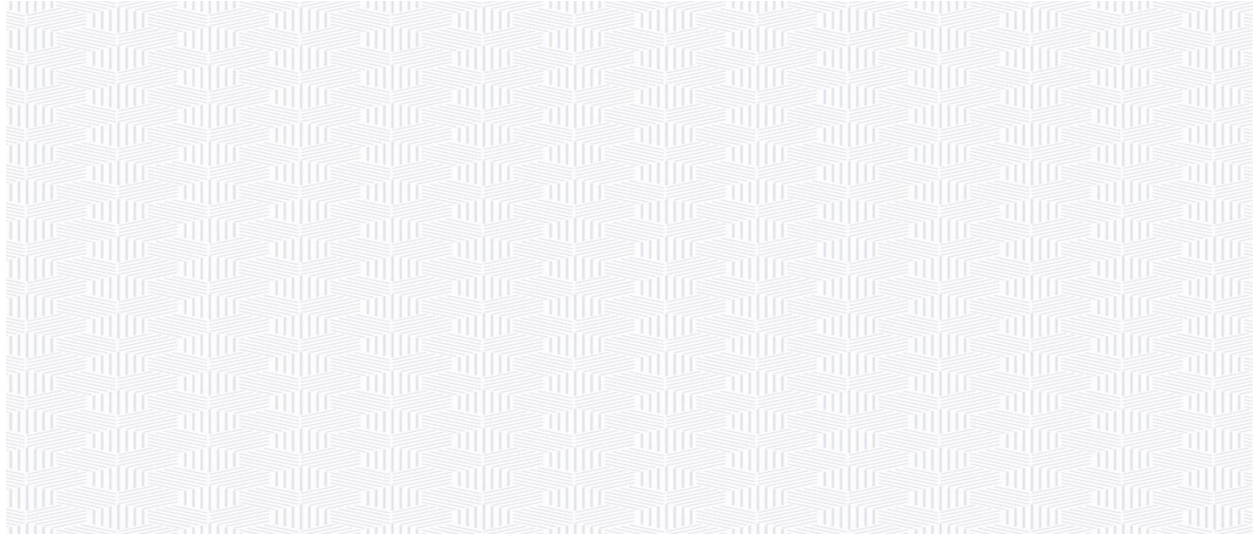


# BENNETT CREEK ANIMAL HOSPITAL SPECIAL EXCEPTION MODIFICATION NO. S-2659-A & FOREST CONSERVATION PLAN AMENDMENT NO. F20240830



## Description

Bennett Creek Animal Hospital seeks a Special Exception Major Modification to add a 4,833 square-foot addition to the south side of the existing building, increase the parking lot and modify the existing Forest Conservation Easements for a Veterinary Hospital pursuant to the 2004 Montgomery County Zoning Ordinance Sections 59-G-2.32 (Specific Conditions), Sections 59-G-1.3(C)(2)(4) (General Conditions), 59-A-4.2 (General Conditions) and 59-A-4.4 (General Conditions) and Forest Conservation Plan Amendment.

Nos. S-2659-A & F20240830

Completed: 9-20-2024

MCPB  
Item No. 6  
October 3, 2024

2425 Reddie Drive  
Floor 14  
Wheaton, MD 20902

## Planning Staff



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Patrick Butler, Chief, Patrick.Butler@montgomeryplanning.org, 301-495-4561

### LOCATION/ADDRESS

22416 Frederick Road, Clarksburg

### MASTER PLAN

1994 Clarksburg Master Plan

### ZONE

R-200

### PROPERTY SIZE

87,251 square feet (2.003 acres)

### APPLICANT

Jeffrey B. Walcoff, D.V.M. and Sheila Walcoff

### ACCEPTANCE DATE

March 21, 2024

### REVIEW BASIS

Chapter 59 and Chapter 22A

### HEARING EXAMINER PUBLIC HEARING

October 18, 2024



### Summary:

- Staff recommends approval of the Special Exception Modification with conditions and transmittal to the Hearing Examiner.
- Staff recommends approval of the Forest Conservation Plan Amendment with conditions.
- The Subject Site has an existing Special Exception for a Veterinary Hospital. The Proposal would allow for the construction of a 2,767 square-foot addition and an increase of the parking lot to 40 parking spaces.
- There is another existing Special Exception S-2660 for Animal Boarding Facility that will not be changed by this application.
- Per Section 59.7.7.1.B.3.c, without regard to the limitations of this section, a special exception approved under the code in effect on or before October 29, 2014, may be expanded under the applicable standards and procedures of the code in effect on October 29, 2014.
- Staff has not received any public correspondence to this modification as of the date of this Staff Report.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### SPECIAL EXCEPTION MAJOR MODIFICATION NO. S-2659-A

Staff recommends approval of Bennett Creek Animal Hospital, Special Exception Major Modification No. S-2659-A, for a new addition to the existing building, increase in staff, and site improvements as it relates to parking, drive aisle, and landscaping for a Veterinary Hospital, subject to the following conditions:

1. The use is limited to a Hospital, Veterinary under the Special Exceptions provisions of Section 59-G-2.32.
2. Replant the landscape screening along the parking lot along the northwest side of the Property as previously approved by the Board of Appeals.
3. All previous conditions remain in effect for the Property if not expressly amended with these conditions.
4. Maximum of 5 veterinarians.
5. Maximum of 17 staff members.
6. Hours of operation for customers is 7 a.m. through midnight for Monday through Friday and 9 a.m. through midnight Saturday and Sunday.
7. Limited to 40 parking spaces shown on the Special Exception Plan.
8. This Special Exception Modification does not change any of the conditions previously approved for the Animal Boarding Facility (S-2660).

### FOREST CONSERVATION PLAN AMENDMENT F20240830

Staff recommends approval, subject to the following conditions:

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.

3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
  - a) Submit a Deed of Release of Conservation Easement for the entirety of the existing Category I Conservation Easement on Lot 7 and 8 in a form approved by the M-NCPPC Office of General Counsel. The Deed of Release must be recorded in the Montgomery County Land Records. The entirety of the existing easement remains in full force and effect until the Deed of Release has been approved and recorded in the Montgomery County Land Records. The Deed of Release cannot be approved by M-NCPPC until the Certificate of Compliance is recorded or fee-in-lieu is paid, and the new easements are recorded.
  - b) Record a Category I Conservation Easement over all areas as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
  - c) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - d) Install the permanent conservation easement fencing along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - e) Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - f) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department Inspection Supervisor for the 0.23 acres of new forest planting mitigation trees, and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
  - g) Record an M-NCPPC approved Certificate of Compliance in an M-NCPPC approved off-site forest bank within the Little Seneca Creek watershed or Priority Area to satisfy the reforestation requirement for a total of 0.14 acres of mitigation credit. The off-site requirement may be met by purchasing credits from a mitigation bank elsewhere in the County, subject to Staff approval, if forest mitigation bank credits are not available for purchase within the Little Seneca Creek watershed or Priority Area or by making a fee-in-lieu payment to M-NCPPC if mitigation credits are not available at any bank.
5. Prior to the certified FFCP the Applicant must revise the plans to clearly reflect the offsite mitigation amount is 0.28 acres (0.14 acres x 2).
6. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject

Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff the Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP.

7. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling a minimum of 7.5 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.

## SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY

The Subject Property outlined in Figure 1 in the red dashed line is located at 22416 Frederick Road, Clarksburg 20871. The Property is located in the 1994 *Clarksburg Master Plan* area.

As shown in Figure 1 below, Staff defined a neighborhood for purposes of analyzing this Special Exception and its possible impacts on the character of the surrounding area. Staff determined the neighborhood based on nearby and surrounding properties that are in proximity to the Bennett Creek Animal Hospital and that would be most impacted by the Special Exception Major Modification. The neighborhood to the north and west are occupied by medium-density residential development, zoned R-200. Directly south and east of the Property is Rocky Hill Middle School, zoned R-200/TDR4. The property to the northwest consists of a place of worship and a cemetery. The owner of Bennett Creek Animal Hospital owns the abutting house to the south of the Property.



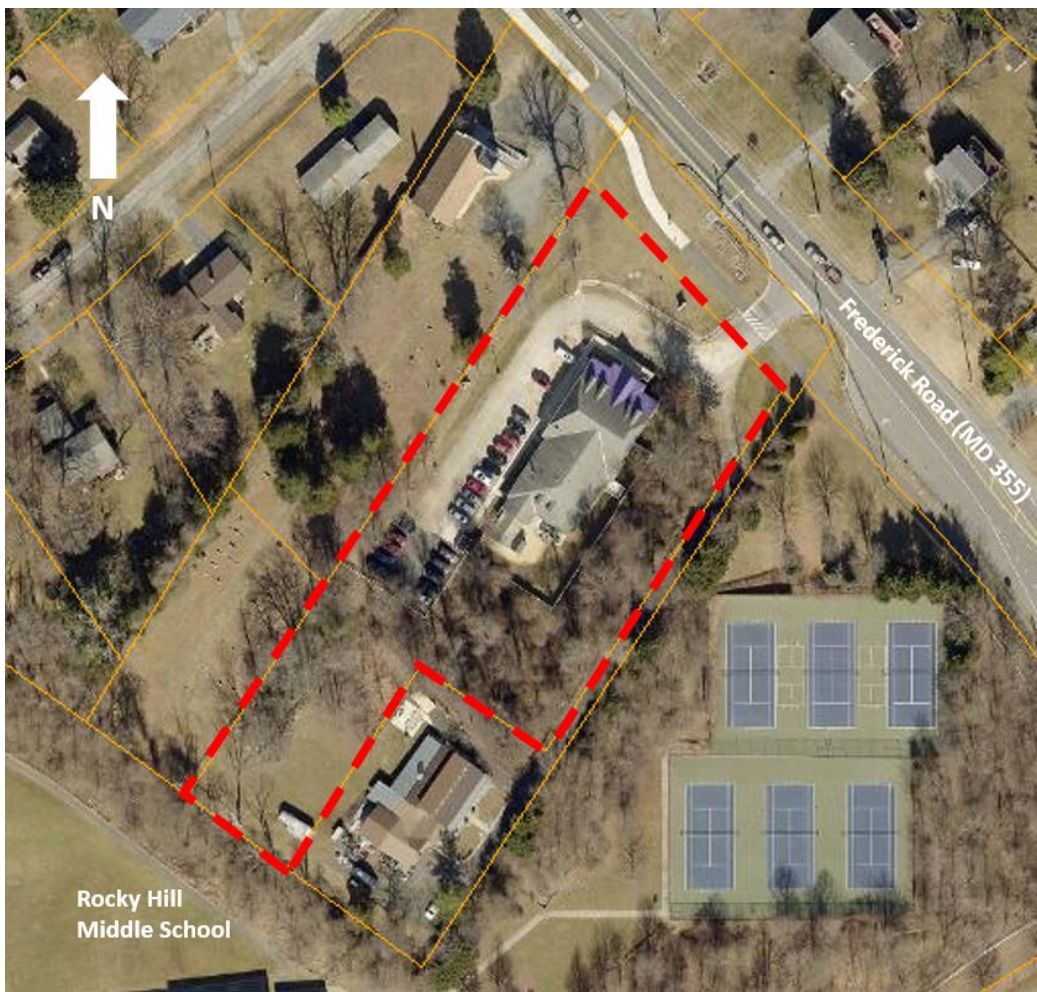
Figure 1: Vicinity Map with Staff-defined neighborhood highlighted in a solid yellow line.

Staff did not identify any approved conditional use/special exceptions within the defined neighborhood other than the previous approvals for the Subject Property.

## PROPERTY DESCRIPTION

The Property consists of 87,251 square feet (2.003 acres) identified as Lot 7, Clarksburg Heights Subdivision, recorded as Plat Number 23918 (“Property” or Subject Property”). The Property is currently developed as a Veterinary Hospital, parking lot and associated lighting and landscaping.

Bennett Creek Animal Hospital is accessed from a single entrance/exit along Frederick Road. The Property is located on the west side of Frederick Road approximately 750 feet south of Clarksburg High School and Wims Road. The Property consists of an existing 1.10 acres of Forest Conservation Easement along the south and west sides of the Property.



*Figure 2 – Subject Property*



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### PREVIOUS APPROVAL:

The existing Special Exceptions were originally approved on February 1, 2007, by the Board of Appeals (BOA). Special Exception S-2659 was for a Veterinary Hospital and Special Exception S-2660 was for an Animal Boarding Place. The subsequent Special Exception modification was approved by the BOA to add the emergency care facility to the Veterinary Hospital Special Exception. The Animal Boarding facility will not be changed by this application.

## SECTION 3: PROJECT DESCRIPTION

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### PROPOSAL

Bennett Creek Animal Hospital is proposing a 4,833 square-foot addition to the existing 6,879 square-foot building for a total of 11,712 square feet. The proposed addition will consist of an additional six examination rooms and one additional, larger surgical suite on the first floor, resulting in a total of six examination rooms and a larger surgical suite. Also, on the first floor will be three new small administrative offices, a larger veterinarians' office suite and a break room for the staff. The basement level will consist of a storage area for food, supplies, records, oxygen tanks, valuables, and equipment.

The Applicant is not proposing to change the hours of operations with this modification. There will be no changes to the previously approved Animal Boarding Facility with this modification also. The proposed modification is requesting an increase from 10 staff members to 17 staff members and an increase from 3 Veterinarians to 5 Veterinarians. The Applicant is requesting to increase the parking lot from 17 parking spaces to 40 parking spaces. The Applicant will be removing a small area of Forest Conservation Easement and relocating it to another area within the Property.



Figure 3: Existing Site Conditions

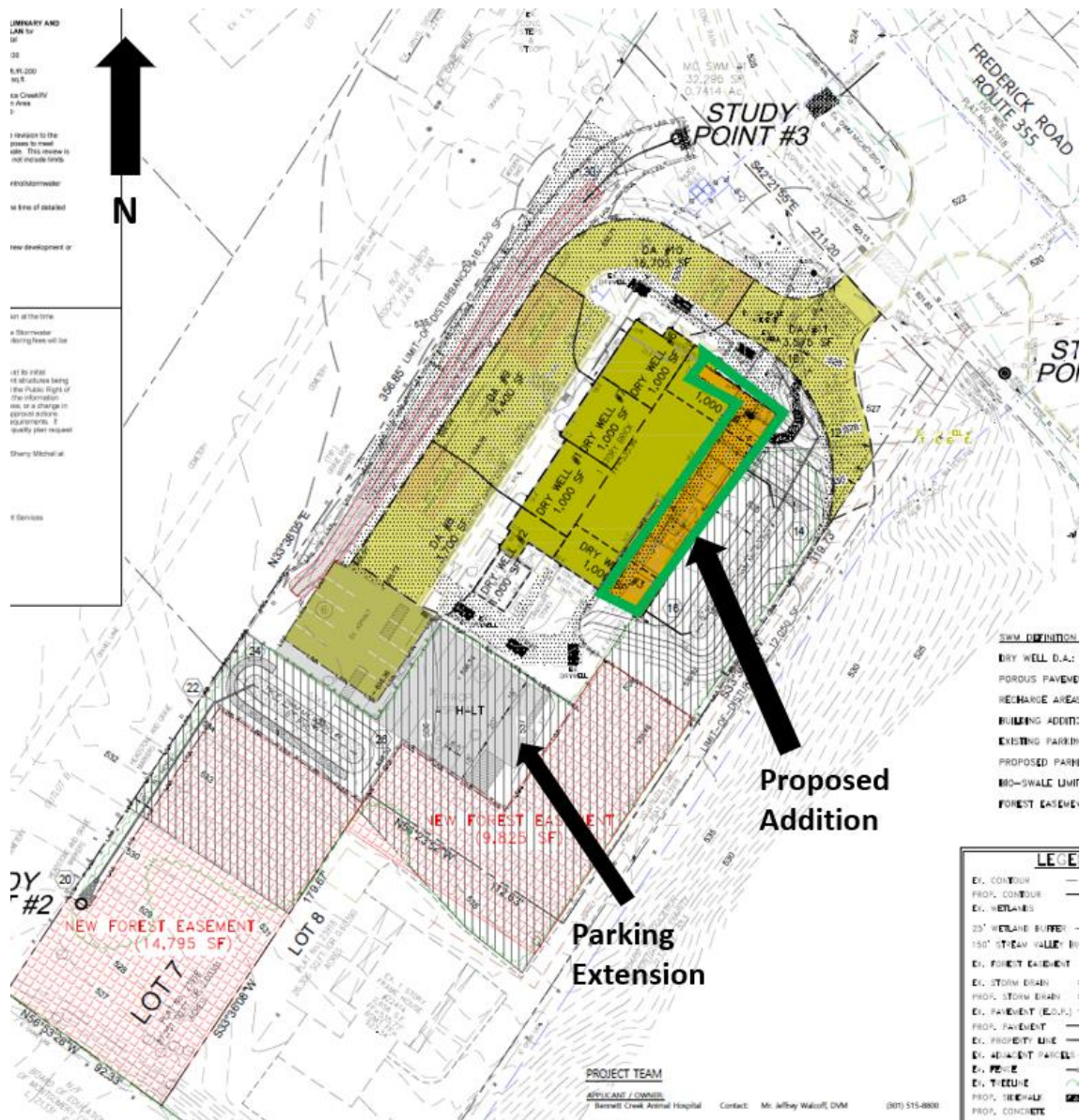


Figure 4: Proposed Site

## SECTION 4: COMMUNITY CORRESPONDENCE

Neighbors and civic organizations were provided notice of application, and Staff has not received any correspondence for the Application as of the date of this report.

## SECTION 5: ANALYSIS AND FINDINGS

### SPECIAL EXCEPTION MAJOR MODIFICATION NO. S-687-H

***Per Section 59.7.7.1.B.3.c, without regard to the limitations of this section, a special exception approved under the code in effect on or before October 29, 2014, may be expanded under the applicable standards and procedures of the code in effect on October 29, 2014.***

**1. Per Section 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.***

Bennett Creek Animal Hospital is not located in a commercial, central business district or transit station zone. Nonetheless, the Applicant is not proposing any new outdoor exercise yards or exterior spaces for keeping animals.

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

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

The Subject Property is zoned R-200 so this section does not pertain to this application. However, the Property consists of just over two acres.

***(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.***

The Applicant is not proposing an exercise or walk area with this application. The Applicant has an indoor walking area for animals to relieve themselves. This was built with the original building and will continue to function as such.

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

The Applicant provided an acoustical engineering study which states the exterior noises will not exceed 40 dBA from the inside of the structure at 10 feet from the structure.

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

The proposed addition will be 70 feet from the front property line and 50.1 feet from the southeast property line.

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

The Applicant is not proposing animals to be outdoors between 6 p.m. and 8 a.m. The Applicant has an indoor exercise area for animals to relieve themselves and there is no need for animals to go outside.

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

The Applicant has provided an acoustical engineering study which shows the noise at the property line will not 60 dBA during daytime hours and 50 dBA during nighttime hours (Attachment D).

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

The Applicant has acknowledged this and currently only walks dogs by leash on the Subject Property. The Applicant will continue to adhere to

this practice. As previously stated, the Applicant has an indoor walking area for dogs to relieve themselves.

**(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.**

The Applicant has provided an acoustical engineering study (Attachment D).

**(ii) detailed floor plans that show all the interior areas and their use designations,**

The Applicant has provided a detailed floor plan for the interior of the proposed addition (Attachment B).

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

The Applicant has provided a site plan showing the existing conditions with the proposed (Attachment B).

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

***(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.***

The Board did not limit the number of animals that may be kept onsite for the Veterinary Hospital, only for the Animal Boarding Facility. The Animal Boarding Facility Special Exception (S2660) is not being modified with this application and therefore those conditions are still valid.

***(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.***

Bennett Creek Animal Hospital is currently open from 7 a.m. to midnight Monday through Saturday and 9 a.m. to midnight on Sunday per previous Special Exception approvals for S-2659 and S-2660. The Applicant is not proposing any changes to the hours of operation with this application.

***(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%.***

The Applicant acknowledges this and has stated this in the Statement of Justification. This is already a condition of the previous Special Exception approvals and shall remain in effect.

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

The Applicant has been operating since the original approval February 1, 2007, and maintains the existing waste containment method. Outside waste is picked up and disposed of in trash cans. The Applicant has a regular scheduled trash pick-up service.

***(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.***

The Applicant is not proposing for animals to stay overnight except for medical purposes only.

***(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 Property is not located in an area where well water and septic facilities are used so this section does not pertain to this application.

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

This section does not pertain to this application as the use started after the adoption of the 2004 zoning code.

**2. Per Section 59-G-1.21, to approve a special exception application, the Hearing Examiner must find that the proposed development:**

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

A Veterinary Hospital use is allowed in the R-200 Zone as a Special Exception per Section 59-C-1.31(c).

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

This Application complies with the standards and requirements for a Hospital, Veterinary per Section 59-G-2.32 of the 2004 Zoning Ordinance (See Table 1 below).

*Table 1: Conditional Use Development and Parking Standards (R-200)*

<b>Development Standard Section 59-C-1.32</b>	<b>Permitted/ Required</b>	<b>Existing</b>	<b>Proposed</b>
Minimum Lot Area	20,00- Sq. Ft.	87,251 Sq. Ft.	No Change
Minimum Lot Width at Front Building Line	100 feet	200 feet	No Change
Minimum Lot Width at Front Lot Line	25 feet	211.20 feet	No Change



Maximum Density	1 dwelling unit/20,000 sq. ft.	N/A	N/A
Maximum Lot Coverage	25%	7.41%	10.67%
Minimum Front Setback	50 feet	82 feet	70 feet
Minimum Side Setback	12 feet	70 feet	50.1 feet
Minimum Sum of Side Setbacks	25 feet	143.4 feet	123.5 feet
Minimum Rear Setback	30 feet	200 feet	No Change
Maximum Height	50 feet	28 feet	No Change
<b>Vehicle Parking Requirement (Section 59.6.2.4.B &amp; 2004 Code 59-E)</b>			
Number of Spaces	30 Spaces	17 Spaces	40 Spaces
Number of Accessible Spaces	2 Spaces	2 Spaces	No Change
Landscape Strip Adjacent to R/W	10 feet	See Landscape Plan	See Landscape Plan
Perimeter Landscaping	4 feet	See Landscape Plan	See Landscape Plan
Min Parking Setbacks, from Street	40 feet	75 feet	No Change
Min Parking Setback, Rear	30 feet	45 feet	38 feet
Min Parking Setback, Side	16 feet	18 feet	No Change
Screening Required	Yes	See Landscape Plan	See Landscape Plan

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

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

***planning board may require additional landscaping in order to ensure compatibility with adjoining properties.***

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

The Application meets the requirements under Sec. 59-E-2.71. The Applicant is not proposing any changes or additions to the parking facility adjacent to the public right of way.

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

The Application meets the requirements of Sec. 59-E-2.72. The parking area is located adjacent to residential development along the northwest portion of the Subject Property. The landscape strip is 8-feet wide, contains one shade tree for every 40 feet of perimeter, and incorporates an existing and proposed vegetative evergreen screen comprised of evergreen trees. The property adjacent to the parking lot is an existing place of worship and cemetery. The only other residential use abutting the Subject Property is owned by the applicant and is on the other side of the Forest Conservation Easement.

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

The Application meets the requirements of Sec. 59-E-2.73. The existing parking lot has shade trees and the proposed parking lot will be providing shade trees as well for a total of 8 percent of the internal area.

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

The Applicant is not proposing internal planting islands, so this section does not pertain to this application.

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

The Application meets the requirements of Sec. 59-E-2.75. The primary landscape material used for the planting areas adjacent to and in the parking area are turf grasses and shade trees with

higher branching characteristics, so visibility will not be restricted in the parking areas.

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

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

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

The Application meets the requirements of Sec. 59-E-2.83(c). The parking facility adjacent to residential properties are screened using six-foot-high evergreen trees.

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

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

The Application meets the requirements of Sec. 59-E-2.83(d). The Applicant is proposing 32 percent shading at 15 years.

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

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

The Application meets the requirements of Sec. 59-E-2.91. The existing parking facility has existing evergreen trees for screening and the Applicant will extend the line of evergreen trees to screen the proposed new parking lot extension. The property to the northwest is a place of worship with a cemetery. The property to the southeast is owned by the applicant and the Forest Conservation Easement is between the parking lot and this abutting lot.

**D. Section 59-G-1.23; General Development Standards**

**1. Section 59-G-1.23(h); Lighting in Residential Zones Per Section 59-G-1.23(h) all outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:**

- a. Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.**
- b. Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.**

The Application meets the requirements under Sec. 59-G-1.23(h). The Applicant is providing additional lighting at the new parking lot, but the abutting property is not a residential use. The abutting property to the northwest is a place of worship and a cemetery.

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

The Site is located within the 1994 *Clarksburg Master Plan* area, which does not have recommendations for this specific property; however, the plan does state the properties along Frederick Road should retain the residential character. The existing building and proposed addition are constructed in a

way to look like a house as opposed to a commercial business. This area also contains institutional uses such as a church and a public school.

***(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.***

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

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

***(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.***

The proposed use will not cause any objectionable noise, vibrations, fumes, odors, dust, or glare at the Subject Site. The Veterinary Hospital has been in

operation since first approved and there are no records of any complaints as it pertains to these elements. The modification being proposed will not introduce any of these elements to the Subject Property.

***(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.***

Bennett Creek Animal Hospital is the only Special Exception/Conditional Use Staff found in the surrounding neighborhood so this modification would not adversely affect or alter the residential 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 been operating since 2007 without causing adverse effects to the residents, visitors, or workers in the area. This application will not alter the operations of Bennett Creek Animal Hospital.

***(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.***

Bennett Creek Animal Hospital will be served by adequate public services and facilities. The Property is on public sewer and water service. The Applicant has an approved Fire Department Access Plan (Attachment C). The proposed use will not create an increase in school enrollment.

#### *Master-Planned Roadways*

The Property is located along Frederick Road which is classified as a Boulevard with a 120-foot-wide right-of-way (ROW) as determined by the Master Plan of Highways and Transitways.

#### *Bike and Pedestrian Facilities*

The Bicycle Master Plan calls for a sidepath on Frederick Road and a 10-foot-wide sidepath exists today. The Complete Streets Design Guidelines calls for a 15-foot-wide street buffer (9-foot minimum); the current buffer varies in width along the site frontage but meets these guidelines. No additional bicycle or pedestrian facilities are recommended.



*Image of sidepath along Frederick Road from Google Maps*

*Local Area Transportation Review*

The proposed expansion of the veterinary hospital will result in 13 net-new morning peak hour person trips and 13 net-new evening peak hour person trips as shown in the table below. The projected peak hour morning and evening vehicle trips are based on the Institute of Transportation Engineers' (ITE) trip generation rates for an animal hospital/veterinary clinic and were calculated based on the 2,767 square feet of expansion. The vehicular trips were converted into person trips based on the modal split calculation for the Clarksburg Policy Area.

Table 2: Site Person Trips

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

Source: STS Consulting (January 2024)



The proposed expansion does not exceed 50 peak hour person trips, and thus does not require a transportation impact study.

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

The Subject Property will not need to go through the Preliminary Plan process because it has a previous approval. The use is already served by adequate services and facilities. The Transportation Exemption Statement submitted in support of this Application concludes that the proposed modification will not have a detrimental impact on the surrounding transportation network, adequate water category W-1 and sewer category S-1 facilities currently serve the use. The Applicant has obtained an approved Fire Department Access Plan from Montgomery County Department of Permitting Services (DPS).

***(B) If the special exception:***

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

The Applicant has obtained an approved Fire Department Access Plan (Attachment C) and an approved Stormwater Management Concept Plan (Attachment E). The use will not affect school capacities in the area.

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

The Traffic Study submitted by the Applicant confirms the proposed changes will maintain the safe and efficient conditions as they have previously existed on the site. The existing 10-foot-wide sidepath and crosswalk at the entrance to the parking lot help to maintain pedestrian safety.

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## FOREST CONSERVATION

***All Forest Conservation Law, Chapter 22A requirements are satisfied.***

The Application is subject to the Montgomery County Forest Conservation Law, Chapter 22A of the County Code, and requires a Forest Conservation Plan Amendment Included with this FFCP is a request for a tree variance for impacts to three significant trees. The Plan complies with the Montgomery County Environmental Guidelines and the Forest Conservation Law, as conditioned in the Staff Report and described below.

### ***Natural Resource Inventory/Forest Stand Delineation***

An NRI/FSD, Plan No. 420041870 was originally approved on March 26, 2004 and subsequently recertified twice. The Property is located within the Little Seneca Creek watershed a Use Class IV-P stream. The Property contains 1.10 acres of forest. There are no wetlands, streams, floodplains, or any associated buffer onsite.

### ***Forest Conservation Plan Amendment***

The Final Forest Conservation Plan (FFCP) under plan number 120080180 was approved on February 27, 2009. A Final Forest Conservation Plan Amendment number F20240830 (Attachment B) was submitted with this application. The Application satisfies the applicable requirements of the Forest Conservation Law, Chapter 22A of the Montgomery County Code, and complies with the Montgomery County Planning Department's approved *Environmental Guidelines*. This FFCP revises the previously approved limits of disturbance ("LOD") to provide for onsite improvements including an addition and associated stormwater management. The FFCP also shows the currently proposed alterations to the Subject Property as required under Section 22A.00.01.09.B of the Forest Conservation Regulations.

The FFCP Amendment proposes the removal of 0.37 acres of Category I forest conservation easement, which will be mitigated through a combination of onsite and offsite mitigation. The Amendment proposes the creation of 0.23 acres of new Category I conservation easement onsite and 0.14 acres of mitigation to be met offsite at a 2:1 ratio or a total of .28 acres offsite. The offsite mitigation will be met at a forest conservation bank if available or through fee-in-lieu if no banks are available. This will provide mitigation at a rate of 1:1 for the easement removal (0.23 acres onsite) and 2:1 mitigation offsite ( $2 \times 0.14$  acres offsite = 0.28 acres).

The new onsite easement will be reforested with native species as per the planting schedule on the FCP.



Figure 1: Easement Diagram

This application also requires the removal of one protected tree (30-inch DBH Black Oak) which requires a variance request.

### Forest Conservation Variance

Section 22A-12(b)(3) of the Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection ("Protected Trees"). Any impact to these trees, including removal of the subject tree or disturbance within the tree's critical root zone ("CRZ") requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such

resources must be left in an undisturbed condition. A request for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

### Variance Request

The Applicant submitted a variance request in a letter dated July 26, 2024 (Attachment C). The Applicant proposes to remove one tree that is 30 inches or greater DBH (#T2 a 30" DBH Black Oak (*Quercus velutina*), that is considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law (Table 1).

*Table 1 - Protected Trees to be Impacted*



*Figure 2 - Tree Variance Exhibit*

### Unwarranted Hardship Basis

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the requested trees in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. The required regrading of the Site for the addition and associated stormwater management requires the removal of tree T2, not being able to remove tree T2 would deny the ability for the animal clinic to expand. While tree T2 is currently in a Category I easement there is no other option for the expansion of the existing building that would allow the

Applicant to expand their business. The expansion of the existing use is a reasonable use of the property and is permitted in the zone by special exception, while denying the variance would create an unwarranted hardship.

Therefore, there is a sufficient unwarranted hardship to justify a variance request because the Applicant would otherwise be denied the ability to use the Property for the redevelopment and layout of the proposed animal clinic expansion, which is a reasonable and significant use of the Property.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted.

### ***Variance Findings***

The following determinations are based on the required findings for granting of the requested variance:

***1. Will not confer on the applicant a special privilege that would be denied to other applicants.***

Granting the variance will not confer a special privilege on the Applicant as the impacts to tree T2 are due to the reasonable development of the Property and the location of the trees within the property adjacent to the limits-of-disturbance (“LOD”). Granting a variance to allow disturbance within the developable portion of the site is not unique to this Applicant. Therefore, the granting of this variance is not a special privilege that is granted only this Applicant and denied to other applicants.

***1. Is not based on conditions or circumstances which are the result of the actions by the applicant.***

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions, development standards of the zone, and necessary design requirements of this Application. The site is currently developed with an approved animal veterinary clinic and the expansion of the existing use cannot be accommodated without the addition and the required grading and stormwater management.

***2. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

The requested variance is a result of the existing conditions and the proposed site design and layout of the Subject Property and not as a result of land or building use on a neighboring property.

**3. Will not violate State water quality standards or cause measurable degradation in water quality.**

The variance will not violate State water quality standards or cause measurable degradation in water quality. The Protected Tree being removed will be mitigated for replacing the form and function of that tree. Therefore, the Application will not violate State water quality standards or cause measurable degradation in water quality.

Mitigation for Trees Subject to the Variance Provisions

The Applicant is proposing the removal of 30 inches of protected trees and has provided mitigation at a ratio of 1:4 using a minimum of 3-inch caliper trees. Total mitigation provided must be equal or greater 7.5 inches, the applicant is proposing three 3-inch caliper trees or a total of 9 inches of mitigation.

Recommendation on the Variance

Staff recommends approval of the variance request.

## SECTION 6: CONCLUSION

The proposed Special Exception Major Amendment complies with the general conditions and standards of a hospital, veterinary, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 1994 *Clarksburg Master Plan*, will comply with the Zoning Ordinance and not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Special Exception Major Modification with conditions and transmittal of comments to the Hearing Examiner and approval with conditions of the associated Forest Conservation Plan.

### ATTACHMENTS

Attachment A: Forest Conservation Plan

Attachment B: Special Exception Site Plan & Floor Plan

Attachment C: Approved Fire Department Access Plan

Attachment D: Acoustical Engineering Study

Attachment E: Approved Stormwater Concept Plan

Attachment E: Statement of Justification

Attachment F: Board of Appeals Resolution No. S-2659 for Bennett Creek Animal Hospital S-2659