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September 20, 2024

Kathleen Byrne, Esq.
Director
Montgomery County Office of Zoning
and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

RE: Special Exception Amendment No. S-2659-A,
Bennett Creek Animal Hospital;

Dear Ms. Byrne,

In finalizing the Staff Report and Recommendation on the above-referenced Special Exception Amendment Application, staff of MNCPPC requested that the Applicant clarify certain information appearing in its Statement of Justification and requesting some additional information about areas for animal exercise and animal relief.

In response to staff's request, the Applicant has amended the Statement of Justification originally submitted with this application (Exhibit 2 in your Exhibit List for the upcoming public hearing). Based on staff's request, the Petitioner wishes to submit an Amended Statement of Justification responding to staff's request. To facilitate your review of the changes, attached are both a "clean" copy and a "redline" copy of the Amended Petitioner's Statement of Justification.

Because the attached submission does not add any information or new documentation to the record of Case No. S-2659-A, but rather clarifies the existing information in the record, the Petitioner does not believe that this submission requires compliance with Rule 22.0 of the Administrative Rules of Procedure under which OZAH's cases are handled. However, if the Hearing Examiner disagrees, we understand that you will not accept the attached materials into the

Exhibit 21
S-2659-A Major Mod

record of this case until after a Notice to Amend has been issued and at least ten (10) days have passed.

Thank you for your attention to this information and this request.

Sincerely,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody Kline". The signature is written in a cursive, slightly stylized font. The first letter "J" is large and has a long horizontal stroke that extends to the left. The "K" is also prominent, with a long vertical stroke.

Jody S. Kline

JSK/tn

Attachments

cc: Nana Johnson
Mark Beall
Dr. Jeff Walcoff
Lee Miller
Al Clapp
Shahriar Etemadi

BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS

**IN THE MATTER OF THE APPLICATION)
OF JEFFERY B. AND SHEILA)
WALCOFF FOR AMENDMENT OF A)
SPECIAL EXCEPTION)
)**

Case No. S-2659

**AMENDED
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.

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. The total area of the first floor addition will be 2767 square feet.

A basement level of the proposed addition contains exclusively storage space that has become very important to providing prompt care and attention to the Hospital’s animal patients. The lower level of the addition is 2066 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. (This basement area, because it will be used exclusively for storage, is not included in the calculation of trip generation for the expanded facility).

~~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

20 Total

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

- 2 Veterinarians
- 2 Receptionists
- 6 Technicians
- 1 Kennel Staffer

11 Total

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

- 3 Veterinarians
- 3 Receptionists
- 9 Technicians
- 2 Kennel Staffers

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. Walcoff 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.

F. NO CHANGES TO ANIMAL EXERCISE OR RELIEF AREA

The changes described above do not necessitate revised or additional animal exercise or animal relief area(s). Since the opening of Bennett Creek Animal Hospital, the Petitioner has provided these areas in an interior enclosed area for dog runs and animal relief so no such activity occurs outdoors.

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.

C. CONFORMANCE WITH THE SPECIFIC DEVELOPMENT STANDARDS OF SECTION 59-G-2.32 (“HOSPITAL, VETERINARY”)

The expansion of the Bennett Creek Animal Hospital conforms with the “Standards and Requirements” for individual special exceptions in the following manner:

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 soundproofed.

Not applicable.

As conditioned in the February 7, 2007 Opinion of the Board of Appeals, the "...proposed facilities must be designed and constructed in a manner that will insure noise levels within County standards, not to exceed 40dBA within 10 feet of the Facility." The Petitioner's architect was mindful of this admonition in his design of the animal hospital building itself, and use of materials in order to comply with that standard. Within its sixteen years of operation, the Petitioner is aware of no incidents when sound from the animal hospital building exceeded the specified limits nor has Dr. Walcoff ever received any complaints about animal noise from his facility.

The Petitioner's architect for the proposed addition is the same architect who worked on the original building in 2007. Mr. Clapp will incorporate the same design techniques, and will use even more efficient noise absorbing materials in the proposed addition to the hospital building.

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

*(1) * * **

(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.

Bennett Creek Animal Hospital does not have any outdoors exercise area. A generously sized enclosed "dog run" is employed to give the dogs room to move about and socialize with other animals. The proposed addition will not propose, nor will it necessitate the installation of any exterior exercise areas that would need to meet the standards of Section 59-G-2.32(b)(2).

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

The project architect will use construction techniques and building materials for the addition that will achieve the noise levels prescribed above.

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

The addition will extend into the southern side yard but the perimeter wall will be set to be at least 50 feet from the southern boundary line in order to satisfy the requirement quoted above and to qualify the open space between the building and the southern property line as wide enough to qualify for forest conservation purposes.

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

This requirement is presently adhered to and will be followed notwithstanding the operation of the proposed addition.

(6) On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6:00 p.m. and 50 dBA between the hours of 6:00 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 6:00 p.m. and 50 dBA between 6:00 p.m. and 9:00 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.

As noted in paragraphs 2 and 3 above, the existing Bennett Creek Animal Hospital has been constructed, and is operated, to meet the Noise Standards quoted above. The proposed addition will provide space for: a) 6 examination rooms; b) a second surgery room; c) offices (doctors, manager, HR staff) and d) a lounge/"break room" for staff. The new space will contain few animals (in the examination and surgery rooms only) and only when the animals will be under close attention and control, noise control included.

Dr. Walcoff and his architect point out the following features of the activities to be conducted in the new addition that relate to noise issues. Animals, in the surgery area are usually sedated and do not bark. The exam rooms are only occupied for 10 to 15 minutes per animal, on a rotating basis, usually accompanied by their owners, and are therefore less likely to bark. Accordingly, because of the rather benign use of the new space, and the construction of the new space, the Petitioner is confident that the County's Noise Standards stated above can be satisfied.

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

Noted. The primary adjacent properties are a public school and a church and are never used for outdoor exercise for animals since the Animal Hospital has an adequate interior enclosed exercise area within the existing building.

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number.

(i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst 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.

The Special Exception Amendment application contains detailed floor plans (Sheets A-102 and A-101).

As explained above, Bennett Creek Animal Hospital has no outdoor exercise areas.

With regard to an acoustical engineering study, the project's architect has demonstrated that he has the knowledge and experience to design an animal hospital that can be operated in accordance with the County Noise law as evidenced by over fifteen years of operations at Bennett Creek Animal Hospital. Mr. Clapp is committed to design the hospital addition, and to use materials in the construction of the addition, that will achieve compliance with the County Noise law. Furthermore, as explained above, the addition will be "lightly used" in terms of animal occupancy and will be facing a public school property. Indeed, the public school is located almost 400 feet distant from the closest point of the new addition. The closest feature of the public school are six tennis courts within the range of 100 to 350 feet from the Animal Hospital.

(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 number of parking spaces on the site is proposed to be increased to forty (40) parking spaces which Dr. Walcoff is confident will be adequate to accommodate the parking needs for customers and staff at all times of the day.

(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.

Noted. Most animals receiving treatment will be released on the day of treatment. There is, however, adequate space for animals that need to remain under care and attention after surgery or special treatment.

(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.

While most animals receiving treatment at Bennett Creek Animal Hospital arrive in accordance with a scheduled appointment, Bennett Creek does have an emergency care treatment capability approved by the Board of Appeals in 2017. Obviously, animals arriving for emergency care are not – prescheduled and such visits occur spontaneously due to events outside of the control of the pet owner.

(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%.

Nothing about the proposed addition will alter the Petitioner’s current compliance with this requirement.

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

Any litter and/or or animal waste generated in the addition area will be incorporated into the Petitioner’s current sophisticated method of control for these features already in place.

(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.

Noted. The Petitioner already holds a separate companion special exception approval (S-2660) for an animal boarding at the Bennett Creek facility approved on February 1, 2007. That use is not affected by this application.

(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.

The proposed addition will be served by public water and public sewer. There is no history of inadequate transmission or treatment related to these public services. The existing utility system has been reviewed and is deemed adequate to handle any volume increases attributable to the proposed addition.

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

Jody S. Kline

BEFORE THE MONTGOMERY COUNTY BOARD OF APPEALS

**IN THE MATTER OF THE APPLICATION)
OF JEFFERY B. AND SHEILA)
WALCOFF FOR AMENDMENT OF A)
SPECIAL EXCEPTION)
)**

Case No. S-2659

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.

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

- 20 Total

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

- 2 Veterinarians
- 2 Receptionists
- 6 Technicians
- 1 Kennel Staffer

11 Total

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

- 3 Veterinarians
- 3 Receptionists
- 9 Technicians
- 2 Kennel Staffers

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. Walcoff 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.

C. CONFORMANCE WITH THE SPECIFIC DEVELOPMENT STANDARDS OF SECTION 59-G-2.32 (“HOSPITAL, VETERINARY”)

The expansion of the Bennett Creek Animal Hospital conforms with the “Standards and Requirements” for individual special exceptions in the following manner:

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 soundproofed.

Not applicable.

As conditioned in the February 7, 2007 Opinion of the Board of Appeals, the “...proposed facilities must be designed and constructed in a manner that will insure noise levels within County standards, not to exceed 40dBA within 10 feet of the Facility.” The Petitioner’s architect was mindful of this admonition in his design of the animal hospital building itself, and use of materials in order to comply with that standard. Within its sixteen years of operation, the Petitioner is aware of no incidents when sound from the animal hospital building exceeded the

specified limits nor has Dr. Walcoff ever received any complaints about animal noise from his facility.

The Petitioner's architect for the proposed addition is the same architect who worked on the original building in 2007. Mr. Clapp will incorporate the same design techniques, and will use even more efficient noise absorbing materials in the proposed addition to the hospital building.

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

(1) * * *

(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.*

Bennett Creek Animal Hospital does not have any outdoors exercise area. A generously sized enclosed "dog run" is employed to give the dogs room to move about and socialize with other animals. The proposed addition will not propose, nor will it necessitate the installation of any exterior exercise areas that would need to meet the standards of Section 59-G-2.32(b)(2).

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

The project architect will use construction techniques and building materials for the addition that will achieve the noise levels prescribed above.

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

The addition will extend into the southern side yard but the perimeter wall will be set to be at least 50 feet from the southern boundary line in order to satisfy the requirement quoted above and to qualify the open space between the building and the southern property line as wide enough to qualify for forest conservation purposes.

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

This requirement is presently adhered to and will be followed notwithstanding the operation of the proposed addition.

(6) *On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6:00 p.m. and 50 dBA between the hours of 6:00 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 6:00 p.m. and 50 dBA between 6:00*

p.m. and 9:00 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.

As noted in paragraphs 2 and 3 above, the existing Bennett Creek Animal Hospital has been constructed, and is operated, to meet the Noise Standards quoted above. The proposed addition will provide space for: a) 6 examination rooms; b) a second surgery room; c) offices (doctors, manager, HR staff) and d) a lounge/"break room" for staff. The new space will contain few animals (in the examination and surgery rooms only) and only when the animals will be under close attention and control, noise control included.

Dr. Walcoff and his architect point out the following features of the activities to be conducted in the new addition that relate to noise issues. Animals, in the surgery area are usually sedated and do not bark. The exam rooms are only occupied for 10 to 15 minutes per animal, on a rotating basis, usually accompanied by their owners, and are therefore less likely to bark. Accordingly, because of the rather benign use of the new space, and the construction of the new space, the Petitioner is confident that the County's Noise Standards stated above can be satisfied.

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

Noted. The primary adjacent properties are a public school and a church and are never used for outdoor exercise for animals since the Animal Hospital has an adequate interior enclosed exercise area within the existing building.

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. Applications submitted without this information are incomplete and will not be accepted or assigned a case number.

(i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst 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.

The Special Exception Amendment application contains detailed floor plans (Sheets A-102 and A-101).

As explained above, Bennett Creek Animal Hospital has no outdoor exercise areas.

With regard to an acoustical engineering study, the project's architect has demonstrated that he has the knowledge and experience to design an animal hospital that can be operated in

accordance with the County Noise law as evidenced by over fifteen years of operations at Bennett Creek Animal Hospital. Mr. Clapp is committed to design the hospital addition, and to use materials in the construction of the addition, that will achieve compliance with the County Noise law. Furthermore, as explained above, the addition will be “lightly used” in terms of animal occupancy and will be facing a public school property. Indeed, the public school is located almost 400 feet distant from the closest point of the new addition. The closest feature of the public school are six tennis courts within the range of 100 to 350 feet from the Animal Hospital.

(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 number of parking spaces on the site is proposed to be increased to forty (40) parking spaces which Dr. Walcott is confident will be adequate to accommodate the parking needs for customers and staff at all times of the day.

(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.

Noted. Most animals receiving treatment will be released on the day of treatment. There is, however, adequate space for animals that need to remain under care and attention after surgery or special treatment.

(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.

While most animals receiving treatment at Bennett Creek Animal Hospital arrive in accordance with a scheduled appointment, Bennett Creek does have an emergency care treatment capability approved by the Board of Appeals in 2017. Obviously, animals arriving for emergency care are not – prescheduled and such visits occur spontaneously due to events outside of the control of the pet owner.

(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%.

Nothing about the proposed addition will alter the Petitioner’s current compliance with this requirement.

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

Any litter and/or or animal waste generated in the addition area will be incorporated into the Petitioner's current sophisticated method of control for these features already in place.

(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.*

Noted. The Petitioner already holds a separate companion special exception approval (S-2660) for an animal boarding at the Bennett Creek facility approved on February 1, 2007. That use is not affected by this application.

(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.*

The proposed addition will be served by public water and public sewer. There is no history of inadequate transmission or treatment related to these public services. The existing utility system has been reviewed and is deemed adequate to handle any volume increases attributable to the proposed addition.

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



Jody S. Kline