G-2.32(b)(7) of the Zoning Ordinance, dogs must not be walked or exercised in outdoor areas that are off-site.
5. Per §59-G-2.32(b)(2), (10) and (14) of the Zoning Ordinance, no animals may be boarded (except for overnight medical purposes).
6. Client visits must be scheduled by appointment only, except in emergencies. Per § 59-G-2.32(b)(11) of the Zoning Ordinance, Petitioner must keep a written log of all appointments, drop-ins and emergency client activities, and make it available for inspection by the County.
7. Per §59-G-2.32(b)(12) of the Zoning Ordinance, accessory operations, such as the sale of pet food and supplies, must not exceed 20% of revenue.

8. Petitioner must maintain at least 21 parking spaces on site, unless the Board approves a change.
9. All litter and animal waste must be contained and controlled on the site.
10. Petitioner must comply with the requirements of the Amended Statement of Operations (Exhibit 18(a)).
11. A sign permit must be obtained for the proposed monument sign, and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is posted. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform with all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
12. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.
13. Petitioner must make a payment to the County to satisfy the requirements of Policy Area Mobility Review (PAMR), in an amount to be determined at subdivision, but it is currently calculated as \$93,600, to mitigate eight (8) peak-hour trips. The timing of the payment will be determined at subdivision.
14. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 7th day of May, 2012.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.