

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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IN THE MATTER OF: *
BRADLEY HILLS ANIMAL HOSPITAL *
 Applicant *
 *
 Dr. Charles Weiss *
 * OZAH Case No. CU 24-11
 For the Application *
 *
 Elizabeth C. Rogers, Esquire *
 Attorney for the Applicant *
 * * * * *

Before: Kathleen Byrne, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on December 4, 2023, Bradley Hills Animal Hospital (hereinafter “Applicant”) applied for a conditional use for Veterinary Office/Hospital pursuant to 59.3.5.1.C.2.b of the Zoning Ordinance. The subject property is identified as 7210 Bradley Boulevard, Tax Account number 07-00672554 located in Bethesda, Maryland 20871. Exhibit 1. The property is zoned R-200. *Id.* On February 26, 2024, OZAH issued a Notice of Hearing scheduling the public hearing for Monday, April 1, 2024. Exhibit 12.

Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report recommending approval of the conditional use application dated March 24, 2024, subject to the following conditions of approval (Exhibit 16, pg. 3):

1. The veterinary office/hospital use is limited to the following operations program:
 - a) Hours of Operation:

7:30am to 6:00pm, Monday through Saturday, by appointment only, with an average of 25 patient appointments per day (up to 150 appointments per week, not including unscheduled visits to the Animal Hospital for pet related emergencies, prescription and item pick-ups and sample drop-offs. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by DPS.
 - b) Staffing:

There are a maximum of six employees on-site at any given time, inclusive of the veterinarian, who lives in the on-site residence.
 - c) Waste/Recycling:

Trash and recycling bins are to be stored behind the clinic and moved curbside for pickup in accordance with the County’s waste management collection schedule.

- d) Grounds Maintenance:
Year-round landscaping and snow removal services are to be provided to ensure the Property continues to be maintained.
 - e) Limited Sale of Items:
A limited offering of prescription pet food and supplies can be made available to customers. For sale items shall remain below 20 percent of business revenue.
 - f) Overnight Care:
No boarding is permitted. Overnight stays for post-surgical care and observation by the live-in veterinarian/property owner are permitted.
2. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated January 18, 2024, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of approval.
 3. The Applicant must adjust the Conditional Use Site Plan development standards table to match the development standards table in the staff report.

At its meeting on March 21, 2024, the Planning Board recommended unanimous approval of the application and recommended certain changes to those conditions recommended by Staff. Exhibit 19. Specifically, the Planning Board suggested the following amendments to Staff's recommendations:

- b) Staffing: There are a maximum of ~~six~~ seven employees on-site at any given time, inclusive of the veterinarian ~~who lives in the on-site residence~~.
- f) Overnight Care: No boarding is permitted. Overnight stays for post-surgical care and observation by the ~~live-in veterinarian/property owner~~ are permitted.

In its letter the Planning Board also stated as follows: "recommended that the seven employees referenced in Condition 1.b. be exclusive of any interns or volunteers. Further, staff corrected the

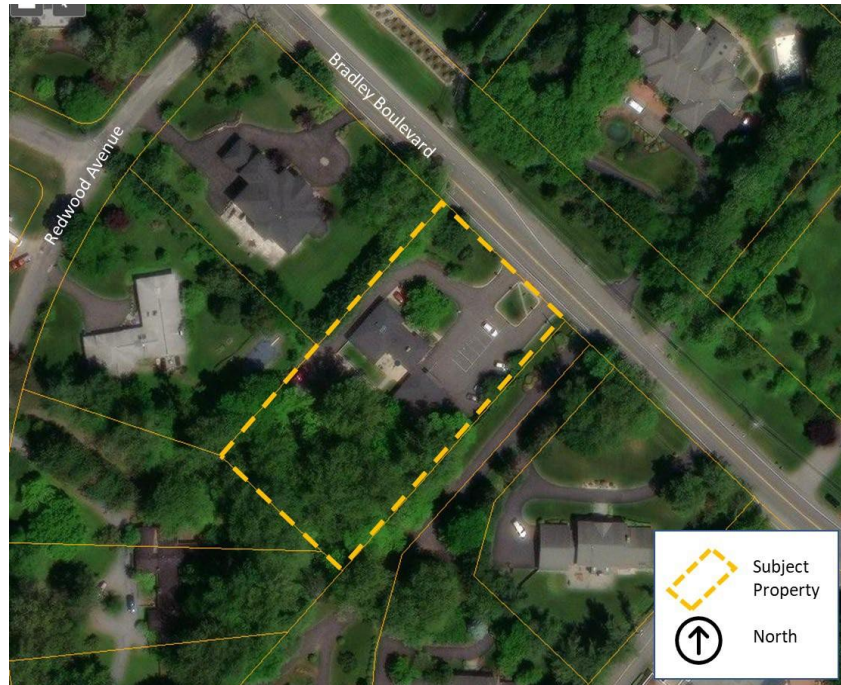
record to note the neighborhood context as shown in the presentation and Staff report was defined by Staff, and not the Applicant as noted in the staff report.” Exhibit 19.

The public hearing proceeded in a hybrid format as scheduled on April 1, 2024. The Applicant presented two witnesses: Dr. Charles Weiss and Mr. Patrick La Vay. T. 4. The record was left open for 10 additional days to allow for a transcript of the proceedings to be generated. T. 61.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is zoned R-200, consists of a single lot identified as Part of Lot 1, Block 3 recorded on Plat 3973 dated January 1955 and the property address is 7210 Bradley Boulevard, Bethesda. Exhibit 16, pg. 5. The property is rectangular in shape, consists of 45,000 square feet (1.03 acres), and contains a single-family detached dwelling constructed in 1951. *Id.* A portion of the dwelling area was converted into a veterinary office/hospital with a parking lot added in the 1970s. *Id.* The veterinary hospital is known as “Bradely Hills Animal Hospital” *Id.* The structure serves as both the residence for the veterinarian-owner/operator of the on-site and the veterinary office/hospital use. See aerial photograph on the following page.



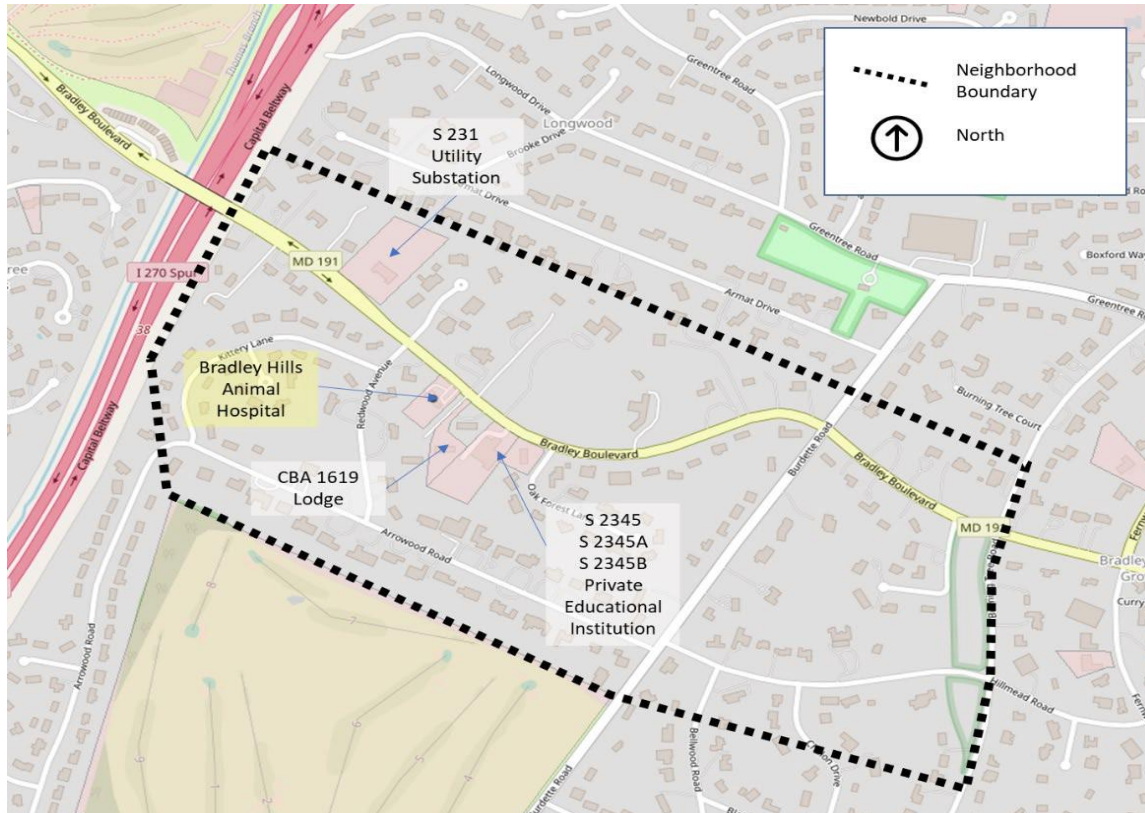
Property Aerial Photo
Staff Report - Exhibit 17, pg. 8

B. Surrounding Neighborhood

The property is located on the south side of Bradley Boulevard, approximately 230 feet southeast of its intersection with Redwood Avenue in Bethesda. *Id.* at pg. 4. Both Staff and the Applicant define the neighborhood surrounding the property to generally be bound by Alma Road to the north, Burning Tree Road to the east, the Burning Tree Club/Arrowood Road to the south, and the Capital Beltway (I-495) to the west. *Id.* This area is primarily developed with single-family detached residential dwellings and the properties abutting and confronting the property are single-family residences. *Id.* The entire neighborhood is located within the R-200 zone and in the 1990 *Bethesda-Chevy Chase Master Plan* area. *Id.* Staff identified the following three existing, approved conditional use/special exceptions within the neighborhood:

1. Special Exception S 231 – for a utility substation
2. Special Exception CBA 1619 – for a lodge
3. Special Exceptions S 2345, S 2345A, and S 2345B – for a private educational institution

The Staff/Applicant defined the neighborhood/vicinity is outlined in yellow below.



Vicinity Map in Yellow Outline
Staff Report – Exhibit 16, pg. 4.

C. Proposed Use

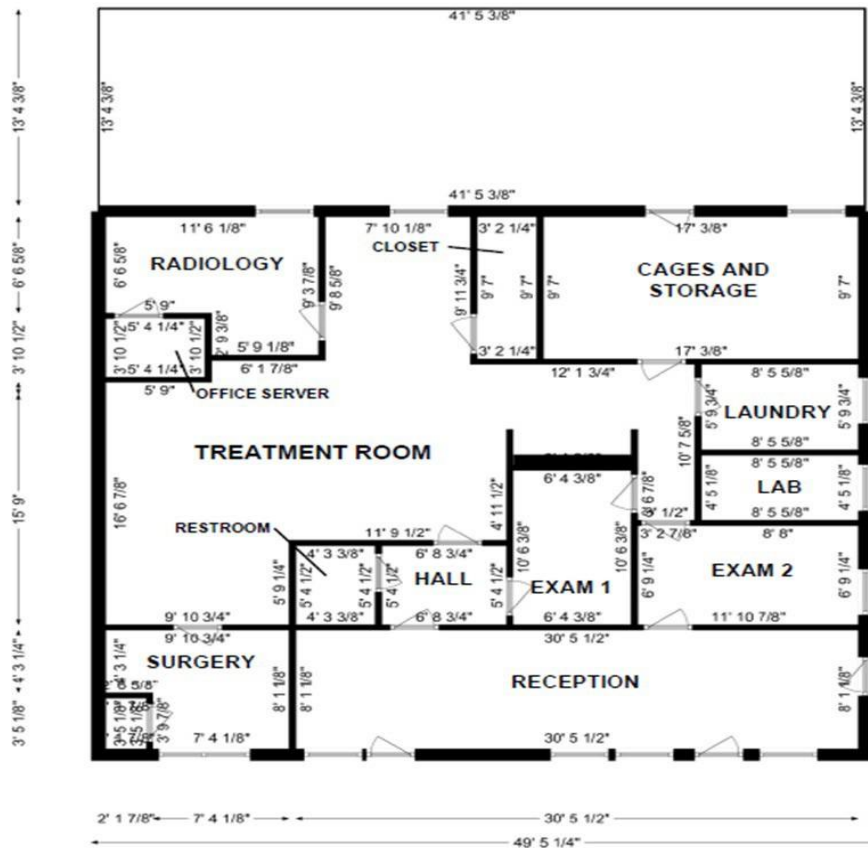
A full-service animal/veterinary hospital has been operated on the property since the late 1970s, and use has operated under a validly issued home occupation certificate the most recent

one issued on March 1, 2000.¹ Exhibit 3, pg. 1. Prior to 2000, veterinary office/hospital uses in residential zones could operate under a home occupation. *Id.* at 9. After 2000, previously approved home occupations could continue to operate, but any new applications would require a conditional use approval. Exhibit 16, pg. 9. Dr. Weiss testified that he wished to obtain conditional use approval so that he could easily transfer the business when he is ready to retire. T. 13-14. The existing building, site layout and operations will remain unchanged, i.e., no change to the existing use or structure will occur because of the conditional use application. Exhibit 3, pg. 1. The Applicant seeks to “continue to provide community residents with access to needed primary care veterinary services, including, for example, regular yearly vaccines, preventative medications, illness treatments, injury treatments and surgical procedures.” *Id.* at pg. 4.

1. Site Plan and Floor Plan

The existing site plan and floor plan will remain unchanged. The property fronts Bradley Blvd. and has two on-way driveways providing ingress and egress to a parking area of 11 spaces located between the building and the street. Exhibit 16, pg. 6. A secondary driveway extends from this parking area along the northwestern property line to the rear of the dwelling leading to two parking spaces to serve the residence resulting in a total of 13 parking spaces on-site. *Id.* The rear yard of the property is enclosed with a wooden privacy fence that extends along the eastern property line to screen views of a portion of the parking area. *Id.* at pg. 6-7. A secondary, smaller fenced area for a pet relief is located directly to the

¹ The current Home Occupation Certification No. 203414 was issued by the Department of Permitting Services in March 2000 with no expiration date. The Bradley Hills Animal Hospital continues to operate in accordance with this Home Occupation Certification. Exhibit 16, pg. 9.



Floor Plan
Staff Report - Exhibit 16, pg. 6

2. *Landscape, Lighting, Parking and Signage*

The Applicant proposes no changes to existing landscape or parking or signage. The lighting at the street consists of 4 pillar-mounted lights. Exhibit 16, pg. 18. All lighting and signage were established prior to October 30, 2014, and is considered conforming and may continue. *Id.*



Existing Signage & Street Lighting
Exhibit 7(c), Photo 1

A 6-foot fence, wooden privacy fence and well-established landscaping provide screening from the use to the neighbors. Exhibit 16, pg. 25. See Natural Resources Inventory on next page.

2. Deliveries. Deliveries for the Veterinary Office/Hospital, from vendor suppliers, are typically arranged for delivery in the morning, before appointments begin, when staff is available to receive and distribute products as they arrive. Deliveries of medical supplies and retail sale items average twice per week, and pet food supplies are delivered once per week, when needed. All other deliveries are made by USPS, FedEx, and UPS on their standard routes.
3. Waste Collection & Recycling. Bradley Hills Animal Hospital adheres to Montgomery County's waste management collection schedule. Trash and recycling bins are stored behind the clinic and are rolled to the curb the night before pick-up and brought back onto the property promptly after being collected. All medical waste is contained in medical grade disposal containers within the clinic and disposed of according to health code standards.
4. Grounds Maintenance. Bradley Hills Animal Hospital has used the same vendor for grounds keeping and maintenance since 2001. The vendor does 4-season maintenance on the property. Everything from spring planting to summer lawn maintenance, and fall leave clean-up, to snow removal in the winter months.
5. Limited Sale of Pet Food and Supplies. The Petitioner provides a limited offering of prescription pet food and supplies to its customers. The sale of these supplies is accessory to the veterinary services and currently accounts for only approximately 1% of total revenue. Sales of pet food and supplies will remain below 20% of revenue at all times.
6. Overnight Care. Animals do not stay on the property overnight with the exception of occasional overnight stays when surgery requires. Because the Doctor lives in the residence next door, he is able to oversee the animal's care when an overnight stay is required.

Id. at 4-5.

The Applicant proposes no physical or functional changes to the property's existing residential use, nor to the operations of existing veterinary office/hospital use. In addition, no new development is proposed, and the use will continue with no change from the existing home occupation. Exhibit 16, pg. 9.

D. Environmental Issues

The property is 1.03 acres triggering review under the Forest Conservation Law. *Id.* at 10. Existing Conditions Plan and Forest Conservation Exemption was approved by M-NCPPC

on April 10, 2023. *Id.* The Application qualifies for an exemption under the Forest Conservation Law and provided exemption number 42023189E. The Existing Conditions Plan demonstrates that there are no forested areas on-site, no known rare, threatened, or endangered species on site and no land disturbance proposed. Exhibit 3, pg. 20. The property is not in a Special Protection Area, so no separate water quality monitoring plan is required. *Id.*

E. Community Response

Per the Staff Report, Staff did not receive any correspondence from the Community regarding the conditional use application. No persons other than the Applicants appeared at the hearing in either support or opposition of the application. OZAH did received 35 letters of support of the Application which were admitted into evidence. Exhibit 15.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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 Veterinary Office/Hospital are in Section 59.3.5.1.C.2.b of the Zoning Ordinance. The general standards (termed "Necessary Findings" in the Zoning Ordinance) 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 (General Standards, Section 59.7.3.1.E)

The relevant standards and the Hearing Examiner's findings for each standard are

discussed below.² For discussion purposes, the general standards may be grouped into four main areas:

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

E. Necessary Findings

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;

Conclusion: The existing veterinary office/hospital use on the property legally operates in accordance with the Zoning Ordinance and has so for many years under home occupation certifications issued by the Department of Permitting Services. The current Home Occupation Certification number is 203414 and was issued in March 2000. Exhibit 16, pg. 11 and T. 13. The Hearing Examiner finds the conditional use approval will replace the previous Home Occupation approval and is in accordance with the prior approval.

b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;

Conclusion: This subsection requires review of the development standards of the R-200 Zone contained in Article 59.4; the use standards for a Veterinary Office/Hospital contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles

² 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. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

1. Substantial Conformance with the Master Plan

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

The property is within the boundary of the 1990 Bethesda-Chevy Chase Master Plan area. Exhibit 16, pg. 19. While the Plan has no specific recommendations for the property it does include five general recommendations for special exceptions/conditional use that apply to this application.

Id. Staff identified those recommendations as follows:

- i. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors. Because sites along these corridors have better visibility for business uses, they are more vulnerable to over-concentration. Of particular concern are office uses, which should be discouraged and are better located in areas with commercial zoning, such as the Bethesda CBD. It is also important to minimize uses that might degrade the safety and capacity of the highway by creating too many access points and conflicting turning movements.
- ii. Avoid over-concentration of commercial service or office type special exception uses in residential communities. These include funeral parlors, horticultural nurseries, veterinary clinics, medical or dental clinics, medical or professional offices, and philanthropic organizations. The Plan does not discourage home occupations that meet Zoning Ordinance criteria. Areas which may be most vulnerable are near employment centers and along major highways.
- iii. Protect major highway corridors and residential communities from incompatible design of special exception uses. In the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance:
 - a. Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures.
 - b. Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard parking is not available, front yard parking should only be allowed if it can be landscaped and screened adequately.
- iv. Support special exception uses that contribute to the housing objectives of the Master Plan. In general, the Plan endorses meeting special population needs through provision of elderly housing and group homes that are compatible with

nearby land uses. The Plan also endorses expanding choices of housing types by provision of accessory apartments.

- v. Support special exception uses that contribute to the service and health objectives of the Master Plan. The needs and objectives related to child day care and the elderly are discussed in Section 6.2. In general, the Plan endorses provision of child day care, group homes, elder, day care, and nursing homes. It is important to meet health needs through hospital services and hospice centers that are appropriately sized to be compatible with surrounding neighborhoods.

Id.

Further the Applicant's expert opined that as the use predated the Master Plan and that it was most likely deemed to be compatible with the Master Plan or the drafters would have noted the use. T. 36. He further opined that use is in conformance with the Plan's goals of "protecting the high quality of life, the existing residential character and the natural environment throughout the area." T. 36

Conclusion: Based on this record, the Hearing Examiner agrees with the Applicant's expert and Staff's assessment that the proposed use will substantially conform to the recommendations of the Master Plan. Regarding Staff's responses to the five general recommendations of the Plan, the Hearing Examiner adopts the reasoning identified by Staff in its report on pages 19 and 20 as satisfying those recommendations set forth in the Master Plan. Specifically, regarding number one excessive concentration of special exceptions along the major highway corridors, the Hearing Examiner finds that this Application proposes no changes to the 45 plus year veterinary office/hospital use and to the established access points at Bradley Boulevard. Regarding recommendation number two, over concentration of commercial services or office type special exceptions in residential neighborhoods, the Hearing Examiner finds that this is not a new use; it was the Zoning Code that changed and that the use on this property has been lawfully operated under as a home occupation certification (currently No. 203414) for many years pursuant to the

Zoning Ordinance. In addition, Bradley Hills Animal Hospital is the only office-type use associated with a special exception/conditional use in the neighborhood and the only veterinary office/hospital use in the area. Regarding recommendation number three, the Hearing Examiner finds that no modifications to the buildings, parking area, or other existing site design features are proposed, and the established development is “generally residential in nature” making it compatible with the character of the surrounding residential neighborhood. No change to the parking or modifications to the building are required since those site design features were established prior to October 30, 2014, and are considered conforming and may be continued in accordance with Section 59.7.7.1.A.1 of the Zoning Ordinance. Regarding recommendation number four, the Hearing Examiner finds it to be inapplicable to this application. Regarding recommendation number five, the Hearing Examiner finds approval of the conditional use will continue the historic veterinary office/hospital use that long serving the needs of the community for multiple decades.

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;

Staff concluded that because the veterinary office/hospital use has operated on-site for “multiple decades” under a home occupation, that the proposal would in fact not add a new use to the neighborhood, but rather validate the legal existing use as a conditional use per the Zoning Code. *Id.* at 21.

Conclusion: The Hearing Examiner agrees that the proposed conditional use merely allows the continuation of a legal use in conformance with the Zoning Code and will not increase the number,

intensity or scope of conditional uses sufficiently to affect the area adversely. She has already found that the project conforms to the Plan. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the project will be compatible with the surrounding area.

2. Adequate Public Services and 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

Conclusion: No preliminary subdivision plan is required. Regarding the adequacy of public services and facilities in this case the Hearing Examiner agrees with Staff and the Applicant's expert and finds that there are adequate public services and facilities to serve the proposed use. Exhibit 16, pg. 22-23 and T. 56. The property contains an existing residential use, and the proposed use will not cause any increase in services or impact existing public services such as schools, water, sewer, electric, telecommunications, police, fire and health services. Transportation services are

also adequate. Because no improvements to the property are proposed the frontage improvements are not triggered.

3. No 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.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. 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, do not justify the denial of a conditional use. 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 may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to a veterinary office/hospital (Exhibit 16, p. 24):

- Vehicle trips to and from the site;

- Drop off and pick-up of pets in the parking lot;
- Commercial deliveries; and
- Noise from animals.

The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use.

Staff acknowledge that the proposed use has existed and operated per the operation terms identified above for many years. Regarding vehicular trips, Staff note that appointment times are staggered averaging 25 appointments per day generating a low number of vehicle trips. *Id.* Commercial trips are two to three times a week. T. 39. The noise report found the largest noise generator to be the traffic from the road and that the animal noise is screened by fencing and landscaping to mitigate any "perceived noise" T. 39 and Exhibit 17.

Conclusion: Staff did not identify any non-inherent adverse effects Exhibit 16, pg. 24. The Hearing Officer agrees with Staff and the Applicant's expert that there are no non-inherent adverse effects from the proposed development and concludes that use and proposed development will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

4. Compatibility with the Neighborhood

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

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.

No changes to the existing structure are proposed and the original single-family residence was constructed in 1951. Exhibit 16, pg. 25.

Conclusion: Section 59.7.3.1.E.2.d examines whether the Plans goals are achieved in a manner compatible with the area. Section 59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located, regardless of the goals of the Plan.

The Hearing Examiner has adopted Staff's characterization of the existing neighborhood as being primarily developed with single-family detached residential dwellings. She already found that the use fulfills the goals of the Plan. She further finds that it does so in a manner that is compatible with the surrounding area. Key to this finding are the following factors: 1) The structure was built in 1951 and the property improvements have remained largely unchanged for the last 45 years, 2) the mature trees, shrubs and lawn are consistent with the suburban landscape in the neighborhood; and 3) the Application proposes no physical or functional changes to the existing residential use or the existing veterinary office/hospital business.

For these reasons, the Hearing Examiner finds that the use is compatible with the surrounding neighborhood in a manner consistent with the Plan and will not adversely affect the character of the surrounding area.

Section 59.7.3.1.E.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, meets the standards required for approval.

B. 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 R-200 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff included a table (Exhibit 16, pgs. 14-16, shown on the following page) in its report comparing the minimum development standards of the R-200 Zone to what is proposed in this application.

Conclusion: Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the standards of the R-200 Zone.

Portion of Development and Parking Standards – Table 1³

Development Standards	Permitted/ Required	Proposed Existing to Remain⁴
R-200 Zone Standard Method Development (Section 59.4.4.7.B.)		
Minimum Lot Area	20,000 sf	45,000 sf
Minimum Lot Width at Front Building Line	100 ft	150 ft
Minimum Lot Width at Front Lot Line	25 ft	150 ft
Maximum Density (units per acre)	2.18	1.03
Maximum Lot Coverage	25%	8%
Principal Building Standards		
Minimum Front Setback	40 ft	99 ft – residence 121 ft – veterinary office
Minimum Side Setback	12 feet	20 ft – residence 24 ft – veterinary office
Minimum Sum of Side Setbacks	25 ft	44 ft
Minimum Rear Setback	30 ft	156 ft – residence 140 ft – veterinary office
Maximum Height	50 ft	35 ft
Accessory Building Standards		
Minimum Front Setback	65 ft	175 ft
Minimum Side Setback	12 ft	66 ft
Minimum Rear Setback	7 ft	112 ft
Maximum Height	35 ft	15 ft

C. Use Standards for Veterinary Office/Hospital (§59-3.5.1.C.2(b))

³ Included in table is on that portion of the chart related to Development Standards 59-4

⁴ Existing site design features were established prior to October 30, 2014, and where they do not meet current development and use standards, are considered conforming and may be continued in accordance with Section 59.7.7.1A.1 and Section 59.7.7.1.A.2 of the Zoning Ordinance and confirmed by Department of Permitting Services in Appendix C of the Applicant’s Statement of Justification. This Application proposes no alternations to any existing Site condition.

The specific use standards for approval of a Veterinary Office/Hospital are set out in Section 59.3.5.1.C.2, of the Zoning Ordinance. The Hearing Examiner basis her conclusions below upon review of the testimony, Staff Report and submitted exhibits.

Zoning Ordinance §59.3.5.1.C.2. Veterinary Office/Hospital

1. Defined

Veterinary Office/Hospital means any structure and land where medical, surgical, and other veterinary care is provided to domestic animals, which may stay overnight only for medical purposes. Veterinary Office/Hospital does not include Animal Boarding and Care (see Section [3.5.1.B](#), Animal Boarding and Care).

Conclusion: Dr. Weiss testified to the operations under his supervision since 2000 as a practicing veterinary at this location for the last 24 years. The Hearing Examiner finds that the use proposed meets this definition.

2. Use Standards

b. Where a Veterinary Office/Hospital is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- i. Exterior areas used to exercise, walk, or keep animals must be set back a minimum of 75 feet from any lot line and screened under Division 6.5.*

Conclusion: The Hearing Examiner finds per the Staff Report and testimony that animals are not exercised, walked or kept outside. The fenced area for pet relief is in the rear of the property and used only on sparingly and for short periods of time. As this exterior area is an existing site feature established prior to October 30, 2014, it is considered conforming in accordance with Section 59.7.7.1.A.1 of the Zoning Ordinance.

- ii. All exterior exercise areas and runs must be fenced.*

Conclusion: The Hearing Examiner finds that as stated above animals are not exercised on the property, but that the pet relief area is fully fenced as identified on the existing site plan. Exhibit 8. In light of these facts, the standard is satisfied.

iv. Animals are prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

Conclusion: Per the Staff Report and testimony, no animals are kept overnight except for post-surgical reasons and those animals will not be outside between the hours of 9:00 pm and 7:00 am. Exhibit 16, pg. 12 and T. 41-42. The Hearing Examiner finds this standard to be satisfied.

v. Animals must only be walked or exercised in on-site outdoor areas.

Conclusion: No animals are walked or exercised on-site outdoors, but in the event an animal needs to relieve themselves, it is done in the fenced area on-site. *Id.* The Hearing Examiner finds this standard to be satisfied.

vi. The sound level at the nearest property line must satisfy Chapter 31B.

Conclusion: The Applicant submitted a noise study concluding that the sound levels satisfy Chapter 31B finding that most of the noise on site was generated from the road/traffic. Exhibit 17, pg. 2. The Hearing Examiner finds this standard to be satisfied.

vii. All buildings and accessory structures must be set back a minimum of 50 feet from any residential lot line.

Conclusion: As the property was built in 1951, the setbacks for those existing structures were established prior to October 30, 2014 as confirmed by the Department of Permitting Services and are considered conforming in accordance with Section 59.7.7.1.A.1. T. 42-53 and Exhibit 16, pg. 12. The residence is set back 20 feet from the northeast corner while the office is set back approximately 24 feet from the southwest property line. *Id.* The Hearing Examiner finds this standard to be satisfied.

vii. *All litter and animal waste must be contained and controlled on the site.*

Conclusion: Dr. Weiss testified that he adheres to the County's waste management policies, procedures and practices and separately using a service to dispose of medical waste. T. 15-16, 43. In addition he detailed the location of the binds and stored in accordance with the health code standards. *Id.* The Hearing Examiner finds this standard to be satisfied.

viii. *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.*

Conclusion: Per the Staff Report, testimony and the Applicant's statement of justification, sales of prescription pet food and supplies are offered for the convenience of patients and customers. Exhibit 16, pg. 12, Exhibit 3, pg. 5 and T. 44. Those sales amount to approximately one percent of the business sales and are accessory to the main veterinary hospital use. *Id.* The Applicant stipulated such sales will remain below 20% of the revenue. *Id.* The Hearing Examiner finds this standard to be satisfied.

ix. *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*

Conclusion: The Applicant has successfully operated Bradley Hills Veterinary Hospital for 24 years with the support of his neighbors, seeing approximately 25 patients a day between the hours of 7:30 am and 6:00 pm, Monday through Saturday. T. 12, Exhibit 3, pg. 10 and Exhibit 15. Staff note the hours of operation as 7:00⁵ am to 6:00 pm as being "long standing hours of operation of the business" and the fact that no animals are exercised, "run" or boarded on-site

⁵ Staff note 7:00 am on pg. 14, but recommend 7:30 am as the opening hours consistent with the testimony and the Applicant's Statement of Justification.

except for the occasional post-surgical overnight patient. Exhibit 16, pg. 14. The Hearing Examiner finds no reason alter the proposed/existing hours of operation and practice.

- x. *The Hearing Examiner may regulate 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 a scheduled appointment; abuse of this exemption may lead to revocation of the conditional use. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by DPS.*

Conclusion: As stated above in Standard ix., the Hearing Examiner finds the existing/proposed practice of seeing approximately 25 patients a day or 150 patients per week to be reasonable and finds no reason to alter the Applicant's proposed hours or number of appointments scheduled.

- xi. *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 adversely effect groundwater or septic systems.*

Conclusion: The property is served by existing public Category W-1 water and Category S-1 sewer services. Exhibit 16, pg. 14. This standard is inapplicable to the Application.

- xii. *The applicant must submit the following:*

- (a) *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.*
- (b) *Detailed floor plans that show all the interior areas, including runs and kennels.*
- (c) *Site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.*

Conclusion: Regarding subsection (a) above, the Applicant submitted a Noise Survey & Analysis, Acoustical Report indicating that no "worst-case" scenario was apparent during testing and that the noise levels emitted from the Animal Hospital met the criteria set forth in Chapter 31B of the DBA falling below the daytime and nighttime levels. Exhibit 17. The Hearing

Examiner finds this submittal to be adequate and meet the required standard. Regarding subsection (b) above, the Applicant submitted Exhibit 18 providing a detailed floorplan/layout of all interior areas of the operation. The Hearing Examiner finds this submittal to be adequate and meet the required standard. Regarding subsection (c) above, the Applicant submitted Exhibits 7a, 7b, 7c and 8 detailing the existing conditions of the exterior of the property that will not change. The Hearing Examiner finds these submittals to be adequate and meet the required standard.

D. General Development Standards (Article 59-6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below. The proposed use and Zone do not require the review of Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage. The property is in a R-200 zone which allows for Veterinary Office/Hospital as a conditional use and the Hearing Examiner finds project complies with all the standard method developments of the zone.

Staff included in its development chart citing the required and proposed development standards per Section 59-6. A portion of that development and parking standards table is shown on the next two pages. See Exhibit 16, pgs. 15-16.

Portion of Development and Parking Standards Table

Development Standards	Permitted/ Required	Proposed Existing to Remain⁶
Vehicle Parking Requirements (Section 59.6.2.4.B)		
Minimum Parking Spaces	11	13
Veterinary Office/Hospital Use		
1 space / employee (6 employees)	9	11
3.5 spaces / doctor (1 doctor)		
Single-Unit Living	2	2
2 spaces / unit (1 unit)		
Bicycle Parking Spaces (Section 59.6.2.4.C)		
	N/A	0 spaces
Vehicle Parking Design Standards (Section 59.6.2.5.)		
Size of Parking Spaces (Section 59.6.2.5.E)		
Perpendicular spaces	8.5 x 18 ft	9.5 x 18 ft
Spaces angled 45 to 59 degrees	12 x 26.5 ft	9.5 x 18 ft
Drive Aisles Minimum Width (Section 59.6.2.5.G.)		
Perpendicular – one way	20 ft	18 ft
Angled drive aisle 45 to 59 degrees – one way	16 ft	16 ft
Facilities for Conditional Uses in Residential Detached Zones (Section 59.6.2.5.K.)		
Rear parking setback	30 ft	173 ft
Side parking setback	24 ft	2 ft

⁶ Existing site design features were established prior to October 30, 2014, and where they do not meet current development and use standards, are considered conforming and may be continued in accordance with Section 59.7.7.1.A.1 and Section 59.7.7.1.A.2 of the Zoning Ordinance and confirmed by Department of Permitting Services in Appendix C of the Applicant’s Statement of Justification. This Application proposes no alternations to any existing Site condition.

Development Standards (Cont.)	Permitted/Required (Cont.)	Proposed Existing to Remain (Cont.)
Parking Lot Requirements for 10 or More Spaces (Section 59.6.2.9.)		
Landscaped Area (8,369 sq ft parking area)	5% (418 sf)	13.7% (1,147 sf)
Tree Canopy	25% coverage	0
Perimeter Planting	Min. 10 ft width Include fence, hedge or wall 6 ft high Include Canopy trees 30 ft on center Min. 2 understory trees per canopy tree	Variable 0-2 ft width 6 ft fence 0 canopy trees 0 understory trees
Lighting	Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type	4 fixtures on 4' stone pillars @ Bradley Blvd.
Loading Design Standards (Section 59.6.2.8.)		
Up to 25,000 square ft GFA	0 spaces	0 spaces

I. Access & Parking Related Requirements

The current ingress/egress to the property is provided by two driveway curb cuts to Bradley Boulevard with one driveway for ingress only and the second for egress only. Access to the property will not change. Exhibit 16, pg. 16. Section 59.6.1.4.D provides that a maximum of two driveways may be permitted for every 300 feet of site frontage along any street, but the property has two driveways along 150 feet of frontage on Bradley Boulevard. *Id.* at 17. Clearly the existing site does not contain enough distance along Bradley Boulevard to meet this requirement. *Id.* The two-driveway configuration predates the October 30, 2024 change and can be considered conforming under Section 59.7.7.1.A.1. *Id.* The Applicant seeks alternative compliance per Section 59.6.8.1. from Section 59.6.1.4.D to allow for continued use of the existing two driveways. *Id.* The Applicant's expert testified that it is "critical" the two driveways remain because the drive aisles are set up to create a circulation pattern. T. 30. The expert further affirmed that the Applicant is grandfathered and doesn't need to seek alternative compliance, but is doing so out of an abundance of caution. T. 32. Mr. La Vay testified that in his opinion that the proposed alternate compliance meets the Code and criteria that there are a unique site characteristics or development constraints such that it satisfies the Hearing Examiner's required findings. T. 33. Regarding the "intent" standard, he stated that safe vehicular circulation that exists today is paramount and that there is no way to provide one two-way drive aisle on the site and the existing two access points are safe. T. 34. Regarding the minimal modification "necessary to accommodate the constraints", Mr. La Vay testified that that parking configuration in conjunction with the drive aisles is what is necessary. *Id.* Further he testified that the final two criteria that no mitigation is necessary and to maintain the driveways

in their current condition is not causing or will cause any adverse impact and maintaining the driveways as they have function for the last 45 years is in the public interest and will allow for the continuation of the use. *Id.*

Conclusion: The Hearing Examiner finds the testimony of the Applicant's expert persuasive and finds that the configuration of the lot with the existing ingress/egress pattern and adjacent parking fronting a busy Bradley Boulevard to be unique. Further the Hearing Examiner finds that the two-drive aisle system has been in place for 45 years and it creates a safe efficient means of ingress/egress and to require an alteration to this system for compliance with the existing development standard would do the opposite and create an unsafe and inefficient development. The Hearing Examiner finds the alternative compliance as proposed/existing for access to be to satisfy Section 59.6.8.1.

Per Staff's table included in this section above, sufficient parking existing on site to serve the conditional use and residence. The use proposes 13 parking spaces more than the minimum required. Regarding the parking design standards, all parking features were established prior to October 30, 2014 and where those design standards, per the table above do not meet minimum requirements, are conforming per Section 59.7.7.1.A.1. The Hearing Examiner finds the proposed number of spaces and parking design to meet the required standard.

2.. *Site Landscaping, Screening, Lighting and Signage*

As previously stated, nothing on the site will change – no new buildings, landscaping, lighting, or sign. The Applicant intends to continue to operate exactly has he has for the last 24 years under the home occupation. T. 13-14. Per the Staff Report, testimony and the statement of justification, the outdoor lighting complies with the required standard. Exhibit 3, pg. 16.

Screening requirements are not applicable. *Id.* Property is landscaped and screened by mature trees, shrubs and a fence. Exhibit 16, pgs 6-8. The signage is grandfathered. *Id.* at 19

Conclusion: The Hearing Examiner finds screening is not applicable, and the existing improvements tob grandfathered. Further that the existing landscaping is also grandfathered. In addition, the existing signage and lighting will not change and either it meets the required standard as currently installed and/or is grandfathered. The Hearing Examiner finds that the Application either meets the development standards for site landscaping, screening, lighting and signage or is considered conforming with Section 59.7.7.1.A.1.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Bradley Hills Animal Hospital (CU24-11) for a conditional use under Section 59.3.5.1.C.2 of the Zoning Ordinance to operate a Veterinary Office/Hospital at 7210 Bradley Boulevard, Tax Account number 07-00672554 which is located in Bethesda, Maryland, 20817 is hereby **GRANTED**, subject to the following conditions:

1. The veterinary office/hospital use is limited to the following operations program:
 - a) Hours of Operation:
7:30am to 6:00pm, Monday through Saturday, by appointment only, with an average of 25 patient appointments per day (up to 150 appointments per week, not including unscheduled visits to the Animal Hospital for pet related emergencies, prescription and item pick-ups and sample drop-offs. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by DPS.

- b) Staffing:
There are a maximum of seven employees on-site at any given time, inclusive of the veterinarian exclusive of any interns or volunteers.
 - c) Waste/Recycling:
Trash and recycling bins are to be stored behind the clinic and moved curbside for pickup in accordance with the County's waste management collection schedule.
 - d) Grounds Maintenance:
Year-round landscaping and snow removal services are to be provided to ensure the property continues to be maintained.
 - e) Limited Sale of Items:
A limited offering of prescription pet food and supplies can be made available to customers. For sale items shall remain below 20 percent of business revenue.
 - f) Overnight Care:
No boarding is permitted. Overnight stays for post-surgical care and observation by the veterinarian are permitted.
2. The Planning Board reviewed and accepted the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated January 18, 2024. Those recommendations are incorporated here as conditions of approval. The Applicant must comply with each of the recommendations in the letter, which MCDPS may amend if the amendment does not conflict with other conditions of approval.
 3. The Applicant must adjust the Conditional Use Site Plan development standards table to match the development standards table in the staff report.

Issued this 10th day of May 2024.



Kathleen E. Byrne
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision 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/>

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS:

The Board of Appeals website sets forth these procedures for filing documents:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.

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/>.

NOTIFICATION OF DECISION TO BE SENT TO:

Elizabeth Rogers, Esquire
Attorney for the Applicant
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Robert Kronenberg, Deputy Director, Planning Department
Adam Bossi, Planner III, Downcounty Planning Department
Stephanie Dickel, Supervisor, Downcounty Planning Department
Elza Hisel-McCoy, Chief Downcounty Planning
Greg Nichols, Manager, Department of Permitting Services
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department
Elana Robison, Esquire, Associate County Attorney