

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**KAREN KRIEG D/B/A DREAMY SKIES**  
**DOG RANCH**

Applicant

Karen Krieg  
Michael Norton

For the Petition

Sean Hughes, Esquire  
Attorney for the Applicant

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Before: Lynn A. Robeson, Hearing Examiner

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OZAH Case No. CU 24-01/  
BOA Case No. A-6817

**HEARING EXAMINER'S REPORT AND DECISION**  
**ON CONDITIONAL USE AND RECOMMENDATION**  
**ON VARIANCE APPLICATIONS**

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## **I. STATEMENT OF THE CASE**

Filed on July 10, 2023, the Applicant, Karen Krieg d/b/a Dreamy Skies Dog Ranch (Applicant or Ms. Krieg), seeks a conditional use for an animal boarding and care facility under 59.3.5.1.B of the Zoning Ordinance at 26330 Mullinix Mill Road, Mount Airy, MD on property in the AR Zone. Exhibit 1. To implement the use, Ms. Krieg also seeks three variances from the limited use standards under Section 3.5.1.B.2.b of the Zoning Ordinance and one under the general design standards in Article 6 of the Zoning Ordinance. Exhibit 4.

The Board of Appeals referred the variance application to OZAH on May 19, 2023. On September 6, 2023, Ms. Krieg filed a Motion to Amend the Application. OZAH issued notice of the public hearing for November 3, 2023, which also included Notice of the Motion to Amend and the Order consolidating the variance and conditional use applications for hearing. Exhibit 35.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the conditional use and variance applications on September 22, 2023, subject to the following five conditions (Exhibit 29):

1. The use is limited to Animal Boarding and Care.
2. No more than 14 dogs are to be onsite at any one time.
3. No more than 6 dogs are to be outside at any one time.
4. A maximum of three non-resident employees may be onsite and [sic] any one time.
5. No dogs are to be outside between the hours of 9:00 pm and 7:00 am each day.

The Planning Board concurred with the findings of the Staff Report. Exhibit 28. Prior to the public hearing, the Hearing Examiner forwarded questions relating to traffic and to on-site storage of waste to be addressed at the public hearing. Exhibit 33. Ms. Krieg provided a photo of the type of structure that would contain the waste receptacles. Exhibit 33(a). On November 3, 2023, the public hearing proceeded as scheduled. At the public hearing, Ms. Krieg also submitted

a revised conditional use plan showing where the receptables would be located on the property. Exhibit 38.

At the public hearing, Ms. Krieg asked to lower the height of a noise attenuating fence along the northern property line from 10-feet to 8-feet. To address noise impacts, she requested a new condition permitting an 8-foot fence until “until a house is built within 75 feet” of that property line. T. 98. The Hearing Examiner left the record open for 10 days to receive the transcript.

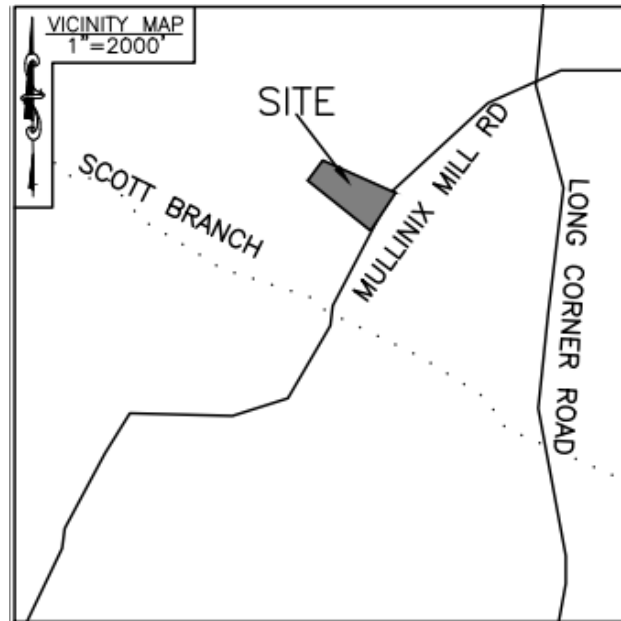
The record closed on November 13, 2023. The Hearing Examiner reopened the record on Tuesday, December 5, 2023, to inform the parties that the number of parking spaces shown on the conditional use plan did not meet minimum requirements and nothing in the record addressed screening of the parking area. Exhibits 42-44. On December 7, 2023, the Applicant submitted a revised conditional use plan showing the required number spaces and additional screening around one of the parking areas. The Hearing Examiner forwarded these documents to Planning Staff for review. Planning Staff replied that they had “no issues” with the changes and continued to recommend approval of the application. Exhibit 46. By Order of even date herewith, the Hearing Examiner re-opens the record solely to receive emails between the Hearing Examiner, the Applicant's attorney, and Planning Staff, the revised conditional use site plan showing the additional parking and screening, the Applicant's letter regarding the additional screening and parking, and the Order Re-Opening and Closing the Record. Exhibits 42-48.

For the following reasons, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and recommends approval of the variances requested.

## II. FACTUAL BACKGROUND

### A. The Subject Property

The property is generally located on the northwest side of Mullinix Mill Road, near the intersection with Long Corner Road, shown on the Vicinity Map from the conditional use site plan (Exhibit 34, below):



Mr. Michael Norton, the Applicant's expert in landscape architecture and site design, testified that the subject property consists of 4 different parcels that form a "pie-shape" totaling 4.57 acres.<sup>1</sup> T. 55. An aerial photograph of the property from the Staff Report (Exhibit 29, p. 5, below) shows the property (outlined in red). The light-yellow lines show the different tax parcels that make up the total acreage:<sup>2</sup>

<sup>1</sup> The Staff Report states that the total property acreage is 4.42 acres. Exhibit 29, p. 4. As the minimum lot size required is 2 acres, the Hearing Examiner does not find it necessary to resolve the issue.

<sup>2</sup> Mr. Norton testified that the thin property on the north is Parcel 583, which is 4,940 square feet. The parcel with the house and structures is Parcel N605, which is about 2.2 acres, and the parcel to the west (P588) is 50,094 square feet. The last of the four properties is P601, which is about 40 feet wide and runs parallel to the southern property line. That has a total of 41,870 square feet. T. 45-48.



Existing improvements include a single-family home, a detached 3-car garage, and existing barn in the rear of the property. The barn is outside the area that will be used for conditional use. T. 34, 62; Exhibit 29, p. 5. A view of the front of the property from Mullinix Mill Road is shown below (Exhibit 29, p. 1, on the following page).

### **B. Surrounding Area**

To determine the compatibility of the proposed use, the Hearing Examiner must delineate the area that will be most impacted by the proposed use. She then must characterize the area and determine whether the use will alter that character. Staff and the Applicant delineated the surrounding area (outlined in yellow) shown in the graphic on the following page (*Id.*, p. 4).

Staff advises that the entire surrounding area is zoned AR (Agricultural Reserve). Mr. Norton testified that the property is surrounded on the north and south sides by agricultural uses. The closest residence to the south is approximately 230 feet away and is one property removed from the subject property. To the north there is a house setback approximately 450 feet from the





View from Mullinix Mill Road, Exhibit 29, p. 1



Surrounding Area Delineated by Staff  
Exhibit 29, p. 4

property line, located on a farm consisting of approximately 60 acres. The property to the south is agricultural and consists of about 20 acres. There are three residential lots to the east across Mullinix Mill Road. T. 48-49. These houses are about 70 feet from Ms. Krieg's property line. T. 50. Staff characterizes the area as "low-density residential development and agricultural uses." Exhibit 29, p. 3.

Having no evidence to the contrary, the Hearing Examiner adopts the delineation of surrounding area boundaries shown in the Staff Report. It is clear from the aerial photo in the Report that the area consists of low-density residential and agricultural uses, as characterized by Staff.

### **C. Proposed Use**

Ms. Krieg testified that she's been a professional dog trainer for ten years. She focuses on helping aggressive and anxious dogs become better citizens. She's spent a lot of time studying, traveling internationally to learn different methodologies and processes for helping dogs. T. 13. Her mission is to help as many dogs and owners who are struggling with behavioral issues as possible. This property provides a location where she can focus and put more time into each individual dog. T. 13-14.

Her clients will typically be dogs with owners in the metro D.C., Maryland and Virginia area. Owners will be drop their dogs off for periods anywhere from three to six weeks. While there, they are cared for as if they were her own dogs. They will typically be either kenneled, working with her, or exercising in one of the play yards. She has two kennel rooms on the main floor and there will be separate kennel runs in the basement. T. 15-16.

### **1. Site Plan**

The final conditional use site plan submitted by the Applicant shows the details of the



proposed use (Exhibit 45(b), shown on the next page.) Ms. Krieg proposes no changes to the existing improvements except to install the noise-attenuating fences along the north and south property lines and to widen the existing driveway to 20 feet to meet fire access standards. A 6-foot high board on board fence behind the house (approximately bisecting the width of the property) separates the area that will be used for the conditional use from the remainder. This fence will connect to an 6-foot fence along the southern property line, an 8-10 foot high fence on the northern property line, both of which will connect to the existing house and garage to form an outdoor, fenced exercise area. T. 82.

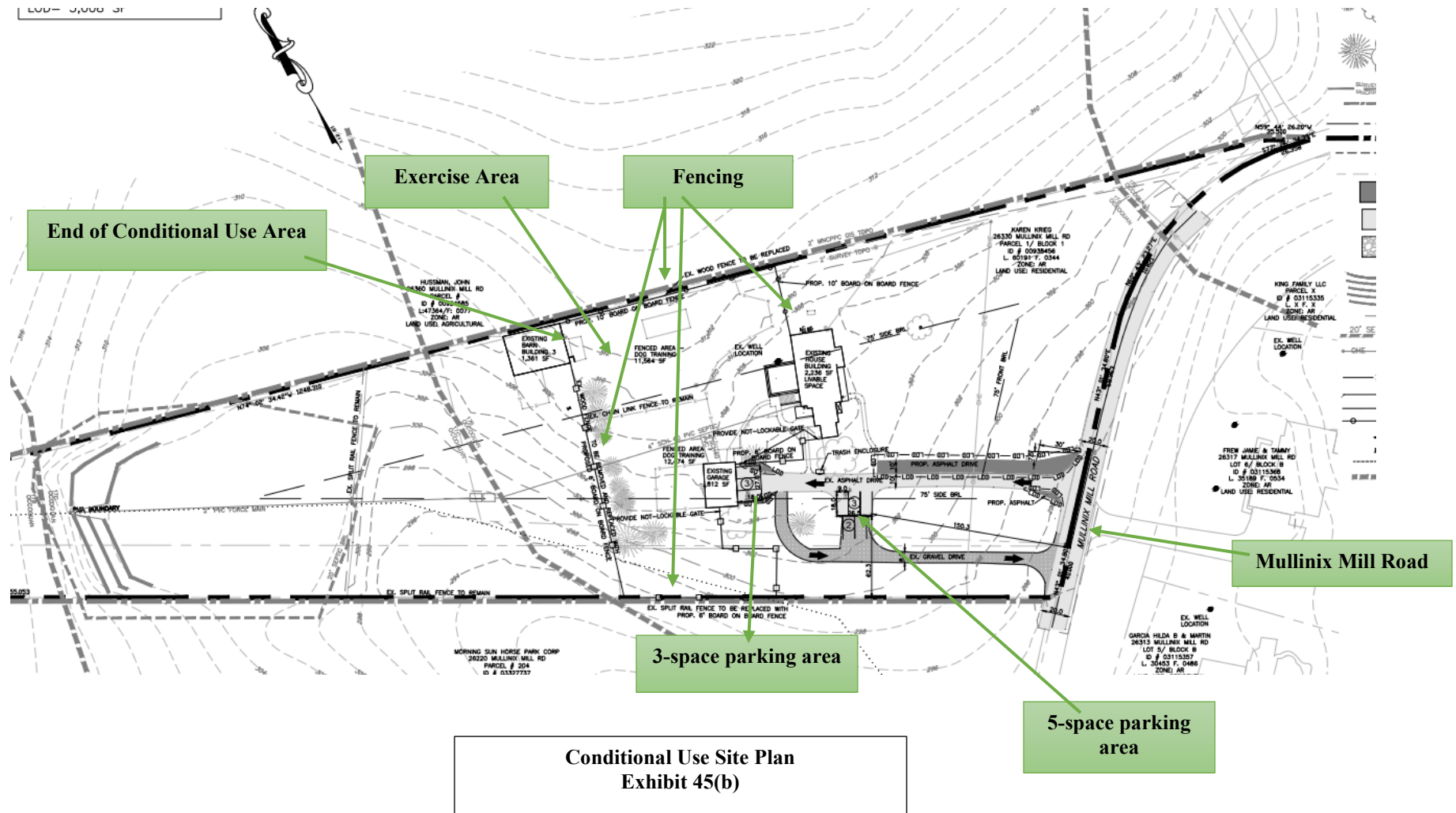
## **2. Operations**

Ms. Krieg is requesting to board a maximum of 14 dogs, although she intends to have no more than 5-6 at a time due to the intensity of the training. No more than 6 will be outdoors at one time. T. 23. No more than three non-resident employees will be on the property at one time. T. 60.

Bedding is washed weekly to ensure that it's clean. Kennels are washed with Wyshiwash, a system for disinfecting that has all natural ingredients and will not affect the well water. She plans to bathe dogs in the basement, which already contains French drains. T. 16.

Dog waste is picked up twice a day and put in receptacles. The receptacles will be located within an enclosure similar to the one shown on the conditional use site plan (Exhibit 45(b), shown on page 11). The receptacles are emptied twice a week by residential curbside service. T. 28.

Dogs will be fed in their crates outside of any training sessions. Medications will be administered as required for each dog. Each dog will have a bin on top of their crate where any medications, directions, including a white board will maintain all of the daily medications to be sure that all are adequately cared for. T. 17. Dishes are washed daily in the dishwasher. *Id.*





**Enclosure for Waste  
Receptacles  
Exhibit 45(b)**

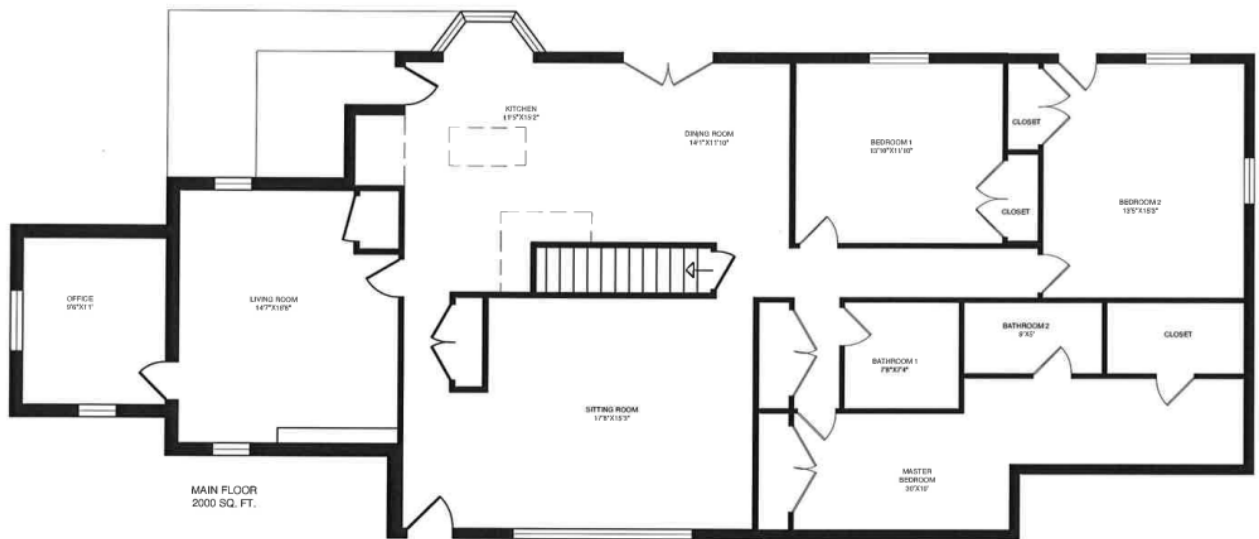
Drop-offs will typically be one per hour to ensure there's no overlap between any of the dogs, especially since she dealing with dogs with issues. This enables her to take time with each owner to discuss issues and their concerns and ensure that the dog is moved to the proper space. T. 18. She did not have a daily estimate for how many dogs would be dropped off in a single day because they stay long-term, typically, three to eight weeks depending on the needs of the dog, the severity of the issues and the needs of the owners. T. 18.

Clients and their guests will come between 9:00 a.m. and 7:00 p.m. It would be excessive if dogs came even once an hour. T. 22-23. She is aware of the limited use standards requiring all dogs to be inside between 9:00 p.m. and 7:00 a.m. T. 23.

She is aware that sales of all pet food and supplies must be limited to 20% of total sales. She doesn't see an issue with that because she doesn't intend to sell much. Items she may sell would be collars, occasional bags of food that she needs for a client. T. 38. Sale items would be only for the convenience of her clients—not for outside customers. T. 28.

### 3. Floor Plans

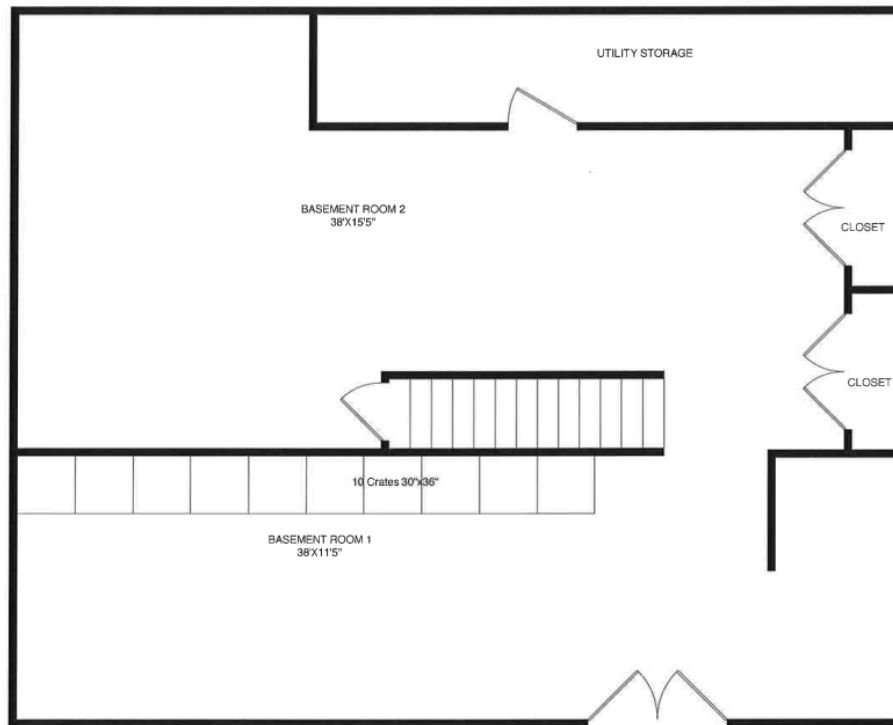
The only area used for the conditional use on the main level of the house will be the front sitting room to meet with owners. T. 33. Her office is on the far-left of the building. T. 33. The interior floor plan of the main level is shown below/on the next page (Exhibit 16(c)):



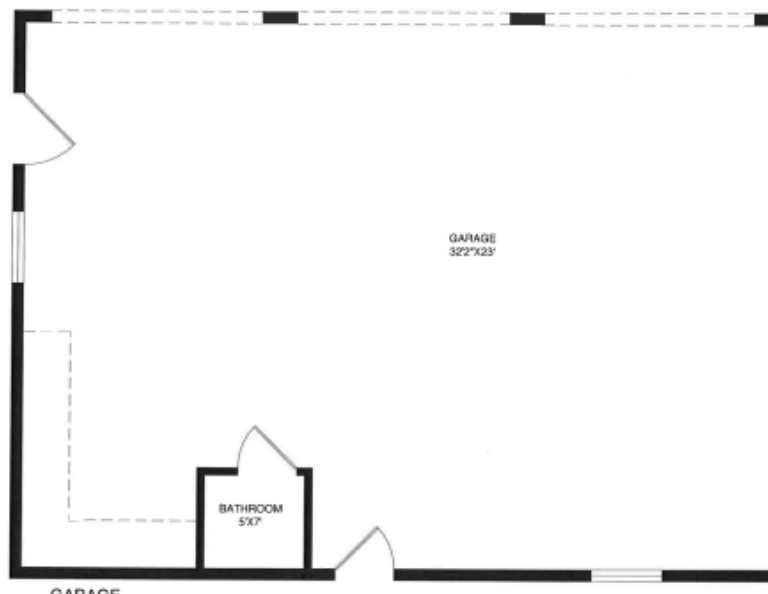
The basement is about 1,100 square feet, divided into two main areas (Exhibit 16(a), shown on the next page). Ms. Krieg intends to put crates and kennels in one half of the basement where the French drains are located. The other half will contain dog treadmills; she may do some training in that room as well to use the space. T. 33-34. The existing three-car garage is heated and has hot water and has approximately 1,000 square feet. It will be a training area so they can have space to work with the dogs. T. 34. The garage floor plan is also shown on the next page (Exhibit 16(b)).

### 4. Site Circulation, Parking and Access

Mr. Norton testified that access is from an existing driveway leading from Mullinix Mill Road to the front of the three-car garage. Part of the driveway is gravel. The drive allows for



**Basement Floorplan  
Exhibit 16(c)**



**Garage Floor Plan  
Exhibit 16(b)**

circulation on the property, but they are not adding any new impervious area except a small amount required by for fire access. T. 54. There will be 8 parking spaces, three in front of the garage and five where the gravel intersects with the pavement. Exhibit 45(b). The spaces are located within the existing impervious area. T. 54.

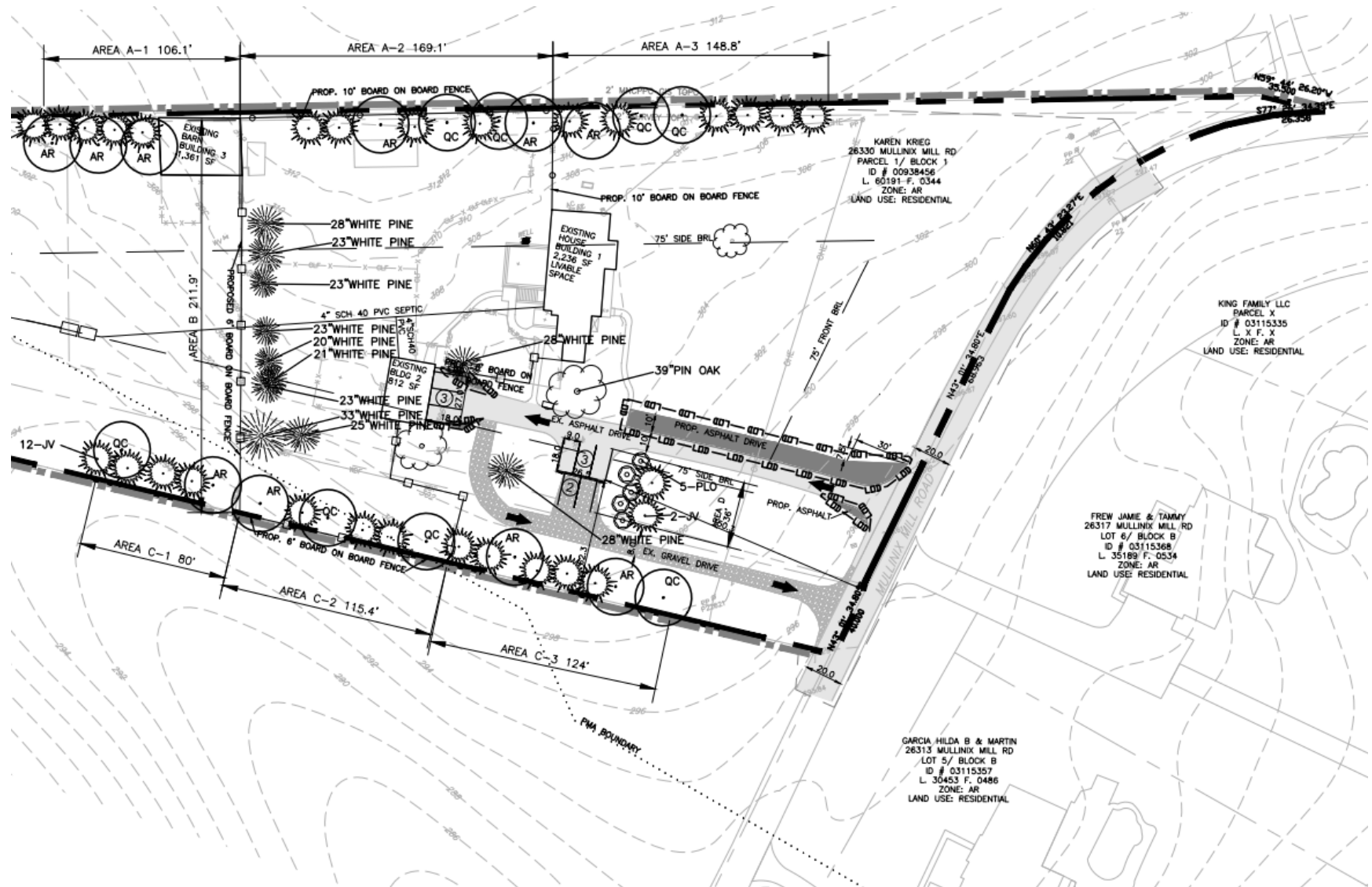
### **5. Perimeter Site Landscaping, Lighting, and Signage**

No new lighting is proposed. Ms. Krieg proposes to use the existing residential lighting currently on the exterior of the house. T. 65. No signage is proposed.

Ms. Krieg seeks alternative compliance from the site perimeter screening requirements along the north, south, and west property lines. Exhibit 29, p. 13. She proposes an 8-foot board on board fence along the southern property line and the western edge of the exercise area and a 8- to 10-foot board-on-board fence along the northern property line. She will install a mix of red maples, scarlet oaks, junipers, and grasses inside the fence along the north and south property lines and retain mature white pines inside the western edge of the exercise area. Exhibit 15. A copy of the landscape plan (Exhibit 45(a)) is shown on the next page.

### **6. Parking and Parking Lot Landscaping**

As revised, the conditional use plan (Exhibit 45(b)) shows 8 parking spaces, the minimum required for the proposed use. The Applicant has also added landscaping for the parking closest to the road, in "Area D" marked on the landscape plan (Exhibit 45(a)). Eastern red cedars and laurel will screen the cluster of five spaces from the road. *Id.* An excerpt from the plan showing Area D is on the page 16 of this Report.







Section 3.1.5.B.2.b.1 of the Zoning Ordinance requires the Applicant to submit an acoustical study demonstrating that the animal boarding and care facility will meet the noise levels mandated by the Montgomery County Code. The Code limits noise levels in residential noise areas to 65 dBA in the daytime (from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays) and 55 dBA in the nighttime (from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays). *Montgomery County Code*, §31-5(a)(1). Mr. Eamon Curley, the Applicant's expert in acoustical engineering, performed an acoustical study of potential noise emanating from the site. He testified that the study was conservative; it assumed conditions that would make the most noise possible. These included (a) having six dogs barking outside at the same time, and (2) assuming the six dogs were of breeds with the loudest barks. In places where the maximum decibel levels crossed the property line, he modeled noise barriers and incrementally

increased the height of those barriers until the 65 dBA contour pulled all the way back to the property line. That required a six-foot noise barrier on the southern property line and a 10-foot noise barrier to the north.

At the public hearing, the Applicant requested a proposed condition permitting an 8-foot fence along the northern property line provided no house was built 75 feet or closer to the northern property line. T. 98. Assuming the same conservative conditions, Mr. Curley opined an 8-foot barrier along the northern property line would extend 65 dBA levels to approximately the yellow boundary shown in the drawing below (Exhibit 30, first attached drawing):



According to Mr. Curley, the yellow extends approximately 60 feet beyond the northern property line. Due to the low probability that the conditions they assumed will occur; he opined that in practice the use will not exceed 65 dBA at the northern property line. T. 94. The condition proposed requires the 10-foot fence if a home is built within 75 feet to create a “buffer” in the calculation. T. 98.

## **D. Community Response**

No one filed any opposition to this application.

## **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW<sup>3</sup>**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for a private educational institution are in Section 59.3.4.5.C.2 of the Zoning Ordinance. The general standards (termed “Necessary Findings”) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

### **A. Necessary Findings (Article 59.7)**

The general findings necessary to approve conditional uses are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below.<sup>4</sup> The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

#### ***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

***a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

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<sup>3</sup> All findings of fact are based on a preponderance of the evidence. *Zoning Ordinance*, §7.1.1.

<sup>4</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: Staff advises that there are no previous land use approvals applicable to the property.

Exhibit 29, p. 11. Having no evidence to the contrary, the Hearing Examiner finds that this standard is inapplicable to the subject application.

*b. satisfies the requirements of the zone, use standards under Article [59-3](#), and applicable general requirements under Article [59-6](#);*

Conclusion: Based on the analysis contained in those discussions below, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6, discussed more fully in Parts III.B, C, and D of this Report, respectively.

### **1. Substantial Conformance with the Master Plan**

*c. substantially conforms with the recommendations of the applicable master plan;*

Planning Staff concluded that the proposed use is consistent with the goals of the Master Plan because animal boarding and care is “similar in character and function to other animal-related agricultural uses, such as ‘Equestrian Facility’, albeit smaller in scale, and to other agricultural-related uses that consist of “animal husbandry, care and boarding.” Exhibit 29, p. 14. Staff also found that residential occupancy of an existing residential structure retained the low-density residential housing in the Rural Area. *Id.*

Conclusion: The property lies within the geographic area covered by the 2006 Damascus Master Plan. The Master Plan divides the area into the “Town Center” area, “Transition Areas,” and “Rural Area” with different recommendations and guidelines for each area. The subject property lies within the “Rural Area” defined by the Plan. The objective for the Rural Area is:

Protect existing rural crossroads villages, provide guidance for subdivision design in the Rural Density Transfer Zone, provide guideline [sic] for special exceptions that could impact rural vistas, and support the evolution toward sustainable agricultural practices.

*Plan*, p. 11.<sup>5</sup> The Plan sought to support agricultural uses and determined that “agriculturally related business are endorsed as the most efficient, effective, and economical means to maintain a viable agricultural economy and protect the Agricultural Reserve.” *Id.*, p. 3. The Plan recognized that additional housing is limited due to wastewater treatment limitations and recommended the low-density AR (Agricultural Reserve) zoning for the area. *Id.*, p. 103.

The Plan’s guidelines for conditional uses (formerly special exceptions) “encourage the protection of the rural vistas that are intrinsic to the character of the Damascus vicinity.” *Id.* It states:

**Guideline for Rural Vista Protection** – The visual character of the Rural Areas surrounding Damascus are as unique as they are the highest elevations in the County. When special exceptions are proposed in Transition and Rural Areas within the Damascus Master Plan area, their review should take into special consideration the preservation of these long vistas that are a part of the unique character of this community. Any proposed land use that would impede those vistas should be discouraged unless it serves an important public purpose.

*Id.*, p. 103.

The Hearing Examiner finds the use is consistent with the Master Plan. The primary goal of the Master Plan is to support agricultural uses and preserve the agricultural vistas characteristic to the Damascus area. While technically classified by the Zoning Ordinance as a “commercial” use (*See, Zoning Ordinance*, §59.3.1.6), she agrees with Staff that has similar characteristics to other agricultural uses, particularly animal husbandry. There is nothing in this record to indicate that the proposed use will impact rural vistas, as it will utilize just the existing home without significant improvements. For the same reason, it meets the housing goals for the Rural Area, which are to keep housing at the low densities permitted by the AR Zone.

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<sup>5</sup> The 2014 Zoning Ordinance discontinued the use of the term “special exception” and substituted the term “conditional use”. Both terms have the same meaning. *Zoning Ordinance*, §1.42.

*d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

Staff found that the proposed use met this standard because “[b]y utilizing the existing house and detached garage and providing additional landscaping, fencing, and screening, this application will not alter the character of the surrounding neighborhood.” Exhibit 29, p. 14.

Conclusion: Conformity to the Master Plan is discussed above. In Part II.B of this Report, the Hearing Examiner characterized the “surrounding area,” as comprised of low-density residential and agricultural uses. This application does not alter the density of the surrounding area. Commercial aspects (outside exercise of dogs) are located in the rear yard and well screened by board-on-board fences with a mix of evergreens, red maples, and scarlet oaks on the inside to soften that view. Parking will be screened from Mullinix Mill Road by cedars and laurel shrubs. The Hearing Examiner agrees with Staff that the proposed use will have little impact visually on the surrounding area because the exercise kennels are located in the rear, the nearest parking to the road is well setback and screened, Ms. Krieg will use the existing dwelling, and there are few visible external changes except the board-on-board fences on the northern and southern property lines. She agrees with Staff that the landscaping proposed along the fences will soften the opaqueness of the fence. .

Noise is also a potential adverse impact that is analysed under this standard. The Applicant seeks the ability to install an 8-foot rather than 10-foot fence along the northern property line. Mr. Curley explained that conservative modeling (with all six of the loudest breed of dogs outside at one time) required a 10-foot fence to bring noise levels down to the maximum permitted by the County Code. The Applicant’s consultant opined that there is a very low probability that these conservative assumptions will occur in practice. Therefore, it’s improbable that noise will exceed the maximum permitted at the property line (*i.e.*, 65 dBA in the daytime). T. 95.

The Hearing Examiner may not vary maximum decibel levels mandated by the County Code. However, Mr. Curley's expert testimony, along with his acoustical report, is the best evidence in this record regarding noise impacts. To ensure that noise levels do not exceed the maximum permitted by the Code, the Hearing Examiner will impose two conditions on the grant of the conditional use. The first is the condition requiring that the height of the fence on the northern property line be 10 feet if a residence is built within 75 feet of the property line. The second will be a condition simply mandating that noise at the property line not exceed the maximum permitted by the Code. If there are questions in the future about noise levels, the conditions of approval make clear that the Code standards are not waived.

*e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Conclusion: Staff confirmed that there are no existing or approved conditional uses within the surrounding area. This standard is inapplicable.

## **2. Adequacy of Public Facilities**

*f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

*i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*



*ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

**a. Transportation**

Staff estimates the number of peak-hour person trips generated by the use will be well under the 50-trip threshold, stating (Exhibit 29, pp. 15-16):

Client interactions are expected to be minimal, with arrival and departure times staggered throughout the day. Given the negligible weekday activities expected to occur, the Applicant has provided a Transportation Exemption Statement (“TES”).”

A graphic from the Staff Report shows the estimated person trips (*Id.*, below):

Trip Generation	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
Staff	3	0	3	0	2*	2
<b>Total Trips</b>			<b>5</b>			

*\*Based on probable situations where a staff member may need to stay overnight  
Table 2: Trip Generation for the Proposed Conditional Use*

Conclusion: Because the application does not require approval of a preliminary plan of subdivision, the Hearing Examiner must decide whether transportation modes are adequate to serve the use. Exhibit 29, p. 15. This is determined under the Planning Board’s Guidelines for Local Area Transportation Review (July 2021) (LATR). Projects that generate fewer than 50 “total net new weekday peak-hour person trips” do not need to submit the analysis (traffic study) required by the Guidelines. Instead, they must submit a “traffic exemption statement” describing why the project is exempt from LATR.

The low number of daily trips estimated is consistent with Ms. Krieg’s testimony that dogs will be boarded for weeks rather than days or hours at a time, depending on the level of training

needed. T. 14. The daily peak hour trips shown appear to be based on the number of of on-site daily employees. As Staff points out, the operating hours permit ample opportunity for clients to visit outside of peak hours. Clients will visit by appointment only. Based on the evidence presented, and having none to the contrary, the Hearing Examiner finds that the use will generate fewer than 50 peak hour person trips and thus is exempt from LATR review.

#### **b. Adequacy of Other Public Facilities**

Staff advises that the proposed use will have no impact on school capacity and that the Department of Permitting Services has deemed the water service (well) and septic capacity is sufficient for the residential use and the animal boarding and care facility. Exhibit 29, p. 15. Staff found the remaining public facilities are adequate, stating, “[O]ther utilities, public facilities, and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.”

Mr. Norton testified that Ms. Krieg has upgraded the septic system so that it can serve both the residential and animal boarding care uses with a new septic field. The maximum number of dogs and staff is based on the amount that the septic can handle. T. 59.

Conclusion: Based on the above evidence and testimony, and having nothing to the contrary in the record, the Hearing Examiner finds that the remaining public facilities are adequate to serve the use.

### **3. Undue Harm from Non-Inherent Adverse Effects**

*g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Staff concluded that there were no non-inherent adverse effects that would warrant denial of the proposed application. It identified the inherent effects of an animal boarding and care facility as temporary construction noise, vehicle trips, on-site lighting, and noise from dogs barking. Staff stated (*Id.*, p. 17):

The Animal Boarding and Care will not be detrimental to surrounding properties and staff has not identified any non-inherent adverse effects associated with the proposed use.

The Project includes new landscaping and screening to limit the visual impact of the proposed surface parking lot, and will not cause any objectionable noise, fumes or illumination or decrease the economic value of surrounding properties. Lighting will not change and will remain residential in character. Trips in and out of the site will be staggered by appointments only.

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use. Planning Staff

have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated (*i.e.*, inherent) with an animal boarding and care facility. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In past cases relating to animal boarding and care facilities the Hearing Examiner has identified inherent characteristics of this use in addition to those listed by Staff. These include (1) sufficient indoor and outdoor spaces to accommodate daily and overnight care of the proposed number of animals, (2) sufficient space for transfer of animals during delivery and pick-up, (3) buildings and outdoor spaces far enough from neighboring structures to reduce noise from groups of animals, and (4) specified procedures for animal waste management. The Hearing Examiner finds Staff's list and the additional items appropriate here because these fully capture all of the potential adverse effects of the use.

The Hearing Examiner finds that there is one non-inherent physical aspect of the site. That is its unusual pie-shaped, narrow configuration that necessitates the variances from the limited use standards for this use. The variances requested are to reduce the minimum setbacks of the exercise area, primary and accessory structures, and to increase the permissible height of the fence along the northern property line (to maintain acceptable noise levels).

The existence of a non-inherent characteristic doesn't mandate denial of the conditional use when adverse impacts are sufficiently mitigated to be compatible with the surrounding area. Mr. Norton opined that site circulation and parking will be adequate for the use and the parking provided meets minimum requirements. This is consistent Ms. Krieg's testimony and Staff's conclusion that daily activity levels will be low and visits by clients will be by appointment. T. 56, 64. The low activity level also supports a finding that there will be sufficient space on-site for drop-off and pick-up of dogs.

The testimony and evidence also supports a finding that waste will be managed without adverse impacts on the area. Ms. Krieg testified that she picks up waste twice a day and puts the waste in receptacles. The receptacles will be located in a shed-type structure and will be emptied twice a week by residential curbside service.

The major impact of the unusually shaped lot is the potential impact on noise. The Zoning Ordinance mandates a 200-foot setback from dog exercise areas. According to Mr. Norton, this cannot be met at any location behind the existing house. Without the 200-foot setback, bringing noise to the maximum levels permitted requires an 8- to 10-foot fence along the northern property line, which is higher than the 6.5 feet permitted by the Zoning Ordinance. *Zoning Ordinance*, § 59.6.5.2.C.3.c.

Even with these variances necessitated by the shape of the property, this record supports a finding that noise will be at levels within the maximum levels required by the County Code. Mr. Curley's acoustical study assumed conditions that would yield the most possible noise (six dogs at once with maximum bark levels). He opined that a 10-foot board on board fence along the northern property line will meet the 65 dBA cap under that scenario. With an 8-foot high board on board fence, the "worst case" scenario would result in the maximum levels approximately 60

feet into the abutting property. T. 99. Mr. Curly testified, however, that the probability of six dogs barking at once is “very, very low” and is “not probable” to occur. T. 96-98.

Based on this evidence, the Hearing Examiner finds that the unique shape of the lot, while a non-inherent characteristic, does not require denial of the application. An 8-foot high board on board fence will be compatible with neighboring uses because the record shows that it's unlikely that the “worst-case” conditions modeled by Mr. Curley will ever occur. To ensure that noise levels meet the Code standards, she imposes compliance with the Code maximums as an additional condition.

For these reasons, the Hearing Examiner finds that the use will not generate adverse impacts despite with the non-inherent shape of the property.

#### **4. Compatibility with the Surrounding Area**

- 2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Staff concluded that this standard was met (Exhibit 29, p. 17):

By utilizing the existing house and detached garage and providing additional landscaping, fencing, and screening, this application will not alter the character of the surrounding neighborhood.

Conclusion: The Hearing Examiner agrees with Staff that the few new improvements (slight widening of the driveway and fencing along the property lines and the rear of the conditional use area) will maintain the property's residential character. Mr. Norton testified that the primary aspects of the use will occur inside buildings or in exercise areas in the rear of the property. The main item seen from the road is the driveway, sized to residential standards for fire access. T. 51. The setback from Mullinix Mill Road and the screening proposed for the parking mitigate any commercial aspect.

- 3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

- 4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.***

Conclusion: The Zoning Ordinance classifies an animal boarding and care facility as a commercial rather than an agricultural use. Thus, the application must meet all conditional use requirements.

#### **B. Standards Specific to Animal Boarding and Care Facilities (Article 59.3)**

The specific standards for approval of an animal boarding and care facility are set out in Section 59.3.5.1.B.2.b of the Zoning Ordinance. Standards applicable to this application are:

- i. In the AR, R, RC, RNC, RE-2, RE-2C, RE-1, and R-200 zones:***

- (a) The minimum lot area is 2 acres or the minimum lot area required for a detached house building type in the zone, whichever is greater.***

Staff reports that the four combined parcels total more than four acres, meeting this standard. Exhibit 29, p. 4. Mr. Norton testified that the largest parcel (containing the house and accessory structures) is approximately 2.2 acres.

Conclusion: The minimum for a detached house building type in the AR zone is 40,000 square feet, so the lot would have to be above 2 acres. *Zoning Ordinance*, §59.4.2.1.F. At least one of the parcels is above 2 acres and the combined properties total 4 acres. Hearing Examiner finds that this standard has been met.



***(b) Exterior areas used to exercise, walk, or keep animals must be set back a minimum of 200 feet from any lot line and screened under Division 6.5.***

Conclusion: Due to the property's unusual shape, the Applicant requests a variance of this requirement. Staff recommended the variance be approved. The Hearing Examiner addresses the variance in Part IV of this Report and recommends approval as well.

***(c) All exterior exercise areas and runs must be fenced.***

Conclusion: Ms. Krieg proposes board-on-board fencing that encircles the exercise area and connects to the house, shown on the conditional use site plan. As a condition of approval requires the applicant to comply with the site plan, this standard has been met.

***(d) Animals are prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.***

Conclusion: The Applicant proposes to keep boarded animals within the basement of the single-family detached home or inside the detached garage. T. 33-34; Exhibit 29, p. 9. The Hearing Examiner imposes a condition of approval requiring compliance with this requirement. As conditioned and proposed, the application meets this standard.

***(e) Animals must only be walked or exercised in on-site outdoor areas.***

Conclusion: The Applicant proposes to have outdoor exercise and play only in the exercise area designated on the conditional use site plan, which will be a condition of approval. This standard has been met as proposed and conditioned.

***(f) The sound level at the nearest property line must satisfy Chapter 31B.***

Conclusion: The Hearing Examiner has already described the evidence and testimony on noise levels at the property line. With the conditions imposed in Part V of this Report, she finds that the application will be this standard.

***(g) All buildings and accessory structures must be set back a minimum of 75 feet from any lot line.***

Conclusion: Ms. Krieg has requested a variance from this requirement. The Hearing Examiner discusses the variance in Part IV of this Report and recommends approval, as did Staff.

***(h) All litter and animal waste must be contained and controlled on the site.***

Conclusion: Ms. Krieg proposes to pick up waste twice a day and deposit into outdoor receptacles that are placed in an enclosure similar to the one depicted on the conditional use plan. These are emptied twice a week through residential trash service. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

***(i) Any accessory operation, such as the sale of pet food and supplies, must be in the statement of operations and must be limited as an accessory activity to a maximum of 20% of sales.***

Staff found that the application will comply with this requirement, stating that the “Applicant will commit to producing accessory sales under 20% of the facilities [sic] gross sales...Pet owners are responsible for providing their dog’s food from home.” Ms. Krieg testified that she is aware that all pet food and supplies must be limited to 20% of sales. She doesn’t believe that poses a problem because she intends to sell items only for the convenience of her clients, not outside customers. Items she may sell would be collars, occasional bags of food that she needs for a client. T. 38.

Conclusion: At the public hearing, Ms. Krieg agreed to a condition incorporating this standard and to permit DPS to see her sales records with reasonable notice. As proposed and conditioned, the use meets this requirement.

***(j) The Hearing Examiner may regulate hours of operation. The Hearing Examiner may also regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and how the animals are boarded, exercised, walked or kept.***

Staff and Ms. Krieg advise that the facility will operate 24 hours a day for 7 days a week because dogs are boarded overnight for extended periods. Clients and their guests will come between 9:00 a.m. and 7:00 p.m. Ms. Krieg testified that it would be excessive if dogs came even once an hour. T. 22-23.

Conclusion: As the dogs will be required to be indoors from 7:00 p.m. to 9:00 a.m., the Hearing Examiner finds that the 24-hour operation will be compatible with the surrounding area. She imposes a condition requiring visitors to be allowed only between 9:00 a.m. and 7:00 p.m., except for emergencies.

***(k) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect on groundwater or septic systems.***

Staff determined that waste will have no effect on groundwater or septic systems because it will be removed immediately. Ms. Krieg testified that she removes it at least twice a day and deposits it in receptacles. She also testified that she uses a product called "Wysiwash" to clean the kennels. It is made of all natural ingredients and will not affect the groundwater. T. 16.

Conclusion: As already described, property's well system is adequate to serve the facility. The septic system has been upgraded and resized to serve both the residence and the animal boarding and care facility, as discussed in Part III.A.2.b of this Report. Ms. Krieg advises that she will remove waste promptly to containers and uses an all-natural cleaner to ensure there is no contamination of groundwater. Based on this record, the Hearing Examiner finds that this standard is met.

***(l) The applicant must submit the following:***

***(1) Acoustical engineering studies that demonstrate that the proposed use will meet required noise levels. The studies must show the worst case scenario sound level (for example, full***

***occupancy). The statement of operations must be sufficiently detailed to allow determination of how often the worst case scenario sound level occurs.***

Conclusion: The Hearing Examiner has already described the acoustical study and the testimony and evidence regarding noise levels. Mr. Curley opined that the probability of the worst case scenario actually occurring is “very, very low.” The Hearing Examiner imposes a condition in Part IV of this Report requiring that the facility meets noise level limits in the County Code. This standard has been met.

***(2) Detailed floor plans that show all the interior areas, including runs and kennels.***

Conclusion: The Applicant has submitted floor plans of the interior areas to be used for kenneling, exercise, and visitors. Exhibits 16(a)-(c). The basement and existing detached garage are relatively large, consisting of approximately 1,100 square feet and 1,000 square feet, respectively, and there is nothing in the record indicating they are inadequate to serve the use.

***(3) Site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.***

Conclusion: The site plan (Exhibit 45(b)) shows the outdoor exercise area and the existing detached garage that will be used for shelter during inclement weather. This requirement has been met.

### **C. Development Standards of the Zone (Article 59.4)**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the AR Zone, contained in Article 59.4 of the Zoning Ordinance. In its report, Staff compared the minimum development standards of the AR Zone to those provided by the application in a table included in the Staff Report. (Exhibit 29, p. 12, shown on the next page). The table shown apparently assumed that there were eight parking spaces when

there were only seven. Exhibit 34. The conditional use plan has been revised to show eight spaces, and the table is now correct. Exhibit 45(b).

The application seeks a variance from three of the limited use standards for animal boarding and care facilities and one from the general design requirements under Article 6 for the height of the fence on the northern property line. These are discussed later in this report.

<b>Development Standard Section 59.4.4.6.B</b>	<b>Permitted/ Required (59.4.2.1.F)</b>	<b>Animal Boarding &amp; Care (59.3.5.1.B)</b>	<b>Existing/Proposed*</b>	<b>Variance Requested</b>
Minimum Lot Area	40,000 sf	2 Acres	192,535 sf (4.42 acres)	
Minimum Lot Width at Front Building Line	125 ft.		266 ft.	
Minimum Lot Width at Front Lot Line (CU)	25 ft. (50 ft)		398 ft.	
Maximum Lot Coverage	10%		2.2%	
Minimum Front Setback	50 ft.	75 ft.	188.4 ft.	
Minimum Side Setback	20 ft.	75 ft.	55.8 ft. **	19.2 ft.
Minimum Sum of Side Setbacks	40 ft.		177.2 ft.	
Minimum Rear Setback	35 ft.	75 ft.	865.8 ft.	
Maximum Height	50 ft.	50 ft.	Under 50 ft.	
Accessory Structure Front Setback	50 ft.	75 ft.	253 ft.	
Accessory Structure Side Setback	15 ft.	75 ft.	68.7 ft.	6.3 ft.
Accessory Structure Rear Setback	15 ft.	75 ft.	787.6 ft.	
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	2 Spaces for the dwelling unit= 2 space3	1.00/employee plus 3 spaces= 6 spaces	8 spaces	

\*The primary structure is existing. Only proposing site work

\*\*Requesting a variance from the Hearing Examiner. See Variance Request below.

**Comparison of Proposed and  
Provided Development  
Standards**

## **D. General Development Standards (Article 59.6)**

Article 59.6 sets requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.<sup>6</sup>

### **1. Site Landscaping**

Minimum standards for landscaping are set forth in Division 6.4 of the Zoning Ordinance, with a stated intent to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” *Id.*, §59.6.4.1. Required landscaping permits two options—one an eight-foot-deep strip and one a 12-foot-deep strip with slightly different mixes of canopy trees, understory evergreen trees, small to large shrubs, at certain distances apart. One option requires four-foot berm, fence, or wall. *Zoning Ordinance*, §59.6.5.3.C. The Zoning Ordinance permits alternative methods of compliance with these minimums if the Hearing Examiner “determines there are unique site or development constraints, such as grade, visibility, an existing building or structure, an easement, a utility line, or use restrictions that preclude safe or efficient development” under the required standards and the alternative design will:

- A. satisfy the intent of the applicable Division;
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;
- C. provide necessary mitigation alleviating any adverse impacts; and
- D. be in the public interest.<sup>7</sup>

*Id.*, §6.8.1. The alternative landscaping proposed by the Applicant has already been described.

Staff recommended approval of the alternative compliance, as did the Planning Board, because the

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<sup>6</sup> Standards for site access (Section 59.6.2.1) of the Zoning Ordinance does not apply to properties in the AR Zone. Other standards, including requirements for new outdoor lighting, outdoor storage of goods, and signage are not applicable because none are proposed with this application. *Zoning Ordinance*, §§59.6.2.1, 59.6.6.1, and 59.6.6.7.

<sup>7</sup> Section 59.7.3.1.E.1.b. also permits the Hearing Examiner to waive the requirements of Article 6 to the extent needed to ensure compatibility.

board-on-board fence is opaque and the large trees on the interior of the fence soften the fence's exterior. According to Staff, no shrubs are proposed due to the presence of dogs. Staff also recommended approval of screening along Area B (the western fence) of the Landscape Plan because there are (Exhibit 29, p. 13):

...existing large evergreen trees currently along the line of the proposed fence and dog area. Proposed vegetation cannot be installed; however, the existing vegetation meets or exceeds the intent of the code.

Mr. Norton testified that the Applicant could not provide the required landscaping along Area B (shown on the Landscape Plan to the west of the exercise area) because it would interfere with both the fence and seven existing, mature White Pine trees. T. 66. Nor would a shrub layer have any positive impact because the fence is opaque. T. 67. In Mr. Norton's opinion, the fences along the northern and southern property lines, necessary for noise mitigation, would also interfere with the mandatory landscaping requirements.

Conclusion: The Hearing Examiner agrees with the Staff's recommendation to approve the alternative method of compliance shown in the Landscape Plan (Exhibit 45(b)). Given the unusual shape of the lot, the fences needed to mitigate noise levels are at the same location where the standard landscaping would typically be located. The fence provides more screening than the standard landscaping and the visual impact will be softened by trees that extend beyond the height of the fence. There is no purpose for standard landscaping, as it will not be seen from the outside if located on the interior of the fenced area.

## **5. Parking Lot Landscaping and Lighting**

Additional landscaping standards apply to conditional uses that have parking areas with between 3 and 9 spaces (*Id.*, §59.6.2.9.B), set forth below:

1. If a property with a conditional use requiring 3 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is

vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:

- a. satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;
  - b. contains a hedge, fence, or wall a minimum of 4 feet high; and
  - c. has a minimum of 1 understory or evergreen tree planted every 30 feet on center.
2. The Hearing Examiner may increase the perimeter planting requirements for a conditional use application under Section 7.3.1.

The Applicant represents that the landscaping in Area D meets the minimum requirements and that this screening also acts to screen the three spaces in the rear yard. The rear yard, Ms. Krieg argues, is already extensively screened to the north and south by the fences and additional landscaping on the interior. The Applicant states that both parking areas are existing site design and are grandfathered under Section 59.7.7.1.B. of the Code, among other arguments.

The Hearing Examiner finds that the screening between the road and the 5-space parking area meets the Zoning Ordinance requirements. The north and south sides are screened by the perimeter landscaping and eventually, the fence on the southern side of the property. The interior 3-space parking area is entirely enclosed by fences and buildings. The Hearing Examiner is authorized to find compliance with Article 6 “to the extent the Hearing Examiner finds necessary to ensure compatibility...” She finds that the parking lot screening more than compatible with the surrounding area, given the distance of the driveway from Mullinix Mill Road, the landscaping along the southern property line, and the 6-foot and 8-foot fences that screen the interior further south of the five spaces and on both sides of the 3-space parking area.

### **E. Variances**

Ms. Krieg requests four variances, three from the limited use standards for an animal



boarding and care facility and one from the general design requirements of Article 6. These variances are:

- To setback a primary structure 55.8 feet from the property line rather than 75 feet (a variance of 19.2 feet) (Section 59.3.5.1.B.2.b.i.(g));
- To setback the outdoor exercise area less than 200 feet from the property line (a variance of 200 feet) (Section 59.3.5.1.B.2.b.i.)
- To setback the detached garage 68.7 feet rather than 75 feet from the property line (a variance of 6.3 feet) (Section 59.3.5.1.B.2.b.i.g).
- To permit the fence along the northern property line to be 8-10 feet high rather than 6.5 feet high. (Section 59.6.4.C.3.c.i)

To grant the variance, the Board of Appeals must find that each of the following criteria apply (Section 59.7.3.2.E.2):

***a. One or more of the following unusual or extraordinary situations or conditions exist:***

- i. Exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;***
- ii. The proposed development uses an existing legal nonconforming property or structure;***
- iii. The proposed development contains environmental sensitive features or buffers;***
- iv. The proposed development contains a historically significant property or structure; or***
- v. The proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood.***

Staff characterized the combined parcels as “exceptionally narrow.” Exhibit 29, p. 19. Mr. Norton testified that the primary constraint necessitating the variances is the long, narrow shape

of the property. He also testified that the structures were erected before Ms. Krieg bought the property and it would not be easy to move them. T. 71.

Conclusion: The Hearing Examiner finds that the long, narrow lot, configured in a “pie shape”, is an extraordinary condition that warrants granting the variances. The use proposed could only meet the 200-foot setback for the exercise areas in the front yard. That would have a greater adverse impact on the existing agricultural/residential character of the area along Mullinix Mill Road. Two of the setbacks (those for the primary and accessory structures) stem from the fact that Ms. Krieg proposes to use only the existing structures within the narrow lot. As Mr. Norton testified, constructing new buildings would be a significant burden on the applicant and potentially also impact the residential character of the neighborhood. The narrow lot also hampers sound mitigation, as the width constrains the size of the exercise area is insufficient to mitigate noise levels required by the County Code without increasing the height of the northern fence.

***b. the special circumstances or conditions are not the result of actions by the applicant;***

Mr. Norton testified that the structures existed before Ms. Krieg purchased the property and that constructing new buildings would be burdensome.

Conclusion: The Hearing Examiner finds that the Applicant did not create the need for the variances, as Mr. Norton testified that the structures existed before Ms. Krieg bought the property and Staff advises that she proposes no changes to the existing site other than slightly widening the driveway. The application meets this criterion for approval.

***c. The requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;***

Conclusion: The variances for the primary and accessory building setbacks are the minimum necessary to allow use of the existing structures. Mr. Curley modeled noise from the subject property. He testified that he raised the fence height only to the extent needed to bring the use into compliance with the County Code. The exercise area could *not* be setback the required 200 feet because the lot is not that wide to the rear of the property and circumscribes the area available for dog exercise. The Hearing Examiner finds that this standard has been met.

***d. The variance can be granted without substantial impairment to the integrity of the general plan and the applicable master plan; and***

Conclusion: The Hearing Examiner has already found that the application substantially conforms with the Master Plan (in Part III.A.1 of this Report).

***e. Granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.***

Conclusion: For the reasons stated in Part III.A.4 of this Report, the Hearing Examiner finds that that grant of the variances will not adversely impact the use and enjoyment of abutting properties.

#### **IV. Decision on Conditional use and Recommendation on Variances**

Based on the foregoing findings and conclusions and a thorough review of the entire record, the Hearing Examiner recommends that the variances requested in BOA Case No. A-8617 be approved, and that the application of Karen Krieg d/b/a Dreamy Skies (CU 24-01) for a conditional use to operate an animal boarding and care at 26330 Mullinix Mill Road, Mount Airy, Maryland, under Sections 3.5.1.B.2.b of the Zoning Ordinance, described above are ***granted***, subject to the following conditions:

1. All development on the property shall conform to the approved Conditional Use Plan (Exhibit 45(b)) and Landscape Plan (Exhibit 45(a)).
2. No more than 14 dogs may be onsite at any time.

3. No more than 6 dogs may be exercised outside at any time.
4. Arrivals and departures of visitors must occur by appointment between the hours of 9:00 a.m. and 7:00 p.m., except for emergencies.
5. No more than three non-resident employees may be onsite at any one time.
6. Outdoor exercise of dogs must occur only within the area shown on the Conditional Use Plan as "Fenced Area – Dog Training.
7. No dogs are permitted outside between 9:00 pm and 7:00 am.
8. Animals must only be walked or exercised on-site.
9. The fence along the northern property line and connecting to the house must be a minimum of 8-feet high until such time as a house is built within 75 feet of the northern property line. If a house is built within 75 feet of the northern property line, the minimum height of the fence along the northern property line must be 10 feet.
10. The Applicant must comply with the requirements of Chapter 31B of the Code regarding noise.
11. The Applicant must make sales records available to the Department of Permitting Service upon reasonable notice.
12. 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 conditional use premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the conditional 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.

Issued this 13th day of December, 2023.



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Lynn A. Robeson  
Hearing Examiner

**NOTICE OF RIGHT TO APPEAL HEARING EXAMINER'S DECISION APPROVING  
CONDITIONAL USE AND RIGHT TO REQUEST ORAL ARGUMENT  
ON HEARING EXAMINER'S RECOMMENDATION TO  
APPROVE VARIANCES**

Any party of record may file a written request to appeal the Hearing Examiner's decision on the conditional use or her recommendation on the variances by requesting oral argument before the Board of Appeals within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such ex parte communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

PLEASE CHECK THE BOARD'S WEBSITE FOR ANY UPDATED HOURS OF OPERATION AND FILING PROCEDURES.

COPIES TO:

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