



## **MONTGOMERY COUNTY BOARD OF APPEALS**

### **MEMORANDUM**

March 13, 2024

**TO:** Lynn Robeson, Director  
Office of Zoning and Administrative Hearings

**FROM:** Barbara Jay, Executive Director  
Board of Appeals

**SUBJECT:** Case No. S-2659-A  
Petition of Jeffrey B. Walcoff, D.V.M., and Sheila Dearybury Walcoff

The case record for the above-captioned special exception major modification petition is hereby transmitted to you. The application has been reviewed by our staff and is complete, according to the requirements of Sections 59-A-4.22 of the Zoning Ordinance (2004), as made applicable by Section 59.7.7.1.B.1 of the Zoning Ordinance (2014). A copy of the Board's Resolution formally transferring this matter to your office to schedule and conduct a public hearing, and to issue a written report and recommendation, is attached.

Attachment

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue, Suite 217  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>  
(240) 777-6600

**Case No. S-2659-A**

**PETITION OF JEFFREY B. WALCOFF, D.V.M. AND  
SHEILA DEARYBURY WALCOFF**

**RESOLUTION TO REFER MAJOR MODIFICATION  
TO THE HEARING EXAMINER TO CONDUCT A PUBLIC HEARING AND  
ISSUE A REPORT AND RECOMMENDATION**  
(Resolution Adopted February 28, 2024)  
(Effective Date of Resolution: March 13, 2024)

Case Nos. S-2659 and S-2660 were granted to Jeffrey B. Walcoff and Sheila Dearybury Walcoff, on February 1, 2007, pursuant to Sections 59-G-2.32 and 59-G-2.02 of the Zoning Ordinance (2004), to permit a veterinary hospital and an animal boarding place. Effective February 27, 2009, the Board granted a modification to these special exceptions to permit certain site, landscaping and architectural changes. Effective July 20, 2017, the Board granted an administrative modification to allow to changes to the hospital's hours of operation, staffing, and level of animal care so that it could operate as an emergency veterinary clinic outside of regular hours and on weekends. After receiving a timely request for a public hearing regarding its July 20, 2017, Resolution from Ms. Cecile Foreman, Trustees Chairperson, Community of Faith United Methodist Church, and Rev. Dr. Samuel Holdbrook-Smith, Pastor-Teacher, Community of Faith United Methodist Church, the Board suspended its July 20, 2017, modification in a Resolution dated September 22, 2017, and scheduled a public hearing for November 8, 2017. The Board reinstated the modification following the public hearing, in a Resolution dated November 16, 2017.

The subject property is located at 22414 and 22416 Frederick Road, Clarksburg, Maryland, 20871, in the R-200 Zone.

The Board of Appeals has received an Application for a major modification of this special exception, as well as supporting documentation, from Jody S. Kline, Esquire. Under the Board's standard procedures for designating cases, this modification would be Board of Appeals' Case No. S-2659-A.

Because Case No. S-2659 was approved prior to October 30, 2014, under Section 59.7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant elects otherwise. Section 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance (2004) provides that the Board “must convene a public hearing” to consider a proposed major modification, and that the request is subject to the requirements of Sections 59-A-4.2 and 59-A-4.4 of that Ordinance, which pertain to filing and scheduling requirements. Section 59-A-4.125(a) of that Ordinance states that:

(a) The Hearing Examiner’s Office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the County Board of Appeals on the following matters:

- (1) any petition for a special exception; and
- (2) upon request of the Board and with approval of 3 of its members, any other matter pending before the Board.

The Board of Appeals considered Mr. Kline’s submission at a Worksession held on February 28, 2024. Mr. Kline was present at the Worksession. After considering the nature of the request, the Board voted to refer this major modification application to the Office of Zoning and Administrative Hearings for a public hearing and the issuance of a report and recommendation, in accordance with Section 59-A-4.125(a) of the Zoning Ordinance (2004).<sup>1</sup> Accordingly, on a motion by John H. Pentecost, Chair, seconded by Caryn Hines, with Richard Melnick, Vice Chair, Alan Sternstein, and Amit Sharma in agreement:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that, pursuant to the authority granted in Section 59-A-4.125 of the Montgomery County Zoning Ordinance (2004), the Board refers the above-described major modification to the Hearing Examiner for Montgomery County to schedule and conduct a public hearing, and for the issuance of a written report and recommendation to the Board of Appeals.

/s/

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John H. Pentecost  
Chair, Montgomery County Board of Appeals

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<sup>1</sup> The Board notes that similar authority exists under Section 59.7.6.2.B.2 of the current Zoning Ordinance, which states in relevant part that “The Hearing Examiner may schedule and conduct a hearing or write a report and recommendation for any other matter pending before the Board of Appeals upon request of the Board of Appeals and with approval of 3 of its members.”

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 13<sup>th</sup> day of March, 2024.

  
Barbara Jay  
Executive Director

**NOTE:** 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. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.



## I. STATEMENT OF THE CASE

Filed on February 16, 2024, Jeffrey and Sheila Walcoff (Petitioners or Applicants), seek to modify an existing special exception for property located at 22416 Frederick Road, Clarksburg, Maryland 20871 (property or subject property) under Section 59-G-2.32 of the *2004 Zoning Ordinance*.<sup>1</sup> Petitioners propose to expand the existing veterinary hospital. Exhibit 1(a). The amendment seeks to add additional square footage creating space to provide “state of the art” veterinary care. Exhibit 21. The subject property consists of approximately 2.003 acres in the R-200 (Residential Detached) Zone. *Id.*

Special Exception No. S-2659 was originally granted to the Petitioner by the Board of Appeals on February 1, 2007. Exhibit 7. Petitioners have since amended the application twice, first to add an animal boarding facility and second to add an emergency veterinary care facility to the property.<sup>2</sup> Exhibit 21. On March 13, 2024, the Board of Appeals transmitted the case record to OZAH for the major modification of the special exception for a public hearing and recommendation. Exhibit 15. On May 31, 2024, Petitioners sought a postponement of the tentative hearing date of July 11, 2024. Exhibit 17. After consultation with the Petitioners, the hearing date of October 18, 2024 was scheduled and OZAH issued notice of the a public hearing. Exhibit 20. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application on September 20, 2024. Exhibit 26. Staff recommended the following conditions of approval (*Id.*, p. 3-4):

1. The use is limited to a Hospital, Veterinary under the Special Exceptions provisions of Section 59-G-2.32.

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<sup>1</sup> Unless otherwise noted, all citations are to the *2004 Zoning Ordinance*. The 2014 comprehensive revision to the 2004 Zoning Ordinance (ZTA 13-04, adopted March 4, 2014) allows special exceptions approved before 2014 to be modified under the 2004 Ordinance until 2029, when they become subject to the 2014 Ordinance. *2014 Zoning Ordinance*, §59.7.7.1.B.

<sup>2</sup> S-2659 was combined with S-2660, the animal boarding facility. Petitioner does not seek to amend S-2660 nor is an amendment needed with this application. Exhibit 21.

2. Replant the landscape screening along the parking lot along the northwest side of the Property as previously approved by the Board of Appeals.
3. All previous conditions remain in effect for the Property if not expressly amended with these conditions.
4. Maximum of 5 veterinarians.
5. Maximum of 17 staff members.
6. Hours of operation for customers is 7 a.m. through midnight for Monday through Friday and 9 a.m. through midnight Saturday and Sunday.
7. Limited to 40 parking spaces shown on the Special Exception Plan.
8. This Special Exception Modification does not change any of the conditions previously approved for the Animal Boarding Facility (S-2660).

On October 9, 2024, the Planning Board concurred with Staff's findings and recommended approval subject to Staff's proposed conditions. Exhibit 25.

The public hearing proceeded as scheduled in a hybrid format on October 18, 2024. Petitioner's witnesses included Dr. Jeffrey Walcoff, co-Petitioner, and four expert witnesses. At the conclusion of the hearing, the Hearing Examiner left the record open for a 10-day period to receive electronically the final forest conservation plan, emergency vehicle access plan and to allow for the transcript to be received. Upon receipt of the requested documents and transcript, the record closed on October 29, 2024.

For the following reason, the Hearing Examiner finds that Petitioner's proposed modification meets the standards and requirements of the 2004 Zoning Ordinance, with the conditions recommended by the Hearing Examiner.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The property consists of 87,251 square feet and is located on the west side of Frederick Road, approximately 750 feet south of Clarksburg High School and Wims Road. Exhibit 26, pg. 7. The property serves as the home of Bennett Creek Animal Hospital and is improved with a structure, parking lot and associated lighting and landscaping along with 1.10 acres of Forest Conservation Easement along the south and west sides of the property. *Id.* Access to the veterinary hospital stems from a single entrance/exit along Frederick Road. *Id.* See image on next page identifying the property outlined in red.





Staff Report - Exhibit 28  
Figure 2 – Subject Property

### **B. Surrounding Area**

In a special exception case, the area that will experience the direct impacts of the proposed use is delineated. It is then characterized to determine whether the proposed use will adversely affect the existing character of the area. The Staff Report contains a graphic of the “surrounding area” (shown in yellow) defined by Staff (Exhibit 28, pg. 6, on the next page).

According to Staff, the area is primarily medium density, single-family detached homes zoned R-200 to the north and west, while to the south and east of the property is Rocky Hill Middle School and to the northwest is a “place of worship and a cemetery.” *Id.* The single-family home directly abutting the property to the south is owned by Bennett Creek Animal Hospital. *Id.* Staff did not identify any approved conditional use/special exception within the defined neighborhood. *Id.* at 7.



Staff Report – Exhibit 28  
Figure 1 – Vicinity Map/Neighborhood

The Hearing Examiner finds that the Staff's boundaries reasonably delineate the surrounding area as they capture areas that may be impacted by traffic, noise, and appearance of the special exception. Further, she finds the character of the area consists of medium-density single-family homes with educational, religious and cemetery uses in the neighborhood.

### **C. Proposed Modification**

Dr. Walcoff testified to his history with the property and veterinary care in the area. In 2007, Clarksburg was beginning to experience a large population growth, i.e. more people, more pets, which led Dr. Walcoff to seek approval to establish his veterinary practice at the property. T. 13. Upon approval of the first special exception, Dr. Walcott served as the lone veterinarian with a staff of seven.<sup>3</sup> T. 13. In 2017, Dr. Walcoff returned to the Board of Appeals and requested approval to expand the practice to include emergency veterinary care. T. 14. Because of the success of his practice and to keep up with demand, Dr. Walcoff requires additional space to allow for more exam rooms and a larger surgery suite to accommodate the volume. T. 15.

Per Staff, Petitioner proposes a 4,833 square-foot addition to the existing 6,879 square-foot building for a total of 11,712 square feet consisting of six an additional examination rooms and one additional, larger surgical suite on the first floor. Exhibit 28, pg. 8. In addition, the first floor will house three new small administrative offices, a larger veterinarians' office suite and a break room for the staff, while the basement level will consist of a storage area for food, supplies, records, oxygen tanks, valuables, and equipment. *Id.*

The hours of operation will remain the same and no changes will be made to the previously approved animal boarding facility. *Id.* Dr. Walcoff testified that with the increase in space he wishes to increase the number of employees on site at any one time to 17 for staff and 5 for veterinarians. T. 18-19. The Applicant is requesting to increase the parking lot from 17

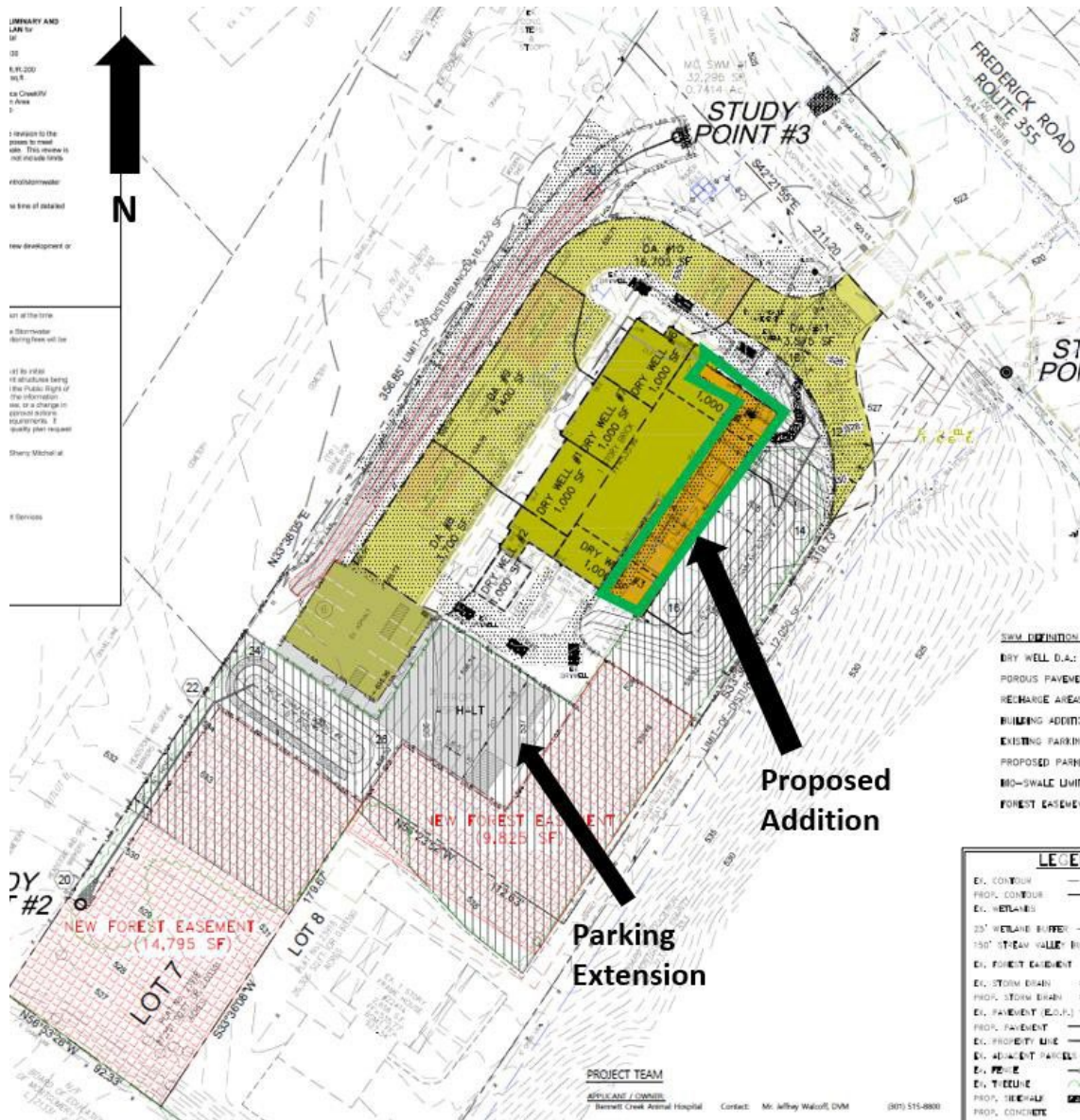
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<sup>3</sup> S-2660 granted the Petitioner approval for an animal boarding facility.



parking spaces to 40 parking spaces. T. 20. Staff note, the Petitioner will be removing a small area of Forest Conservation Easement and relocating it to another area within the Property.

Exhibit 28, pg. 8.



Staff Report – Exhibit 28  
Figure 4 – Proposed Site

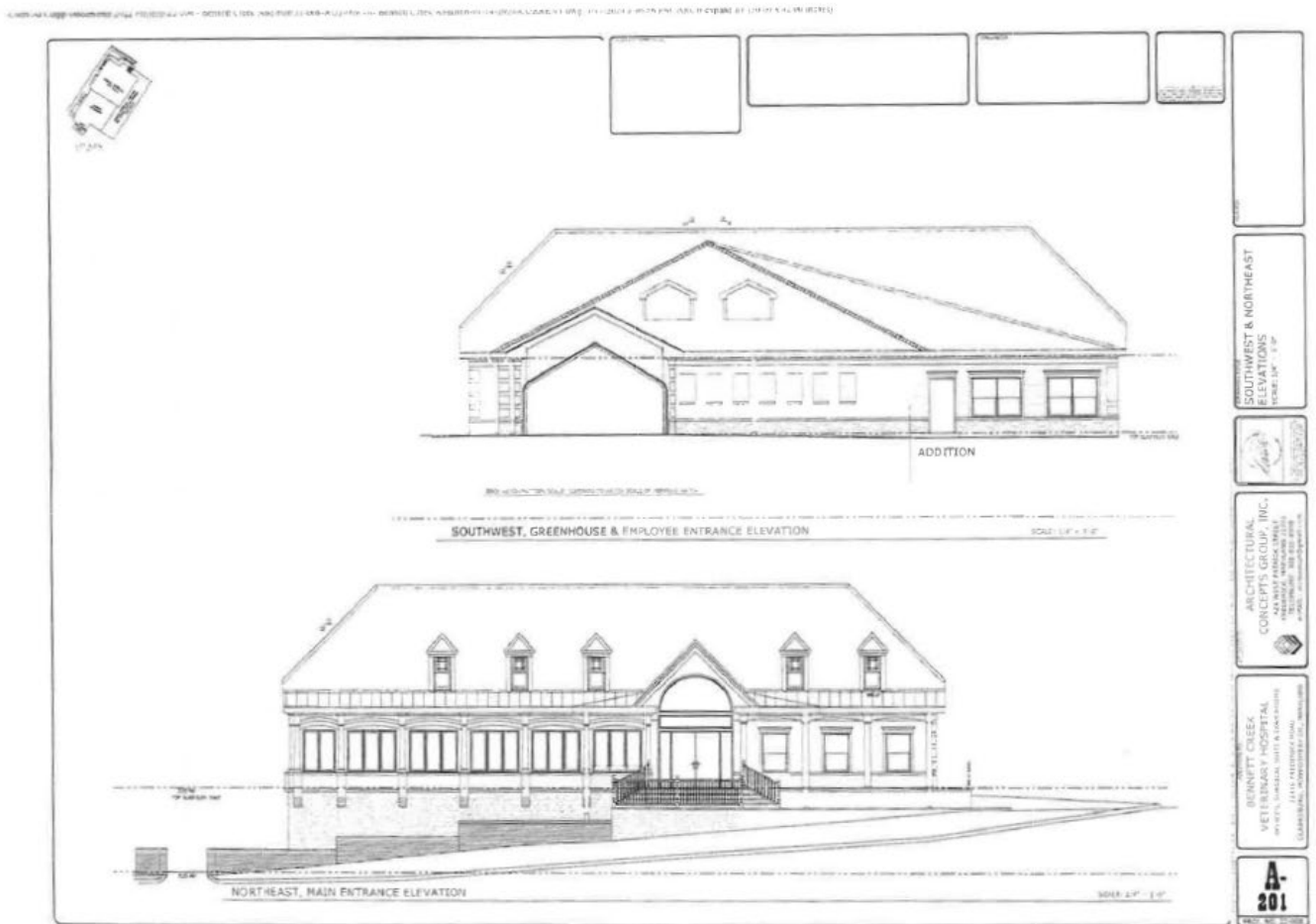


Exhibit 10 – Arch. Plans, pg. 1  
Exterior Views

:\D\HSA\Clapper\Documents\2023\Project\22-0906 - Bennett Creek Address\22-009-A\11-608-A-A - Bennett Creek Address\11-14-2024-CURRENT.dwg, 1/1/2024 10:09:29 PM, ARCH full sheet E1 (30'0" x 42'00" inches)

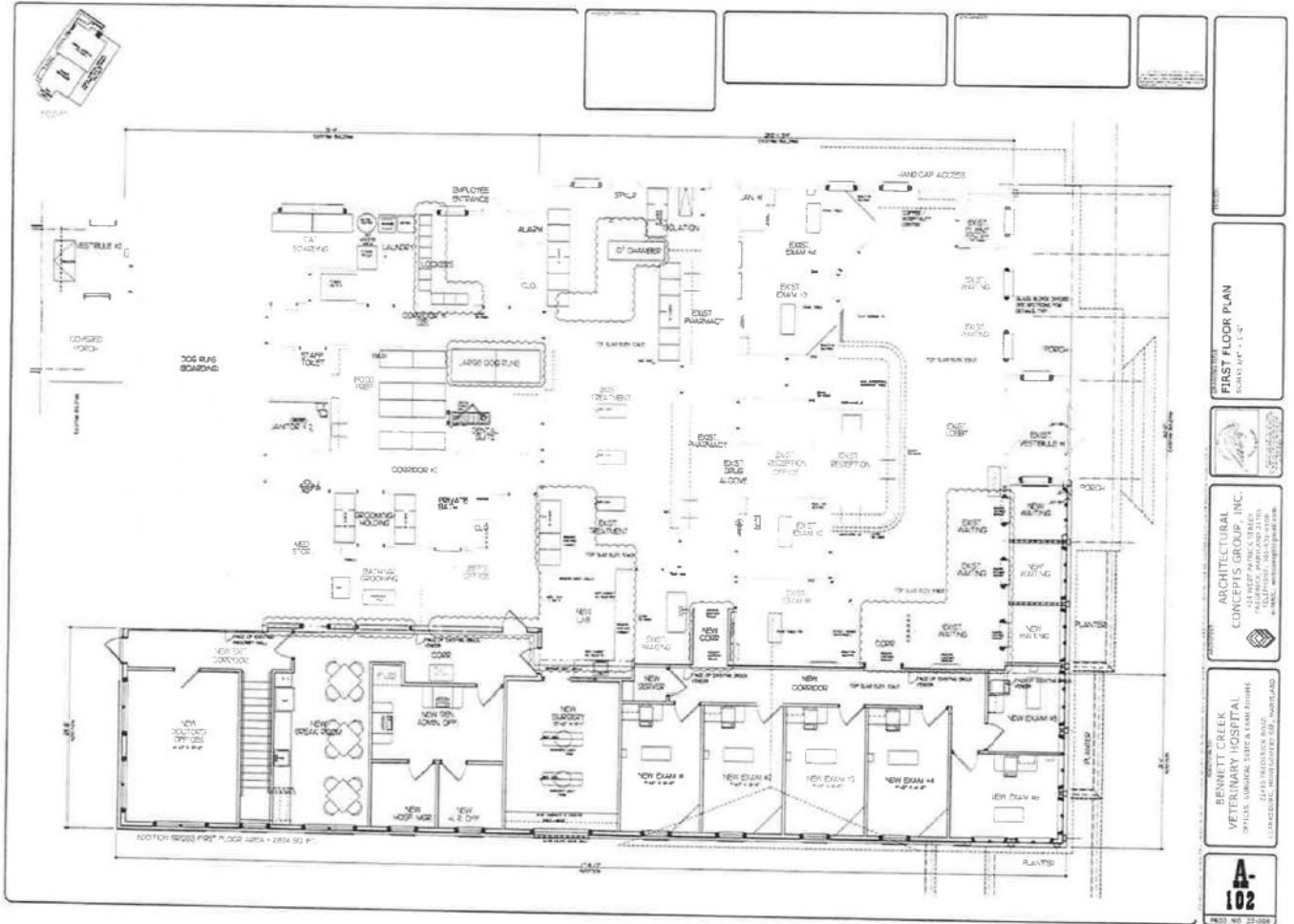


Exhibit 10 – Arch. Plans, pg. 3  
Floor Plan – 1<sup>st</sup> floor

#### **D. Community Response**

Staff noted that neighbors and civic organizations were provided notice of the application and Staff did not receive any correspondence regarding the application as of September 20, 2024. Exhibit 28, pg. 10. No one testified at the hearing either in support or opposition of the application.

### **III. FINDINGS AND CONCLUSIONS**

#### **A. Standards for Evaluation**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a special exception might be appropriate in some locations but not in others. The 2004 Zoning Ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Planning Staff concluded that Petitioner will have satisfied all the requirements to permit the major modification to the special exception if it complies with the recommended conditions. *See* Exhibit 28.

The standard for evaluation prescribed in Zoning Ordinance §59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” § 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects

created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Mr. Clapp testified that in his opinion the proposed addition would not create any adverse impacts on the surrounding area. T. 32. He opined that there are no non-inherent impacts from the proposed modification. In his opinion, the design of the building will not be a “big intrusion on the building as you look at it from the front and one would never see the expansion as it is located in the back of the with the forestry easement.” T. 32.

Mr. Gerald Miller testified that from an engineering point of view, the modification will be an improvement. T. 72. Given the history of the site and seeing the proposed modification, he opined that nothing about the proposed modification would create an adverse effect. T. 71. Dr. Walcoff testified to the history of his veterinary practice at this location. T. 13. In his testimony, he noted that the expansion of the structure is to provide the room needed to adequately support his existing practice and the current demand. T. 20. Further, Dr. Walcoff testified that he is only expanding rooms and providing additional parking so clients do not have to park on the grass, pointing out that the expansion will only be adding a few more visits an hour and will not change the operation, traffic, scheduling or noise level. T. 21-24.

Nothing in this record identifies a non-inherent physical or operational characteristic of the proposed use. For this reason, the Hearing Examiner finds that the potential adverse impacts from the proposed use are inherent to those associated with a veterinary practice.

## **B. General Standards**

The 2004 Zoning Ordinance sets forth general standards for approval that apply to all conditional uses and special standards that apply to the particular use requested. The general standards for a special exception are found in Section 59-G-1.21(a). These are listed below, along with the Hearing Examiner's findings on whether the standards are met.



Sec. 59-G-1.21. General conditions:

(a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) *Is a permissible special exception in the zone.*

Conclusion: A veterinary hospital is permitted by special exception in the R-200 Zone under Zoning Ordinance §59-C-1.31(c).

(2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G-2.32, as detailed in Part III.C. of this report.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Development on the subject property is guided by the 1994 Clarksburg Master Plan (Master Plan or Plan). Staff advises that the Master Plan contains no site-specific recommendations for this property but does indicate that properties along Frederick Road should retain the residential character. Exhibit 28, p. 20. Staff noted that the structure is designed in a way to look like a house and the area also contains a church and school. *Id.*

Mr. Clapp testified that the building was designed to keep the residential character rather than "going with all storefront and glass." T. 28. Specifically, he pointed out the double hung windows in the front, using the stone and brick materials on the walls on the facade along with plants to break up large area of masonry. T. 29. Further, Mr. Clapp opined that in his opinion the structure retained a residential character and is in keeping with the neighborhood. T. 31.

Conclusion: The Hearing Examiner agrees with Staff and the Applicant's expert and finds that the proposed modification meets the goals of the Master Plan and will be consistent with the Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Staff determined the following:

Based on the design and size, the existing veterinary hospital and the proposed addition and size are compatible with the surrounding neighborhood. The neighborhood contains some residential single-family residential across Frederick Road, however most of the properties along the west side for Frederick Road are institutional uses other than the abutting house owned by the Applicant. The property to the northwest is a place of worship and cemetery. Rocky Hill Middle School is located to the south and east of the Property. The parking lot is along the side and rear of the property and cannot be viewed from the single-family houses across Frederick Road from the Subject Property. Because of the design of the building and the proposed addition, from the road the structure looks like a single-family residential house.

Exhibit 28, pg. 21.

Mr. Clapp stated that, in his opinion, the addition was in harmony with the character of the neighborhood. T. 31. He further explained that elements could be found in the design from the mix of uses and structures in surrounding area including schools, churches, single family homes both small and large. T. 32

Conclusion: The Hearing Examiner agrees with Staff that the proposed design does look like a residential home and finds the testimony of the Applicant's expert testimony regarding design and

the care taken to incorporate those residential features persuasive. The Hearing Examiner finds the proposed addition to be in harmony with the surrounding neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Staff found that

Bennett Creek Animal Hospital has been in operation since 2007 and has not had any complaints filed or any enforcement actions by Montgomery County. The proposed addition and parking expansion will not change the overall existing operations. There will be an increase in the number of staff and area of the building to accommodate the Applicant's increase in customers. The proposed addition along the southeast side of the Property is abutting the owner's property as well as Rocky Hill Middle school and is buffered by the existing and proposed Forest Conservation Easement.

Exhibit 28, pg. 21

In further support of Staff's finding that no complaint had been filed against the current operation, Mr. Kline, Applicant's attorney, noted that in 2007 there was some opposition to the proposal and in 2017 the church next door had concerns, but there has never been a complaint filed about the way Dr. Walcoff conducts his business. T. 83.

Conclusion: The Hearing Examiner has already found that the proposed modification is in harmony with the surrounding neighborhood and further finds that the alterations to the structure and the expansion of the parking will not change the overall operation of the existing business. Given the peaceful history of the operations, the Hearing Examiner finds that the proposed modification will not be detrimental to the use, peaceful enjoyment, economic value or development of the surrounding properties or neighborhood.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*
- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The findings made by the Hearing Examiner in this section have been previously discussed. The evidence demonstrates that the modification proposed simply seeks an expansion of the building and parking to suit current needs and nothing about the use will change. As such, the proposal will not introduce any “objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity.” As previously stated, Bennett Creek Animal Hospital is the only special exception/conditional use in the neighborhood and as such will not adversely alter the residential character of the area. Since 2007, Dr. Walcoff has been operating Bennett Creek Animal Hospital without any adverse effects on the surrounding area. Rather, his business operation has benefited those in the neighborhood and surrounding area. The Hearing Examiner finds all criteria set forth in subsections, 6, 7, and 8 to be satisfied.

- (9) *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.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*

*(i) does not require approval of a new preliminary plan of subdivision; and  
(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;  
then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Staff determined that the proposed modification will be served by adequate public facilities. Exhibit 28. Pg. 22. Specifically, Staff notes the property is on public water and sewer, received an approved Fire Department access plan and will not create an increase in school enrollment. *Id.* No additional bicycle or pedestrian facilities are recommended for the property. *Id.*

The Applicant submitted a traffic statement concluding that the project will generate fewer than 50 weekday peak hour person trips, finding that a full traffic study is not required, and the application as submitted passes the LATR Test. Exhibit 12, pg. 3. Staff agreed with the traffic statement submitted and included the following table detailing 13 net-new morning peak hour person trips and 13 net-new evening peak hour person trips. Exhibit 28, pg. 23.

Table 2: Site Person Trips

Proposed	Period	ITE Vehicle Trips	Person Trips	Auto Driver Trips	Auto Passenger	Transit Trip	Non-motorized
2,767 square feet animal hospital/veterinary clinic	AM Peak	10	13	10	3	0	0
	PM Peak	10	13	10	3	0	0
ITE Land Use Category: 640 - Animal Hospital/Veterinary Clinic							

Source: STS Consulting (January 2024)

Staff further notes that the property previously went through a preliminary plan, and it need not go through the process again for this addition. Further, the Applicant’s expert Mr. Gerald Miller testified that, in his opinion, the property would be served by adequate public facilities. T. 72-73.

Conclusion: Based on this uncontroverted evidence, the Hearing Examiner finds that public facilities are adequate to serve the use.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: This record contains sufficient evidence and expert testimony that the modification will have no adverse impact on public roads. The Hearing Examiner agrees with staff and finds that the existing 10-foot-wide side path and crosswalk at the entrance to the parking lot helps to maintain pedestrian safety. This criterion for approval has been met.

**C. Specific Standards: Hospital, Veterinary**

The specific standards for veterinary hospitals are found in Code § 59-G-2.32. The Staff report and the Petitioner’s written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.32. Hospital, veterinary.

(a) *In any commercial, central business district or transit station zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:*

- (1) *There must be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space;*
- (2) *All areas for the keeping of animals must be soundproof;*

Conclusion: As stated above, the Bennett Creek Animal Hospital is not located in either a commercial, central business district or transit station zone. As such, conditions 1 and 2 are not applicable. With that said, no new outdoor areas are proposed for exercise or keeping of animals.

The Hearing Examiner finds this criterion inapplicable.

(b) *In any residential or rural zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:*

- (1) *In the R-150, R-90, and R-60 zone, the minimum lot size is one-half acre. In the R-60 zone a veterinary hospital must be located along a major highway with an existing right-of-way width of no less than 90 feet, and be adjacent to or confronting a central business district or a property zoned for commercial use.*

Conclusion: The property is located in the R-200 Zone. The Hearing Examiner finds this section to be inapplicable.

- (2) *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 exercise areas and runs must be fenced for the safe confinement of animals.*

Conclusion: The Applicant is not proposing any outdoor exercise areas or runs with this application. The Hearing Examiner finds this section to be satisfied.

- (3) *For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure.*

The Applicant's acoustical expert, Kevin Miller, testified at length to the efforts made with the construction materials and construction techniques to ensure the noise emission levels will satisfy the County's noise ordinance. T. 38-40. Mr. Miller specifically stated that, in his opinion, the noise level at the property line will not exceed 50 dB. T. 40. Specific to the standard, Mr. Miller testified that at 10 feet at 40 dB outside Rockville Pike would be louder than the sound coming from the building. T. 40

Conclusion: Based on the Applicant's expert testimony, the Hearing Examiner finds this section to be satisfied.

*(4) All buildings and accessory structures must be set back from any property line a minimum of 50 feet*

Conclusion: Per Staff, the proposed addition will be 70 feet from the front property line and 50.1 feet from the southeast property line. The Hearing Examiner finds the application satisfies this subsection.

*(5) No animal may be outdoors between 6 p.m. and 8 a.m.*

Conclusion: Based on the testimony of the Applicant and the findings in the Staff report, the Hearing Examiner finds that no animals will be outdoors between the hours of 6 pm and 8 am and finds the application satisfies this subsection.

*(6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.*



Conclusion: As the Hearing Examiner previously noted, the Applicant's expert testified that the noise level at the property line will not exceed 50 dBA. The Hearing Examiner finds the application satisfies this section.

*(7) Dogs must not be walked or exercised in outdoor areas that are off-site.*

Conclusion: The Applicant testified that dogs are not kept outside and there are no areas outside for dogs to walk outside other than on a leash to relieve themselves. T. 22-25. The Hearing Examiner finds the testimony of the Applicant persuasive and finds the application satisfies this section.

*(8) In addition to the submittal requirements in Section 59-1-4.22, the Applicant must submit the following information*

- i. Acoustical engineering studies that demonstrate that the proposed use meets the standards in Section 59-G-2.02(b)(3) and (6) above. The Studies must show worst case scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst case scenario sound level occurs.*
- ii. Detailed floor plans that show all the interior areas and their use designations.*
- iii. Site plans that show the layout of all exterior areas used to exercise walk or keep animals.*

Conclusion: The Hearing Examiner finds the application satisfies all subsections of Section 8 in that the Applicant submitted an acoustical engineering study, detailed floor plan and a site plan showing existing and proposed conditions, all submitted as exhibits to this application.

*(9) The Board must specify a minimum number of off-street parking spaces, taking into consideration the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. This number must in no case be less than 5.*

The Staff Report stated as follows: See Exhibit 28, pg. 13

The Property has an existing parking lot with 17 parking spaces. The Applicant is proposing to expand the parking lot to 40 spaces to account for additional staff and customers. The Applicant will have up to 20 staff members during weekday hours and up to 17 staff members on weekend hours. The proposed parking lot expansion is designed to accommodate the maximum number of staff members on any shift along with expected appointments and deliveries. Staff agrees with the Applicant's assessment that 40 spaces should be the minimum spaces onsite.

Conclusion: The Hearing Examiner agrees with Staff and finds the off-street parking proposed satisfies the needs of both the Applicant's employees, patients and any deliveries needed during the day and, as such, finds the Application satisfies this section.

*(10) The Board may regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.*

Conclusion: The Application does not alter the prior approval for the animal boarding facility. As that prior approval is still in effect, those conditions are still valid and there is nothing for the Hearing Examiner to recommend. Since the proposed modification does not anticipate keeping animals outside, the Hearing Examiner finds this section to be inapplicable to this application.

*(11) The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling: abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by County authorities.*

Conclusion: The Applicant's Statement of Justification and Staff both report no change to the current hours of operation. Those hours of operation are as follows: Monday through Friday from 7:00 am to midnight and on Saturday and Sunday, 9:00 am to midnight. Based on the fact that the existence use has had no issues with these hours of

operation, the Hearing Examiner finds no reason to recommend altering the existing hours of operation.

*(12) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.*

Conclusion: The Hearing Examiner notes that this condition is a condition of the previously approved conditional use and, based on the recommendations below, this condition will remain in effect. The Hearing Examiner sees no reason to provide a different recommendation to the Board on this specific condition.

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

Conclusion: The Hearing Examiner notes that the Applicant continues the animal waste containment and disposal method as originally approved in the first special exception approval and finds that that plan continues to satisfy this subsection.

*(14) Animals may be kept overnight at the hospital only for medical purposes. If animals are kept for non-medical purposes, a separate application for an animal boarding place must be approved.*

Conclusion: The application contains no request to keep animals overnight other than for medical purposes. The Hearing Examiner finds the application satisfies this subsection.

*(15) 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*

Conclusion: The Hearing Examiner notes that the property is served by public well and sewer and, as such, this section is inapplicable.

*(c) Any veterinary hospital lawfully existing prior to the effective date of this ordinance is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section*

Conclusion: As this use started after the adoption of the 2004 Zoning Ordinance, the Hearing Examiner finds this section to be inapplicable.

#### **D. Other Applicable Standards**

In addition, per Section 59-G-1.21, to approve a special exception the Hearing Examiner must find that the proposed development satisfies the following:

**1. Is a permissible special exception in the zone.**

Conclusion: Per Section 59-C-1.31(c), a veterinary hospital is allowed in the R-200 Zone.

**2. Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted**

Staff determined that the application complies with the standards and requirements for a veterinary hospital pursuant to Section 59-G-2.32 of the 2004 Zoning Ordinance and included the following table in the Report. *See Exhibit 28, pgs. 15-16*

<b>Development Standard Section 59-C-1.32</b>	<b>Permitted/ Required</b>	<b>Existing</b>	<b>Proposed</b>
Minimum Lot Area	20,00- Sq. Ft.	87,251 Sq. Ft.	No Change
Minimum Lot Width at Front Building Line	100 feet	200 feet	No Change
Minimum Lot Width at Front Lot Line	25 feet	211.20 feet	No Change
Maximum Density	1 dwelling unit/20,000 sq. ft.	N/A	N/A
Maximum Lot Coverage	25%	7.41%	10.67%
Minimum Front Setback	50 feet	82 feet	70 feet
Minimum Side Setback	12 feet	70 feet	50.1 feet
Minimum Sum of Side Setbacks	25 feet	143.4 feet	123.5 feet
Minimum Rear Setback	30 feet	200 feet	No Change
Maximum Height	50 feet	28 feet	No Change

<b>Vehicle Parking Requirement (Section 59.6.2.4.B &amp; 2004 Code 59-E)</b>			
Number of Spaces	30 Spaces	17 Spaces	40 Spaces
Number of Accessible Spaces	2 Spaces	2 Spaces	No Change
Landscape Strip Adjacent to R/W	10 feet	See Landscape Plan	See Landscape Plan
Perimeter Landscaping	4 feet	See Landscape Plan	See Landscape Plan
Min Parking Setbacks, from Street	40 feet	75 feet	No Change
Min Parking Setback, Rear	30 feet	45 feet	38 feet
Min Parking Setback, Side	16 feet	18 feet	No Change
Screening Required	Yes	See Landscape Plan	See Landscape Plan

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that the proposed use meets the requisite development standards listed in Section 59-G-2.32.

**A. Section 59-E-2.7 Landscaping**

*1. Section 59-E-2.7 specifies, that the minimum landscape requirements of this section are intended to alleviate adverse visual and environmental effects associated with parking facilities. The application of these standards will serve to improve compatibility and the attractiveness of such facilities, provide relief from unshaded paved areas, and minimize noise, glare and lights associated with parking areas. In addition, these requirements will improve pedestrian safety, optimize traffic circulation patterns with better defined space, and will provide better definition of entrances and exits through the use of interior islands. The following requirements establish minimum acceptable standards for alleviating the visual and environmental problems associated with off-street parking facilities. Under the site plan review procedures of division 59-D-3, the planning board may require additional landscaping in order to ensure compatibility with adjoining properties.*

*a. Sec. 59-E-2.71; Landscape Strip area adjacent to a street right-of-way This Section in part states that parking facilities located adjacent to a street right-of-way shall provide a landscaping strip at least 10 feet in width. This area shall be planted with either shade or ornamental trees. A minimum of one tree for every 40 feet of lot frontage shall be provided as well as an evergreen hedge (at least 3*

*feet in height), a wall or fence, or other methods to reduce the visual impact of the parking facility.*

Conclusion: Staff notes that the Applicant is not proposing any changes or additions to the parking facility adjacent to the public right-of-way. Given the undisputed evidence submitted, the Hearing Examiner finds this section to be satisfied.

*b. Sec. 59-E-2.72; Perimeter landscaping area adjoining property other than a street right-of-way. This Section in part states that landscaped areas shall be provided along the perimeter of a parking facility, other than area adjacent to a street right-of-way. The perimeter landscape strip shall be at least 4 feet in width, but not less than the setback required in section 59-E-2.8 where a parking facility adjoins a residential zone. Such area shall contain a minimum of one shade tree for every 40 feet of lot perimeter and, if space permits, shall incorporate landscaped berms..*

Conclusion: Staff determined that the Application meets the requirements of Sec. 59-E-2.72.

Specifically finding (Exhibit 28, pg. 17):

[T]he parking area is located adjacent to residential development along the northwest portion of the Subject Property. The landscape strip is 8-feet wide, contains one shade tree for every 40 feet of perimeter, and incorporates an existing and proposed vegetative evergreen screen comprised of evergreen trees. The property adjacent to the parking lot is an existing place of worship and cemetery. The only other residential use abutting the Subject Property is owned by the applicant and is on the other side of the Forest Conservation Easement.

The Hearing Examiner agrees with Staff and finds the Application satisfies this section.

*c. Sec. 59-E-2.73; Internal landscaping of surface parking facility. This Section in part states that a minimum of 5 percent of the internal area of a surface parking facility shall be landscaped with shade trees. The internal area of a parking facility is defined by the perimeter of the curbs or edge of paving. The internal area shall include all planting islands and corner areas within the facility. The shade trees should be distributed in order to increase shade.*

Conclusion: Staff determined that the Application meets Section 59-E-2.73 in that the existing parking contains shade trees and the proposed parking also provides shade trees for a total of 8%

of the internal area. Upon review of the evidence submitted, the Hearing Examiner agrees with Staff and finds the application meets the standard.

*d. Sec. 59-E-2.74; Minimum size of planting islands within internal landscape area. Within the interior of a surface parking facility, planting areas shall be provided with shade trees and shall be wide enough to protect the trees from a vehicle's swinging doors and bumper overhang. Planting islands which are parallel to the sides of parking spaces shall be a minimum of 8 ½ feet wide. Planting islands at the heads of parking spaces shall be a minimum of 8 feet wide.*

Conclusion: In that the Applicant is not proposing internal planting islands, the Hearing Examiner finds this section to be in applicable.

*e Sec. 59-E-2.75; General Landscape Requirements. Section 59-E-2.75 specifies that deciduous shade trees with ground cover or low shrubs shall be used as the primary landscape material for parking areas. Use of tall shrubs or low branching trees which will restrict visibility should be avoided.*

Conclusion: Staff advises that Application meets the requirements of Section 59-E 2.75 and that the primary landscape material used for plating areas will be turf and shade trees. Exhibit 28, pg. 18. The Applicant's amended statement of justification provides that no new landscaping is proposed, and all existing landscaping will remain. The Hearing Examiner finds the application satisfies this section.

**B. Section 59-e-2.83; Parking and loading facilities for special exception uses in residential zones**

**1. Section 59-E-2.83(c); Screening**

*a. This Section in part states that each parking and loading facility, including driveways and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm or combination of them. Along all street rights-of-way screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence or masonry wall.*

Conclusion: Staff notes the parking facility adjacent to residential properties are to be screened using 6-foot-high evergreen trees. The Hearing Examiner finds from the evidence submitted, including Exhibit 27, that this standard is satisfied.

**2. Section 59-E-2.83(d); Shading of paved areas**

*a. This Section in part states that trees must be planted and maintained throughout the parking facility to assure that at least 30 percent of the paved area, including driveways are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.*

Conclusion: Staff notes that the Applicant proposes 32 percent shading at 15 years. Seeing nothing in the record to the contrary, the Hearing Examiner finds this standard to be satisfied.

**C. Section 59-E-2.91; Required Standards, Screening from land in a residential zone or institutional property.**

- 1. Per Section 59-E-2.91 an off-street parking facility for 6 or more vehicles must be effectively screened on each side that adjoins or faces land in a residential zone or institutional property.**

Conclusion: As stated above, the existing parking facility is shaded by existing evergreen trees and the line of evergreen trees has been extended as depicted on Exhibit 27. In addition, the new parking is to the rear of the property abutting the forest conservation area. Staff notes that the property to the northwest is a church and cemetery, the property to the southeast is owned by the Applicant and the forest conservation easement is between the parking lot and the abutting lot. Given this uncontroverted evidence, the Hearing Examiner finds this section to be satisfied.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Applicant meet the specific and general requirements for the proposed use, and that the Petition should be granted, with the conditions recommended below.



#### IV. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the Petition of Jeffrey and Sheila Walcoff, which seeks to modify existing Special Exception No. S-2659-A for a veterinary hospital, on property located at 22416 Frederick Road, Clarksburg, be **GRANTED** with the following conditions:

1. The use is limited to a Hospital, Veterinary under the Special Exceptions provisions of Section 59-G-2.32.
2. Replant the landscape screening along the parking lot along the northwest side of the Property as previously approved by the Board of Appeals.
3. All previous conditions remain in effect for the Property if not expressly amended with these conditions.
4. Maximum of 5 veterinarians on site at any one time.
5. Maximum of 17 staff members on site at any one time.
6. Hours of operation for customers is 7 a.m. through midnight for Monday through Friday and 9 a.m. through midnight Saturday and Sunday.
7. The loop drive will be closed to non-emergency and non-school owned maintenance/security vehicles after 6:30 p.m. daily from beyond the head-in parking spaces located on the west side of the Discovery Center, except when special activity or events are being held.
8. This Special Exception Modification does not change any of the conditions previously approved for the Animal Boarding Facility (S-2660).

Issued this 26<sup>th</sup> day of November 2024.

Respectfully submitted,



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Kathleen Byrne  
Hearing Examiner

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Patrick Butler, Planning Department

Barbara Jay, Executive Director, Board of Appeals

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

**IN THE MATTER OF:** \*  
**JEFFREY B. & SHEILA WALCOFF** \*  
 \*  
**Dr. Jeffrey and Ms. Sheila Walcoff** \*  
**Applicant** \* **Board of Appeals Case No. S-2659-A**  
 \*  
\* \* \* \* \*

**ERRATA TO HEARING EXAMINER’S REPORT AND DECISION**

On November 26, 2024, the Hearing Examiner issued a Report and Recommendation recommending approval of a modification of an existing special exception for a veterinary hospital under Section 59-G2.32 of the Montgomery County *2004 Zoning Ordinance*. The subject property is identified as 22416 Frederick Road, Clarksburg, Maryland. Exhibit 1.

The Hearing Examiner issues this Errata to correct errors and to clarify her recommendation to the Board of Appeals regarding the conditions of recommended approval of the Report and Recommendation. The changes to the Report and Recommendation are set forth below in redline.

On page 29 of the Report, the Hearing Examiner revises condition 6 to read as follows.

- 6. Hours of operation for customers are 7 a.m. through midnight ~~7 days a week. for Monday through Friday and 9 a.m. through midnight Saturday and Sunday.~~

On page 29 of the Report, the Hearing Examiner revises condition 7 to read as follows..

- 7. Limited to 40 parking spaces shown on the Special Exception Plan. ~~The loop drive will be closed to non-emergency and non-school owned maintenance/security vehicles after 6:30 p.m. daily from beyond the head-in parking spaces located on~~

~~the west side of the Discovery Center, except when special activity or events are being held.~~

This correction does not affect the Hearing Examiner's recommendation in the case.

Issued this 4<sup>th</sup> day of December, 2024.



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Kathleen E. Byrne  
Hearing Examiner

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