

**BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS**

**IN THE MATTER OF THE APPLICATION )**  
**OF JEFFERY B. AND SHEILA ) Case No. S-2659**  
**WALCOFF FOR AMENDMENT OF A )**  
**SPECIAL EXCEPTION )**  
**)**

**PETITIONER'S STATEMENT OF JUSTIFICATION**

**I. INTRODUCTION**

Dr. Jeffery B. Walcoff, DVM, and Sheila Walcoff, hereby petition the Board of Appeals to amend Special Exception No. S-2659 originally granted to the Walcoffs by decision of the Board of Appeals on February 1, 2007 (attached), and modified twice since that date, to allow the construction and operation of a veterinary hospital (Case No. S-2659). Also attached is a copy of the Board of Appeals' amendment decision dated July 20, 2017, because that approval added an emergency veterinary care facility to the subject property the success of which has partially stimulated this amendment request.

This subject special exception was combined with a companion special exception petition – S-2660 – for an animal boarding facility both to be located in a single structure situated at 22416 Frederick Road, Clarksburg. No amendment of Case No. S-2660 is sought or needed in this case because the proposed amendment relates exclusively to the operations of the veterinary hospital and no operations of the animal boarding program are affected by this proposal.

The success of Bennett Creek Animal Hospital has been incredible. When Dr. Walcoff appeared before the Hearing Examiner on September 25, 2006, he explained that the Clarksburg region of Montgomery County was underrepresented by veterinary medical services and that, with the planned growth of the Clarksburg area, there was then a current and undoubtedly increasing need for veterinary medical services and for animal boarding facilities. Dr. Walcoff reiterated these observations when in 2017 the Board allowed Bennett Creek Animal Hospital to expand its hours of operations to provide emergency animal care since there were no such services between Frederick and Gaithersburg. (Opinion dated July 20, 2017, attached)

The increased demand for veterinary care in both daytime and emergency hours, has put significant pressure on the operations of the Bennett Creek Animal Hospital in terms of the numbers of patients; the space available to treat animals, particularly those needing emergency care; the number of veterinarians and staff to provide medical services; and, finally, the amount of parking to serve the increased number of customers and staff. This amended Special Exception Application is intended to allow Bennett Creek Animal Hospital to grow to provide superior veterinary care for animals and pets residing in upper Montgomery County.

This Special Exception Amendment is intended to expand the physical space of Bennett Creek Animal Hospital, add staff, and make changes to the site plan (e.g., parking, forest conservation) to accommodate the greater level of service expected to occur on the subject property.

**Exhibit 2**  
**S-2659-A**

## **II. SCOPE OF MODIFICATION**

### **A. CHANGE TO BUILDING FOOTPRINT**

Bennett Creek Animal Hospital today contains a total of 6,879 square feet of building area on one floor with four examination rooms and a modest surgical suite. This amendment proposal will add to the first-floor level six (6) examination rooms as well as a second, and larger, surgical suite. This addition will provide a valuable second surgical table, which will be particularly helpful in emergency situations but will also accommodate more sophisticated surgical support equipment allowing the veterinarians to provide "state of the art" veterinary care. Also, on the first-floor level will be 3 small administrative offices, a larger veterinarians' office suite and a "break room" for staff.

A basement level of the proposed addition includes storage space that has become very important to providing prompt care and attention to the Hospital's animal patients. The lower-level storage space contains 2767 square feet of area encompassing a storage area for food and supplies, and a secure storage area for records, oxygen tanks, valuables, and expensive equipment. In total, the gross floor area of the New Bennett Creek Animal Hospital will be 11,712 square feet, 4833 square feet of which will be contained in the new addition.

The increase in the building footprint has been achieved by expanding the building to the south, towards the open areas of the site adjacent to the large Rocky Hill Middle School campus. The veterinary hospital building has been widened by 21 feet 7 inches in the front and 24 feet 10 inches in the rear to create space for the new facilities described above. The resulting building modification will place the structure 50+ feet north of the common property line with the adjacent public school (to satisfy Section 59-G-2.32(b)(4)) of the Zoning Ordinance but does not materially change the front elevation of the Hospital Building as is shown in the architectural plans ("Front Elevation,") included with this amendment application because the roof line and fenestration pattern have been merely replicated.

### **B. CHANGE IN STAFFING**

When Dr. Walcoff approached the Board in 2017 and secured approval for an emergency veterinary hospital outside of regular hours and on weekends, the Board saw fit to impose a condition on staffing to read as follows:

"8. Petitioner shall be limited to a maximum of ten (10) staff (including all veterinarians, support staff and interns) on site at any one time, provided that the number of veterinarians on site at any one time shall not exceed three (3)."

As stated previously, as the community of Clarksburg has grown the volume of families' pets requiring care, maintenance and emergency treatment services has grown immensely. Dr. Walcoff feels that he needs veterinary hospital and animal boarding staffing at the following levels. Total staff of Bennett Creek Animal Hospital, including Veterinarians and all support staff, needs to be in the range of fifty-five persons. However, there will be not more than twenty (20) staff in the Bennett Creek Animal Hospital at any given time with the following breakdown of specialty areas during peak hours of the day:

#### **1. Monday-Fridays, 7:00AM to 5:00PM**

5 Veterinarians

3 Receptionists  
3 Office Staff and Administrators  
6 Technicians  
2 Kennel Staffers  
1 Groomer  

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20 Total

2. Monday-Fridays, 5:00PM to Midnight

2 Veterinarians  
2 Receptionists  
6 Technicians  
1 Kennel Staffer

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11 Total

3. Saturday-Sunday, 7:00AM to Midnight

3 Veterinarians  
3 Receptionists  
9 Technicians  
2 Kennel Staffers

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17 Total

4. 7 nights a week, Midnight to 7:00 AM

1 Technician

With this staffing increase, Dr. Walcoff believes that he will have the professionals readily available at all times to provide immediate care and attention to all animals and pets presented to the Hospital.

**C. CHANGE TO PARKING**

The original site plan approved in 2006 contemplated seventeen (17) parking spaces on site. This Amendment proposal anticipates the use of forty (40) parking spaces on site spaces to be located a) at the rear of the Animal Hospital (17 spaces, primarily for staff), b) seventeen (17)

spaces adjacent to the north facade of the building (primarily for customers/patients and deliveries, and c) six (6) spaces located along the northern side of the site (primarily for long term parking situations).

Under Section 59-G-2.32, parking for a veterinary hospital will be determined by the Board based on the number of employees on the maximum shift, the number of veterinarians practicing simultaneously, and the number of appointments and deliveries. Even with the companion animal boarding facility, Dr. Walcott is confident that he will have adequate parking for customers and staff at any time of the day.

#### **D. CHANGE TO FOREST CONSERVATION PLAN**

The original special exception plan for the Bennett Creek facility showed a forest conservation easement located on the southeast side of the facility adjacent to the Middle School property to the south. The forest conservation easement then extended to the southwest and partially wrapped around the detached residence at Lot 8, "CLARKSBURG HEIGHTS" created upon the platting of the Bennett Creek Animal Hospital property. The specific location of the Category I forest conservation easement is shown on Plat 23918 included with this amendment application. The Plat notes that the area of the Category I forest conservation easement is 30,174 square feet.

The expansion of the Veterinary Hospital building extended into the existing forest conservation easement area, making the space between the enlarged building and the southern property line not wide enough to qualify for the easement status. Therefore, the Petitioners have shrunk the easement area along the southeast side of the new building and have increased the easement area to include part of the rear of Petitioners' Lot 7, in its southwest corner, which was not originally subject to a category I forest conservation designation. The area of the new redefined Category I easement area is calculated to be 25,116 square feet. Details of the forest conservation issue are shown in the attached Forest Conservation sheets included with this application.

#### **E. CHANGES TO STORMWATER MANAGEMENT PLAN**

Because the Subject Property is located within the Clarksburg Special Protection Area, a Water Quality Plan must be submitted with a major modification application for an existing special exception. Included within this application are copies of a Preliminary/Final Water Quality Plan submitted, reviewed by and approved by the Water Resources Section of the Montgomery County Department of Permitting Services ("MCDPS"). MCDPS' approval letter of the Water Quality Plan dated December 3, 2023, is also enclosed.

### **III. PROPOSAL**

#### **A. Property Description**

The Subject Property remains a platted lot (i.e., Lot 7, Clarksburg Heights subdivision per plat No. 23198 recorded November 25, 2008) located at 22416 Frederick Road, Clarksburg. Lot 7 contains 82,251 square feet (2.00301 acres) of land area and is zoned in the R-200 (single family detached residential zone). The property is improved with the herein described Bennett Creek Animal Hospital which has been constructed and operated in accordance with the prior approvals of the Board of Appeals since its opening in 2010.

### **B. Area Description**

The vicinity surrounding the Subject Property is primarily institutional in character with some single-family detached residences confronting the Property (on the east side of Maryland Route 355) and one abutting residence to the west. As shown on the attached excerpt from the Hearing Examiner's December 28, 2006, Report and Recommendation on Case Nos. S-2659 and S-2660, the subject site is abutted on the south by the Rocky Hill Middle School and is adjoined on the north by the John Wesley United Methodist Church. In addition, further to the north is Clarksburg High School. This exhibit shows the single-family residences located on the northeast side of Frederick Road as well as the existing single-family home located in the "Notch" in the southeast corner of the Subject Property.

The Zoning Vicinity Map included with this Petition indicates that the surrounding properties are almost all located in the R-200 zone except for the adjacent Middle School property which is zoned in R-200/TDR-4.0.

### **C. Zoning Neighborhood**

For the purposes of this special exception amendment application, the Petitioners adopt the "zoning neighborhood" reflected in the Hearing Examiner's Report and Recommendation identifying the "Neighborhood Area" on which the Hearing Examiner would rely in analyzing the zoning aspects of the paired applications. In the opinion of the Petitioners, there has been no change or redevelopment in the surrounding area that would warrant repositioning of the "Neighborhood Area" boundary line.

## **IV. ZONING ANALYSIS**

### **A. Conformance with Requirements of Section 59-G-1.21 ("General Conditions")**

The pre-October 2014 Montgomery County Zoning Ordinance prescribes that a special exception area can be amended upon a demonstration that from the preponderance of the evidence of record that the following standards set forth in italics hereafter have been satisfied:

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

Pursuant to Section 59-C-1.31 ("Land Uses") of the County Zoning Ordinance, a "Hospital, Veterinary" is allowed by special exception in the R-200 zone.

Pursuant to Section 59-C-1.31, an "Animal boarding place" is allowed by special exception in the R-200 zone.

Since Special Exception Case Nos. S-2659 (Hospital, Veterinary) and S-2660 (Animal boarding place) were previously approved by the County Board of Appeals in February 2007, the Petitioners are permitted to file applications to amend the respective special exceptions.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2.*

Section 59-G-2 of the County Zoning Ordinance ("Special Exceptions – Standards and Requirements") draws the reader's attention to Section 59-G-2.32 ("Hospital, Veterinary"). That section contains a number of standards and requirements related to the operation of a veterinary clinic and its potential impact on surrounding properties. In most cases, these restrictions apply

to the a) care of animals, b) the treatment of animals and when they can be outside of the hospital building and c) the sound containment measures that will be employed to minimize animal noise that may be bothersome to surrounding properties. Dr. Walcoff will continue to abide by all of the restrictions regarding animals outside of the hospital itself and binds himself to comply with all of the operational controls listed in Section 59-G-2.32(b)(1) through (15).

At the original hearing on cases S-2659 and S-2660 in February 2006, Dr. Walcoff presented testimony from an expert acoustical engineer describing the measures that would be implemented to address the County noise standards and the criteria for this proposed use. In particular, Mr. Kevin Miller recommended upgrades to the original design that would achieve the standard of 40dBA measured at the outside of the structure at a distance of 10 feet from the building. Dr. Walcoff's architect, who was the same architect for the original building, has incorporated the acoustical expert's 2006 recommendations into the design and construction of the expanded facility which should assure compliance with the noise limitations set forth in Section 59-G-2.32(b) of the Zoning Ordinance.

*(3) Will be consistent with the general plan for the physical development of the district, including any Master Plan adopted by the Commission.*

The Subject Property is located within the area covered by the Clarksburg Master Plan approved and adopted in June 1994. While there have been amendments to the Clarksburg Master Plan since that date (e.g., July 2011 Limited Amendment to the Retail Staging Provisions; Ten Mile Creek Area Limited Amendment), none of these Amendments have changed the zoning and land use recommendation for the Subject Property and its surrounding area.

As a general planning goal, the Clarksburg Master Plan encouraged retention of the residential character of the properties fronting on Frederick Road. However, the Subject Property is sandwiched between institutional uses including a public Middle School to the south and a church to the north with an even larger public high school just further north. Therefore, it is hard to say that this special exception use allowed in the R-200 zone is out of character with the surrounding area. Indeed, the "Transit Corridor District Land Use Plan", found on page 55 of the 1994 Clarksburg Master Plan, depicts the Subject Property as being adjacent to areas planned for institutional and public park areas. And, in accordance with Section 59-C-1.23(g) ("Building compatibility in residential zones"), the Bennett Creek Animal Hospital has been designed, and previously accepted by the reviewers of Case Nos. S-2659 and S-2660, as having a residential appearance in form.

*(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.*

As described in the previous paragraph, the design and appearance of the Bennett Creek Animal Hospital has previously been deemed to have a residential appearance and is compatible with the character of the surrounding neighborhood. Furthermore, the use is intended to act as a "local" service to the residents of the Clarksburg area and their pets. While the use itself may be "non-residential" in zoning classification, it is appropriately located in a residential neighborhood with easy accessibility for its customers and their animals needing medical attention and care, often on an emergency basis.

A review of the tests for harmony and compatibility includes the following analyses:

*Height*

The height of the proposed modified structure (23 feet) will remain which will keep it consistent with the height of surrounding residences and lower than the abutting Middle School and Church.

*Width and Depth of Structure*

The building is no longer than was originally approved but it has become wider by 22+ feet. This was accomplished by extending the building to the south by an extra "bay." That is, the existing design was replicated using the same fenestration pattern, detailing and materials so that the new addition is unidentifiable. The result is that although the building has been widened the addition is assimilated into the original design so that the building does not look like it has changed.

*Visibility*

Because the building sits back 132 feet from the drive lanes of Route 355, any changes to the façade of the Hospital will not be detected.

Additionally, although parking will be added to the site, a large amount of the parking (17 spaces) will be behind the Hospital building and will not be visible from Route 355. And because parking spaces along the north side of the building, and adjacent to the northern property line, will be parallel to the flow of traffic on MD 355 and are at a much higher elevation, the car or cars parked closest to the highway will screen the other cars further to the west. (See Application exhibit 5b).

For the reasons set forth above, the proposed use will be in harmony with its surroundings.

*(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.*

Bennett Creek Animal Hospital has been an active, growing and successful veterinary hospital in its present setting since 2010. In light of the fact that there are no known complaints or enforcement actions by Montgomery County, Bennett Creek has proven itself to be a non-residential use that does not have an adverse impact on other uses surrounding the Hospital regardless of whether those uses are detached residential units or institutional facilities. There is no evidence that the operation of the Veterinary Hospital has been objectionable or bothersome to any surrounding properties or has had any adverse impact on any such properties. There is nothing in this application that introduces any new operations at Bennett Creek Animal Hospital; it merely proposes to do more of what it has been doing compatibly for the past 13 years.

*(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.*

A combined veterinary hospital/animal boarding facility certainly has the potential of causing bothersome noise, fumes, or odors. But the Bennett Creek Animal Hospital addition will

install the same noise control measures that are present in the existing structure. Moreover, Dr. Walcoff will continue to manage the animals visiting the Hospital and the waste generated by animal care and boarding so that there will be no odors or site contamination.

*(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 exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.*

Based on a review of the records of the County Board of Appeals and the Office of Zoning and Administrative (“OZAH”), there have been no new special exceptions or conditional uses approved since Bennett Creek Animal Hospital was approved in 2007 when the zoning analysis reported that there were no other special exceptions or conditional uses in the general area surrounding the Subject Property. Therefore, there is no saturation of special exceptions or conditional uses in the vicinity that would alter the character of the 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.*

Bennett Creek Animal Hospital has conclusively demonstrated that its operations have had no adverse impact on the health, safety, security, well-being or general welfare of visitors, workers or residents in the surrounding area. The addition to the Hospital will not alter the operation of the facility nor will its expansion create any condition that will have an adverse effect on the surrounding properties.

*(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.*

The Subject Property is classified in the respective W-1 and S-1 water and sewer service categories and there have been no transmission or treatment problems with these two public services. The proposed addition can be served by the existing utility lines which are adequate in size to accommodate the increased demand for service.

Police and fire protection remain adequate to serve the proposed addition.

The Petitioners have or will be submitting a traffic impact study to be reviewed in conjunction with this special exception amendment application. The Statement confirms that the increase in building size, client patronage and staff growth will generate an amount of vehicle traffic that can be accommodated by the transportation network surrounding the Subject Property. The Study confirms that the Bennett Creek Animal Hospital will operate in accordance with the County’s Adequate Public Facilities Ordinance.

#### **B. CONFORMANCE WITH THE GENERAL DEVELOPMENT STANDARDS OF SECTION 59-G-1.23**

A special exception amendment application must also conform to the following standards of Section 59-G-1.23 of the pre-October 2014 Zoning Ordinance:



(a) Development Standards. *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Development Standard – R-200/Uses	Required Development Standards	Development Standards
Maximum Building Height:	50 feet	23 Feet
Minimum Lot Area:	87,120 sq. ft.	87,138
Minimum Width at Front Building Line:	100 feet	211 feet
Minimum Width at Proposed Street Line:	25 feet	211 feet
Minimum Front Yard Setback:	40 feet	71.9 feet
Minimum Side Yard Setback:	One Side 12 feet Sum of both sides 25 feet	Minimum Side Yard is 50 feet
Minimum Rear Yard Setback:	30 feet	135 feet and 6 inches
Maximum Building Coverage:	25%	11.0%
Minimum Building Setback for Boarding Use	75 feet	77 feet and 1 inch
Minimum Building Setback for Animal Hospital Use	50 feet	50 feet

(b) Parking requirements. *Special exceptions are subject to all relevant requirements of Article 59-E.*

The parking requirements set forth in Section 59-G-2.32(b)(9) states that parking for a veterinary hospital will be set by the Board of Appeals but will not be less than five (5) spaces. Even with the companion animal boarding facility parking requirement (not less than three (3) parking spaces), Dr. Walcoff is comfortable that the 40 parking spaces to be provided on the Bennett Creek Animal Hospital property will be more than adequate to handle his staff, patients and deliveries.

(c) **Minimum Frontage**

Not applicable

(d) **Forest conservation**

This major Special Exception amendment application includes an amended forest conservation plan.

(e) **Water Quality Plan**

This major Special Exception amendment application includes a Water Quality Plan reviewed and approved by the Montgomery County Department of Permitting Services.

(f) **Signs**

The Petitioner proposes no change to the existed posted sign with permits from Montgomery County Department of Permitting Services.

(g) **Building Compatibility**

The Bennett Creek Animal Hospital building was found in 2006 by the technical staff of Maryland National Capital Park and Planning Commission, the Montgomery County Planning Board and the Hearing Examiner all concluded that the original building was compatible with the neighborhood in which it is located taking into account its size, siting, scale, bulk, height, materials and textures and had a "residential appearance."

This application merely extends and repeats the building patterns established in the existing building but has not increased the mass of the structure to be inappropriate for its setting.

(h) *Lighting*

This major Special Exception amendment application contains information about new lighting that will be installed in conjunction with the building additional along with a photometric plan confirming that listing levels along the side and rear lot lines do not exceed 0.1 foot candles.

(i) *Landscaping*

The Petitioner is proposing installation of no new landscaping and all of the landscaping planted along with the original construction, to create a decorative front to the Hospital and to provide screening along the northwest property, will remain and will continue to be maintained in healthy condition.

## V. CONCLUSION

In summary, this application to modify Special Exception No. S-2659 complies with the general and special development standards for veterinary hospitals in this area of Montgomery County and is worthy of approval to continue the delivery of high-quality pet and animal veterinary care in Upper Montgomery County.

Respectfully submitted,

MILLER, MILLER & CANBY



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Jody S. Kline