

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

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:
PETITION OF: : BOA Case No. S-2874
FAMILY PET VETERINARY PRACTICE, LLC, : OZAH No. 14-03
:
      Petitioner :
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A hearing in the above-entitled matter was held on September 23, 2014, commencing at 9:37 a.m., at the County Office Building, Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Lynn Robeson, Hearing Examiner

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A P P E A R A N C E S

On Behalf of the Applicant:

Susan Carter, Esquire
Damon Orobona, Esquire

Also Present

Dr. Nathan Wehrli, Applicant/Petitioner
Charles Joch, Architect

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C O N T E N T S

Petitioner's Witnesses	Direct	Cross
Dr. Wehrli	8	
Charles Joch, Architect	28	

E X H I B I T S

PETITIONER'S EXHIBITS	PAGE(S)
23 Drawing of neighborhood	6
24 Revised special exception site plan	11
25 Larger scale drawing of Exhibit 17E	13
26 Charles Joch's CV	29

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P R O C E E D I N G S

1 MS. ROBESON: This is a public hearing in the
2 matter of Family Pet Veterinary Practice, LLC, BOA Case No.
3 S-2784, OZAH No. 14-03; an application for a special
4 exception to operate a veterinary hospital at 8313 Grubb
5 Road, Silver Spring, Maryland, on land in the C1 zone. The
6 property is located in the Rock Creek Gardens Subdivision
7 N642.
8
9 This hearing is conducted on behalf of -- well,
10 first, will the parties identify themselves for the record?
11 MS. CARTER: For the record, Sue Carter, with the
12 law firm of Miller, Miller and Canby. And with me is Damon
13 Orobona, also with Miller, Miller and Canby. And then the
14 petitioner, Dr. Wehrli, and the architect, James Joch --
15 excuse me -- Charles Joch -- excuse me.
16 MS. ROBESON: All right. Thank you. I'm going to
17 skip a lot of the introductory -- our normal introductory,
18 because I know that Ms. Carter, and there is no opposition,
19 is well aware of the nature of the hearing and the nature of
20 the special exception process, as is Mr. Orobona.
21 Do you have an Affidavit of Posting?
22 MS. CARTER: We do. This is a photocopy of it.
23 Ellen has the original, but I'll give you this one. It's --
24 and I'm just going to see that she has that for the record.
25 MS. ROBESON: She already took the file?

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1 MS. CARTER: She may have already placed it in the
2 file. She gave me a photocopy. But let me give you that
3 for a placeholder.
4 MS. ROBESON: Let me just -- I just want to --
5 okay, she's already got it marked as Exhibit 22. All right.
6 MS. CARTER: All right. Do you want us to get
7 started?
8 MS. ROBESON: Yes.
9 MS. CARTER: Let me just -- give you a really brief
10 overview, and she said the property is located at 8313 Grubb
11 Road.
12 This is not an exhibit that's in the record and we
13 can place it in the record. It's really here more just to
14 kind of orient you to the property.
15 MS. ROBESON: Well, is the pink -- one thing I was
16 missing was the neighborhood.
17 MS. CARTER: The neighborhood.
18 MS. ROBESON: Yeah.
19 MS. CARTER: Okay. What -- and the pink is my
20 effort to outline what I understood Staff to say that the
21 neighborhood was, which is all the way along East-West
22 Highway, to the north and to the east, and then the District
23 line. Where I was a little puzzled was, in Staff's report
24 they said Ellington Drive. And, to the best I can tell,
25 there is no Ellington Drive. I think it's a typographical

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1 error. I think it's supposed to be Ellingson.
2 MS. ROBESON: Okay.
3 MS. CARTER: Okay. Which makes sense.
4 MS. ROBESON: Right.
5 MS. CARTER: And so what I did was followed
6 Ellingson down to this point, and so I put sort of dashes
7 because I just wanted to close the loop. So I assume that
8 it came essentially across this way.
9 MS. ROBESON: Okay.
10 MS. CARTER: It didn't -- you know, it didn't tie
11 all together, but we are comfortable with that being
12 identification on there.
13 MS. ROBESON: I'm just wondering how to get it --
14 well, I'm going to take it in because it's unopposed.
15 MS. CARTER: Okay.
16 MS. ROBESON: You know there questions about --
17 it's your drawing and you are not a witness, but I'm going
18 to take it in just so I have a graphic description of the
19 neighborhood for the Board.
20 MS. CARTER: Is that Exhibit 23?
21 MS. ROBESON: Yes.
22 MS. CARTER: Okay. So we'll move that in.
23 (Petitioner's Exhibit 23 is
24 marked/entered into evidence.)
25 MS. CARTER: The subject property, the shopping

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1 center, is highlighted in yellow, and it is Zone C1. There
2 is -- there are apartments and condominiums in the R20 zones
3 in the north and to the east of the property, and to the west
4 and south it's R60 zoned land.
5 And the tenant space that my client is intending to
6 occupy is 3,701 square feet, and it's in this shopping center
7 that's located on the subject property.
8 MS. ROBESON: Okay.
9 MS. CARTER: Okay. And with that I would call my
10 first witness.
11 MS. ROBESON: All right. Go ahead.
12 MS. CARTER: Okay. Okay. Mr. Wehrli, would you
13 state your name and address for the record, please?
14 THE WITNESS: Yes. I'm Dr. Nathan Wehrli, and I
15 live at 2814 Linden Lane, in Silver Spring, Maryland.
16 MS. CARTER: Okay. What is your -- the applicant
17 in this case is --
18 MS. ROBESON: Just a second. Can you raise your
19 right hand?
20 DR. WEHRLI: Yes.
21 MS. ROBESON: Do you solemnly affirm under the
22 penalties of perjury that the statements you are about to
23 make are the truth, the whole truth, and nothing but the
24 truth?
25 DR. WEHRLI: All right. Go ahead, Ms. Carter.

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1 MS. CARTER: All right.
2 WHEREUPON
3 DR. NATHAN WEHRLI,
4 having been called for examination by counsel for
5 applicant/petitioner and having been duly sworn, was
6 examined and testified as follows:
7 DIRECT EXAMINATION BY COUNSEL FOR PETITIONER
8 BY MS. CARTER:
9 Q All right. The petitioner in this matter is named
10 Family Pet Veterinary Practice LLC. What is your
11 relationship to Family Pet Veterinary Practice LLC?
12 A Yes. Well I'm the owner -- or I will be. I set
13 up the entity about a year ago.
14 Q Mmm-hmm.
15 A That's when I worked on the Articles of
16 Organization. I am the owner.
17 Q Okay. So you are one and the same as the
18 petitioner?
19 A Yeah.
20 Q Okay. Do you agree today to be bound by the
21 testimony and exhibits presented, and any conditions that
22 the Board of Appeals may include and grant in your request
23 for a special exception?
24 A Yes.
25 Q Dr. Wehrli, would you give us just a brief

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1 description of your education and professional training, and
2 go into a little bit why you are seeking this special
3 exception?
4 A Sure. Sure. Well I went to veterinary school at
5 Tufts University, School of Veterinary Medicine in
6 Massachusetts. It's a four-year program. I graduated in
7 2001, and have been a practicing veterinarian since then. I
8 don't know if it's important, but I was under-grad at UMASS
9 Amherst. I got a biology degree. That's kind of the way it
10 took. And so now I have been in private practice for 13
11 years. I have been working as an associate veterinarian for
12 others and other practices. Some in New Hampshire. More
13 recently here, in Maryland. And I'm just at the point
14 where I'd like to open up my own business and start my own
15 practice, and so I'm going through this process.
16 Q Okay. And have you entered into a long-term lease
17 with Rock Creek Properties, the owner of the shopping
18 center, to occupy the unit?
19 A Yes, I have.
20 Q And is that unit identified on this exhibit over
21 here, which should be -- this is the architectural layout of
22 the land -- is that the unit that you request?
23 A That is the unit.
24 MS. ROBESON: You have probably a better exhibit,
25 please.

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1 THE WITNESS: Yes. On the larger property map
2 it's the shaded area.
3 MS. CARTER: The shaded area.
4 MS. ROBESON: Okay.
5 THE WITNESS: It's a little bit like an L, and
6 that's at 8313 Grubb Road.
7 MS. ROBESON: So you are referring to --
8 MS. CARTER: Yeah. Let's see -- I'll just note --
9 I should mark this.
10 MS. ROBESON: The larger map is Exhibit -- and
11 this is just to clarify the record -- is it 17F?
12 MS. CARTER: Well, yes, but you know what --
13 MR. OROBONA: We've got --
14 MS. CARTER: -- it was 17F; however, we are going
15 to offer this one into the record as a new exhibit because
16 it now contains a note that was added as a condition before
17 the Planning Board.
18 MS. ROBESON: Okay.
19 MS. CARTER: So maybe we want to give this a new
20 exhibit number?
21 MS. ROBESON: Yes, we do.
22 MS. CARTER: Okay.
23 MS. ROBESON: Do you want to -- okay -- do you
24 have a witness that is going to testify what this is?
25 MS. CARTER: Let's just go ahead and, if that's

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1 okay, I can offer this into the record as the site plan of
2 the shopping center with the unit identified.
3 MS. ROBESON: Okay.
4 MS. CARTER: And that would Exhibit --
5 MS. ROBESON: Let me ask you something then.
6 MS. CARTER: Sure.
7 MS. ROBESON: Is the only change in this the
8 addition of the condition, the language?
9 MS. CARTER: Yes.
10 MR. OROBONA: Yeah.
11 MS. CARTER: Yes.
12 MS. ROBESON: Okay. All right. So I'm going to
13 mark this -- can you mark this -- thank you -- as Exhibit
14 24, revised special exception site plan?
15 (Petitioner's Exhibit 24 is
16 marked/entered into evidence.)
17 MS. ROBESON: And the --
18 MS. CARTER: And for purposes later, and we'll get
19 into this, nothing has changed about the floor plan, so I --
20 I don't -- we won't change this. So this will be Exhibit
21 17E. The only difference is this is an enlarged version.
22 We don't even have to put it into the record unless --
23 MS. ROBESON: We don't. Do you have electronic
24 copies of all these?
25 MS. CARTER: We are going to get you electronic

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1 copies of all of these.
2 MS. ROBESON: Okay.
3 MS. CARTER: Yeah. That came -- I know that came
4 through yesterday. And part of the thinking at this point
5 was that in case of any further changes, we know we have to
6 get electronic with this new verbiage.
7 MS. ROBESON: Right.
8 MS. CARTER: So we'll get you electronics of
9 everything. So you don't really need -- I mean we can refer
10 to this as 17E, but --
11 MS. ROBESON: Well I guess my only other question
12 is I'm trying to think if at some point you are going to
13 need the larger the plans, because I have trouble reading
14 the 11x17.
15 MS. CARTER: Okay.
16 MS. ROBESON: So, if you have paper copies, can I
17 -- MS. CARTER: Why don't we go ahead and label it.
18 MS. ROBESON: -- I'd just like them as an exhibit.
19 MS. CARTER: Yeah. So we'll label the exhibit --
20 MS. ROBESON: This is Exhibit 25.
21 MS. CARTER: 25. Great. And that's just the --
22 MS. ROBESON: And what is this? How would you --
23 MS. CARTER: This is the --
24 MS. ROBESON: Is this the larger --
25 MS. CARTER: Larger scale of the updated floor

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1 plan exhibit. So it's a larger scale of 17E.
2 MS. ROBESON: Great.
3 (Petitioner's Exhibit 25 is
4 marked/entered into evidence.)
5 MS. CARTER: That way we'll have them all marked.
6 MS. ROBESON: Thank you.
7 MS. CARTER: Sure. Okay.
8 BY MS. CARTER:
9 Q Dr. Wehrl, would you describe the type of animal
10 care that you are providing, and by that I mean the types of
11 animals and how, the illnesses?
12 A Sure. Sure. It's going to be a small animal
13 hospital, so I am basically dealing with people's pets.
14 It's going to be vastly -- the vast majority of them are
15 going to be dogs and cats; probably over 90 percent will be
16 just dogs and cats. I will see some small exotic pets, like
17 rabbits, guinea pigs, you know, maybe like an occasional
18 lizard or turtle, that kind of thing. But we are not
19 talking large animals. We are not talking zoo animals, or
20 anything like that.
21 Q Okay. And what's the general scope of the
22 services that you are going to provide?
23 MS. ROBESON: Can you treat a turtle?
24 MS. CARTER: That was my --
25 MS. ROBESON: I'm sorry. I just had to ask.

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1 MS. CARTER: I asked him the same thing.
2 THE WITNESS: Yeah. We can treat them as an
3 outpatient. There are specialists that deal specifically
4 with them. So certain things I would then refer them on to
5 those specialists.
6 MS. CARTER: Only if they poke their head out of
7 the shell.
8 MS. ROBESON: I'm just saying I had to ask. Okay.
9 I'm sorry. Go ahead, Ms. Carter. I apologize for
10 interrupting.
11 MS. CARTER: Yes. Okay.
12 BY MS. CARTER:
13 Q The general scope of the services that you will be
14 providing.
15 A Yeah. So some of it will be just physical exams,
16 wellness exams, where we might be doing vaccines or
17 preventative care. There's certainly going to be sick
18 animals coming in. There may be injured animals coming in.
19 That kind of thing.
20 Q Will you be providing any grooming services for
21 your patients?
22 A Yes. It will be kind of a minor service that the
23 hospital provides where we will probably be doing grooming
24 for pets for our clients.
25 Q Okay. And what about animal boarding?

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1 A No, we are not going to do boarding. We -- for
2 sick or injured animals, they -- or for surgeries, we may be
3 having them there. They will be there during the day, but
4 everybody ends up being discharged, going home. If there
5 are animals that are not stable or they are very ill and
6 they can't go home, then we would refer them to the 24-hour
7 emergency hospitals that are in the area. I think there are
8 several. I mean there is Rockville and Gaithersburg, and
9 D.C. all have these sorts of hospitals. So we wouldn't be
10 keeping anyone over night. We don't have the staff that are
11 going to be there to provide the proper care that they would
12 need. It would be better for them to either to go home, if
13 the owners can care for them, or to go to a 24-hour
14 facility.
15 Q Okay. But this will not be -- this is not going
16 to be -- otherwise you are not going to be taking in animals
17 to care for them while the family goes on vacation?
18 A Oh, no, no, no. No, we are not going to be doing
19 boarding.
20 Q Okay. Will the animals be allowed to run, walk,
21 or be exercised outside?
22 A Not routinely. The only caveat to that is that
23 the animals are staying hospitalized, the ones that have had
24 surgery, you know, that kind of thing. The employees will
25 walk them out on a leash to a pet relief area -- the dogs,

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1 I'm talking. The cats will go in their litter boxes. The
2 dogs will walk out to the special spot that's designated to
3 relieve themselves, but then they are going to come back
4 inside. They are not going to be out in a run. They are
5 not going to be out for any other reason.
6 Q Would you identify, using Exhibit 24, could you
7 just point out where the animal relief area would be
8 located?
9 A Sure. Oh, this one here?
10 Q Yes.
11 MR. OROBONA: Mmm-hmm.
12 THE WITNESS: Okay. It is in the back parking
13 lot. The back door is here and several parking spots over
14 there will be -- this shaded area here is going to be the
15 pet relief area.
16 MS. ROBESON: And when you say here, you are
17 pointing to the --
18 MR. OROBONA: North.
19 MS. CARTER: The north.
20 MS. ROBESON: -- the shaded parking area behind
21 the --
22 THE WITNESS: Yes. We would --
23 MS. ROBESON: -- interior?
24 THE WITNESS: Right. We would leave through the
25 back door, the north door, and then east of that door there

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1 is the pet relief area.
2 BY MS. CARTER:
3 Q Okay. Can you just describe briefly the surface
4 material that you are going to be using in this pet relief
5 area?
6 A Yes.
7 Q We are -- it' going to be an artificial grass. It
8 is -- there are several on the market. The one that we
9 looked at for statistics were made by a company called Pro-
10 Green. This is very nice grass-like material. This isn't
11 like astro-turf or Easter grass. It looks --
12 MS. ROBESON: I was curious about that. Yeah.
13 THE WITNESS: Yeah.
14 MS. CARTER: Yeah.
15 THE WITNESS: It looks very realistic. I mean
16 it's textured so it looks like grass. It's on a surface that
17 is porous, so rain will go through it. You know, dog's
18 urine will go through, and there is a substrate underneath
19 that will help to eliminate odors and drain. And it was
20 designed -- this company makes a lot of different types of
21 artificial turf. The types that we are using is
22 specifically designed for pets to use as a relief area.
23 It's been used in parks. It's been used in like urban area,
24 specifically for dogs to go to the bathroom on.
25 MS. ROBESON: Interesting.

1 THE WITNESS: So that's what we'll use.
 2 MS. ROBESON: Okay.
 3 MS. CARTER: Yeah. Staff is suggesting this will
 4 be sort of the prototype for future.
 5 BY MS. CARTER:
 6 Q All right. So will your staff clean up after the
 7 dogs?
 8 A Yes. Yes.
 9 Q Okay.
 10 A I mean we'll pick up any -- that will be gross --
 11 but any dog feces --
 12 Q Yes.
 13 A -- at that moment, put it in a plastic bag, and put
 14 it in the receptacle that will be in that area. And we'll,
 15 you know, hose it down each day; you know, we'll pick up as
 16 needed.
 17 Q All right. One of the conditions that had been
 18 recommended was that there be a hose spigot near the relief
 19 area to hose it down -- well they are proposing to do that?
 20 A Yes. We will put a hose spigot.
 21 Q Okay. And are you also agreeable to installing a
 22 pet waste bag dispenser with appropriate signage that
 23 restricts -- the signage that restricts the areas on either
 24 side of the pet relief area as veterinary staff parking?
 25 A Yes, we will do that.

1 Q And also to install a pet waste bag dispenser near
 2 the area?
 3 A Yes, definitely.
 4 Q Okay.
 5 A That will make our job easier too because I'm sure
 6 clients will be coming in with their dogs and have to use it.
 7 Q Yes.
 8 A If they pick up for us -- that's never for us. We
 9 want that there.
 10 Q Yeah. Okay. How will medical waste be handled or
 11 disposed of?
 12 A Yeah. What happens in veterinary hospitals is there
 13 are biohazard relief -- or biohazard disposal buckets. And
 14 they are basically plastic buckets that are for that purpose.
 15 All of the medical waste, which is like used needles, blood
 16 samples that are being disposed of, broken glass, you know,
 17 that kind of thing, all gets put into these containers, and
 18 then the hospital essentially when they are full or when they
 19 need a pick up, we deal with a company specifically that comes
 20 by to pick up medical waste and dispose of it properly.
 21 Q Will you be selling any pet supplies?
 22 A Some. It's more of a perk to our clients. We will
 23 be selling flea and tick preventatives. You know we may be
 24 selling medicated shampoos. Things of that nature. So we are
 25 not like a big box retail store where we are just trying to

1 just sell to everybody coming off the street.
 2 MS. ROBESON: You are not PetSmart.
 3 THE WITNESS: Exactly. So there will be some of
 4 that, but a limited scale.
 5 BY MS. CARTER:
 6 Q What are your proposed days and hours of operation?
 7 A Week days it's going to be 7:00 in the morning until
 8 -- I'm sorry -- 8:00 in the morning until 7:00 in the evening.
 9 And then on Saturdays it will be 8:00 in the morning until
 10 1:00 in the afternoon.
 11 Q Okay. And at your maximum capacity, how many
 12 employees will there be at any one time?
 13 A Yes. We have agreed with the Planning Board to have
 14 seven -- well, no more than seven on site at any one time.
 15 Q Initially -- let me -- just to clarify -- initially
 16 you sort of just indicated there would be what -- two
 17 veterinarians, three technicians, a groomer, and -- in your
 18 initial submission you had broken it out, but at the Planning
 19 Board did you amend your statement then to say -- to allow
 20 some more flexibility in terms of the mix?
 21 A Yes. I -- the Planning Board had asked me what I
 22 envisioned to be on site, and then would I want those to have
 23 a little flexibility; so if the pet groomer isn't there on a
 24 given day, we could have another technician or a second
 25 receptionist, just to give me the flexibility. I think

1 basically -- you are right -- we amended it to be just seven
 2 -- up to seven employees on site at any given time.
 3 MS. ROBESON: Now, do you have any issues, or are
 4 you willing to abide by the conditions recommended by the
 5 Planning Board?
 6 THE WITNESS: Yes.
 7 MS. ROBESON: Okay.
 8 BY MS. CARTER:
 9 Q Okay. And just to be clear, within that seven, you
 10 wouldn't be exceeding two veterinarians, is that correct?
 11 A Right. That's fine. Yeah.
 12 Q Mmm-hmm. What's the length -- typically when you
 13 are scheduling patient appointments, what sort of a typical
 14 timeframe -- how many patients do you see an hour?
 15 A Right. And I guess it depends on what the
 16 appointment is for. It might be as short as 15 minutes or it
 17 might be up to 30 minutes. When we were talking with the
 18 Planning Board to figure out the maximum amount of traffic it
 19 might generate, I think we put it in as 15 minutes, but
 20 realistically some appointments might be half an hour.
 21 Q Okay.
 22 A Yeah.
 23 Q All right. And so that would be -- if you went
 24 with that conservative number of four per hour for each
 25 veterinarian --

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1 A Right.
2 Q -- what would be the maximum that you'd have?
3 A Right. So if we have two veterinarians working,
4 then it might be a maximum of eight an hour.
5 Q Okay. Are you willing to maintain a written log of
6 all appointments, drop-ins and emergency client activities and
7 make it available for inspection by the County?
8 A Yes.
9 Q And is there going to be adequate parking available
10 for this use?
11 A Yeah. The shopping center has a lot of parking.
12 They have 100 -- I think 169 parking spots is what I was told.
13 They require -- it's required to have 149. They exceeded by
14 20, and we will be sharing that parking, those spots.
15 MS. ROBESON: So even removal -- that was one
16 question I had.
17 THE WITNESS: Oh yes.
18 MS. ROBESON: So even removal of one space --
19 MS. CARTER: One space.
20 MS. ROBESON: -- it's the shopping center as a whole
21 still meets the code requirements?
22 MS. CARTER: Correct. That's correct.
23 MS. ROBESON: Okay.
24 MS. CARTER: Yeah. We understand that from Staff's
25 analysis as well that it exceeds current requirements by 20.

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1 MS. ROBESON: Yeah. They didn't say that though,
2 so that's --
3 MS. CARTER: Okay.
4 MS. ROBESON: I think it's the number of parking
5 spaces overall is on the site plan.
6 MS. CARTER: Mmm-hmm.
7 MS. ROBESON: Okay. All right. Finish.
8 BY MS. CARTER:
9 Q In terms of signage, is the signage you are
10 proposing going to be consistent with other signage in the
11 shopping center?
12 A Yes. There is a building sign frame on the building
13 that runs along the entire façade of the front of it, and each
14 unit uses their sign portions to place a sign.
15 Q I see.
16 A So I'm just essentially replacing the old words --
17 it used to be a bicycle shop a few years ago -- so I'm basically
18 taking out their sign and putting mine in in that same spot.
19 MS. ROBESON: Okay.
20 BY MS. CARTER:
21 Q Do these photographs sort of accurately sort of
22 represent what you are talking about in terms of the signage
23 and where it would be located?
24 A Yes. Yes.
25 MS. ROBESON: What -- are those in the record?

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1 THE WITNESS: This visually shows what I just
2 described.
3 MS. CARTER: That's what I wanted to double-check.
4 We have these two photographs, and I'm looking to check to
5 see if these are already in the record.
6 MS. ROBESON: I think they are.
7 MS. CARTER: I think they are.
8 MR. OROBONA: They should be.
9 MS. ROBESON: I have -- can you look at 8E? Do
10 you have 8E and -- or you can come up --
11 MS. CARTER: Let me take a look. Yes.
12 MS. ROBESON: -- if you want to approach, you can
13 come up and look at my file. Just -- I'm just trying to --
14 MS. CARTER: Keep your copy. And I think that
15 what you have is -- I think is what --
16 MS. ROBESON: Let's just double-check here. Let
17 me see.
18 MS. CARTER: It's this one here.
19 MS. ROBESON: Okay. So that is 8 -- so what
20 you're referring to is 8E and 8D?
21 MS. CARTER: And 8E, yes.
22 MS. ROBESON: Okay. Okay.
23 MS. CARTER: Great.
24 MS. ROBESON: Just for the -- when we say this and
25 here, this goes to the Board and the transcript doesn't

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1 understand it. So I need you to --
2 BY MS. CARTER:
3 Q Do you have any idea whether or not there is this
4 -- I think at the end of the Planning Board session the
5 Staff mentioned something about that if you needed a sign
6 variance, you would get it -- do you know at this point
7 whether a sign variance is even going to be required?
8 A Yeah. It's not clear yet. I'm not sure if they
9 are going to -- I know we get a certain amount of square
10 footage, and I'm not sure if they are measuring the words
11 that are getting placed in the sign box or the sign box
12 itself.
13 Q Okay. But if it were determined by the Department
14 A Yes.
15 Q -- of Permitting Services when you went for your
16 permit, that if it did exceed it in some way, would you go
17 then before the Sign Review Board to seek approval of that
18 or --
19 A Yes. Or change the size of the sign. One or the
20 other. But I would abide by the regulations, yes.
21 Q Is there anything about your proposed use that
22 might have an adverse impact due to sort of specific use or
23 some feature that's unique to this location?
24 A I don't think so. It's an established shopping
25 center. We are putting a business into where an old

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1 business used to be; so it's not generating a lot of extra,
2 you know, traffic or noise. I think the one thing that
3 might have been considered would be the dog waste, and the
4 pet relief area addresses that. I can't think of anything
5 else.
6 Q Okay. In your opinion based on your experience in
7 veterinary medicine and your familiarity with this site,
8 will the proposed operation be in harmony with the general
9 character of the neighborhood?
10 A Yeah, I think so. I think this is a good place to
11 have a veterinary hospital. Like I said, we are not
12 adversely affecting the neighborhood. There are a lot of
13 residences around it, a lot of people with dogs. Every time
14 I have been there, whether I'm eating or shopping or when I
15 have checked out the site, there are people right now going
16 through with dogs on leashes all the time. So the only
17 difference is they'll be stopping by, I hope.
18 Q Yeah. Is there anything about the proposed use
19 that will be detrimental to the use, enjoyment, or
20 development of surrounding properties or the general
21 neighborhood?
22 A I don't think so. No.
23 Q Will the proposed use cause any objectionable
24 noise, vibrations, fumes, odors, illumination, glare, or
25 other physical activity?

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1 A No. No.
2 Q Is there anything about the proposed use that will
3 affect the health, safety and welfare of visitors,
4 residences, or workers in the surrounding area?
5 A No, I don't think so.
6 Q Okay.
7 MS. CARTER: I don't have any further questions.
8 MS. ROBESON: All right. You may be excused
9 unless -- I think you're going to stay.
10 DR. WEHRLI: Yeah.
11 MS. ROBESON: Call your next witness.
12 MS. CARTER: Okay. My second witness on this --
13 Mr. Joch, would you state your name and business address?
14 MS. ROBESON: Well, let me swear him in first.
15 MS. CARTER: Oh, I'm sorry.
16 MS. ROBESON: Please raise your right hand. Do
17 you solemnly affirm, under penalties of perjury, that the
18 statements you are about to make are the truth, the whole
19 truth and nothing but the truth?
20 MR. JOCH: Yes, I will.
21 MS. ROBESON: Okay. Go ahead, Ms. Carter.
22 WHEREUPON
23 CHARLES JOCH, III,
24 having been called for examination by counsel for
25 applicant/petitioner and having been duly sworn, was

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1 examined and testified as follows:
2 DIRECT EXAMINATION BY COUNSEL FOR PETITIONER
3 BY MS. CARTER:
4 Q Would you state your name, your business address,
5 and your occupation profession for the record?
6 A My name is Charles Joch, III. I'm a registered
7 architect. The company is CHJ3 Architecture, 14203 Stone
8 Chase Way, Centreville, Virginia.
9 Q Are you licensed in Maryland?
10 A I am licensed in Maryland, D.C. and Virginia. I
11 have been licensed in Maryland for close to 20 years --
12 well, 17 years.
13 Q But who's counting.
14 A Yeah.
15 Q And have you ever testified as an expert before?
16 A I have not.
17 Q Okay.
18 MS. CARTER: I have a copy of Mr. Joch's resume,
19 which it doesn't appear to have been put in the record.
20 MS. ROBESON: Let's take that in.
21 (Petitioner's Exhibit 26 is
22 marked/admitted into evidence.)
23 MS. CARTER: So let me offer this and ask him, you
24 have indicated that you are a registered architect in the
25 state of Maryland. Have you ever worked on similar type

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1 projects, of animal facilities, or other things where you
2 had to deal with the issue of mitigating noise?
3 THE WITNESS: That is actually my specialty. We
4 do animal hospitals, medical/dental facilities throughout
5 the region, and have done somewhere in the neighborhood of
6 300 to 400 of them. Currently have just completed an animal
7 hospital and have one under construction in Virginia, and
8 hopefully doing another one soon.
9 BY MS. CARTER:
10 Q Okay. So as part of this experience, have you
11 experienced the design, construction with the sound-proofing
12 of such facilities?
13 A That is the most common requirement of all of them
14 Whether it's animals or people, we have to meet HIPAA
15 requirements for people, for not being able to hear through
16 the walls conversations, and for animals, to make sure
17 everybody around is very comfortable. And also, when you
18 talk about dental offices and others, there's loud equipment
19 that needs to be -- that's within the space as part of the
20 function; that must be also muffled for everybody's -- not
21 only the staff working, but also the space around them. So
22 we are very considerate of wall construction type we use --
23 utilize through all of our spaces to make sure the sound is
24 controlled.
25 MS. ROBESON: Interesting. Okay.

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1 MS. CARTER: And I would offer Mr. Joch as an
2 expert witness as an architect with noise mitigation.
3 MS. ROBESON: I'm going to accept him. And now
4 you can say you have been accepted as an expert. And I
5 marked his resume as Exhibit 26.
6 BY MS. CARTER:
7 Q All right, Mr. Joch, have you visited the site and
8 are you familiar with the subject property and the
9 surrounding area?
10 A Yes, I have.
11 Q Okay. Would you describe the unit -- and if you
12 want to approach the Board, that's fine --
13 A Okay.
14 Q -- but would you describe the unit and sort of the
15 proposed interior layout?
16 MS. ROBESON: And you are referring to 25?
17 MS. CARTER: 25.
18 THE WITNESS: 25.
19 MS. ROBESON: Okay. Go ahead.
20 THE WITNESS: This is a very common retail type of
21 space that's utilized for veterinary practice, where you
22 would have a front entrance for patients and customers to
23 come through the front door, where you have a reception
24 waiting space, in the middle of the space you have a series
25 of exam rooms where they can meet their patients and review,

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1 and then in the very back of the space is for treatment or
2 whatever is required for each procedure.
3 And then in this situation we have a rear door
4 here that allows them to -- allows the patients to be taken
5 out to the back parking lot where the pet relief area is
6 right outside the back door.
7 We have a total of two exam rooms -- three exam
8 rooms, and then office space, a small surgery suite with x-
9 ray, and a treatment area.
10 Q Are you proposing any exterior renovations to the
11 building?
12 A only exterior renovation would be the pet relief area
13 that's outside the back door.
14 Q But to the building itself you are not --
15 A The building itself, no.
16 Q All right. Are you familiar -- and you can sit
17 down, if you like, or you may want to stand. I don't know
18 if you need to point out where these areas are, but I wanted
19 to ask you about are you familiar with the requirements for
20 noise attenuation contained in our zoning ordinance for a
21 veterinary hospital in a C1 zone?
22 A Yes.
23 Q All right. And the requirement is that it be
24 soundproof. Is there such a thing as soundproofing?
25 A Soundproof is not a real solution -- sound control

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1 -- but soundproof is not -- there's no zero.
2 Q Okay.
3 A That's the best answer that they offer there. We
4 have basically two demising walls adjacent to our suite
5 here. One of them is a CMU wall that's existing, and another
6 one is a drywall framed wall. We are going to upgrade and
7 modify both of them to make sure they are complete, sealed
8 top to bottom, not only required for fire, but also to
9 improve -- to make sure that we can improve on the sound
10 control of those walls.
11 Q How do you do that?
12 A We've actually proposed within the -- I'm not sure
13 if they are in the exhibits, but the --
14 MS. CARTER: Yes.
15 MS. ROBESON: Yes, your report is in the file.
16 THE WITNESS: Okay. So we have actually proposed
17 a series of wall types that are marked on our plan to do
18 that. The CMU wall, by its own nature, is actually very
19 good at that. We are just going to open -- look -- make
20 sure it doesn't have any holes or things like that, and make
21 sure we patch that.
22 The other adjacent wall, which is a -- it's a
23 drywall framed wall. It's very basic. We actually remove
24 all the materials from our tenant side, do not disturb the
25 tenant on the other side, and then improve that to that wall

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1 type that is actually already classified under an STC
2 rating.
3 BY MS. CARTER:
4 Q Now what do you mean when you use the term STC
5 rating?
6 A Sound transmission co-efficient. That is the
7 standard industry-wide of how you determine how good a wall
8 is, for controlling how much noise passes through it. And
9 that's -- there are test cases and backup from the
10 manufacturers that their material will do an STC of this if
11 you build the wall this way.
12 Q Now what sort of an STC rating would you
13 anticipate for the two demising walls?
14 A We are proposing -- basically with standard
15 construction materials, about the best you are going to get
16 is somewhere in the neighborhood of 54 to 60 range of -- and
17 what we are proposing on our demising wall of right around
18 60, which is about the best we are going to be able to do
19 with standard building materials, which is a very good wall.
20 In addition to internally in the space one of the
21 things we do with all of our medical offices is we also make
22 all the interior walls sound rated, so that actually adds to
23 the effect of no echo. It kind of deadens up the space so
24 noise does not get even loud. And, as a rule, in an animal
25 hospital the animals are there for being sick. They are not

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1 typically a very noisy bunch.
2 MS. ROBESON: I just had a question. Obviously I
3 know nothing we -- we do have this issue with veterinary --
4 we have had the issue with veterinary hospitals. When I
5 read your report, I just -- what is generally the -- when
6 you said 54 to 60, is that decibels or hertz?
7 THE WITNESS: No. That's STC.
8 MS. ROBESON: Okay.
9 THE WITNESS: That's for sound transmission. And
10 they don't really translate the same.
11 MS. ROBESON: Okay. That was my question.
12 THE WITNESS: Right.
13 MS. ROBESON: Do you have an estimate of what the
14 decibel level will be, or --
15 THE WITNESS: Oh, I think the biggest barking dog
16 -- I was actually researching it -- and they typically will
17 -- the biggest barking dog gets up closer to 100.
18 MS. ROBESON: Wow.
19 THE WITNESS: yeah, but that's -- but an STC will
20 --
21 MS. ROBESON: Now I feel bad letting my dog out at
22 night.
23 THE WITNESS: So you know what your dog is doing
24 during the day.
25 MS. ROBESON: Yeah.

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1 THE WITNESS: But, as a general rule, the STC
2 would cut that basically in half as you go through. There
3 is --
4 MS. ROBESON: Okay. That was my question.
5 THE WITNESS: There's a mathematical determination
6 of -- it's something that was determined back in the early
7 '60s of how to -- they don't -- they don't relate to one and
8 the other. I can't tell you that from side or the other,
9 because it's also tested on a large -- on variable
10 frequencies. So every dog, just like a human voice, has a
11 different --
12 MS. ROBESON: Oh interesting. Right.
13 THE WITNESS: Every dog sounds different, just
14 like every person does.
15 MS. ROBESON: Right.
16 MS. CARTER: Mmm-hmm.
17 MS. ROBESON: Right.
18 THE WITNESS: So it's hard to muffle a loud person
19 in an office space. It has the same --
20 MS. ROBESON: Okay.
21 THE WITNESS: It's the same issue.
22 MS. ROBESON: Okay.
23 BY MS. CARTER:
24 Q Are the measures that you are proposing in this
25 instance with the STC rating, are those consistent with

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1 other veterinary hospitals that have been approved by the
2 Board in the past?
3 A This is what we utilize in all of our veterinary
4 hospitals that we've worked in, as well as in government
5 SCIF facilities, as well as in sound recording for focus
6 groups for recording purposes.
7 Q Okay.
8 A So this is the exact same type we use in all of
9 those types of facilities.
10 Q And the Hearing Examiner may know this
11 terminology, but I didn't. Would you explain what -- when
12 you say a SCIF facility?
13 A That's a secure facility for government or a
14 government contractor where they do work in secrecy that
15 they need to make sure that sound is not going, and their
16 typical one is looking right around 54 of an STC rating for
17 construction type.
18 MS. ROBESON: Okay.
19 BY MS. CARTER:
20 Q Okay. In your professional opinion, will the
21 materials you have described, the STC ratings you've
22 described, and the construction materials you are proposing
23 satisfy the zoning ordinance standard found in 59(g)
24 2.32(a)(2), that the space will be soundproofed.
25 A That will -- I believe it will the best way to do

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1 it.
2 MS. ROBESON: Okay.
3 MS. CLARK: Okay. I have no further questions.
4 MS. ROBESON: All right. Can I return to your
5 first witness? I neglected to -- you are still under oath
6 -- I neglected to ask you whether, except for the size of
7 the sign and the condition relating to specifying employees,
8 do you wish to adopt the findings and conclusions of the
9 Staff Report as your own testimony?
10 DR. WEHRLI: Yes.
11 MS. ROBESON: Okay.
12 DR. WEHRLI: That's acceptable.
13 MS. ROBESON: All right. Anything else, Ms.
14 Carter?
15 MS. CARTER: No. I guess I just was going to say,
16 in closing, we believe that the special exception satisfies
17 both the general and specific conditions for approval of a
18 veterinary hospital. Special exception -- obviously it's a
19 relatively small practice in a commercial setting; so we
20 believe it's an entirely appropriate location, and
21 consistent with the Master Plan, which recommends this be a
22 neighborhood oriented retail center.
23 I just was going to add parenthetically, because
24 this discussion actually came up with the Board, is very
25 soon assuming that the comprehensive zoning -- when zoning

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1 ordinance -- zoning ordinance is adopted as part of the
2 comprehensive rezoning. This is proposed to be CRT, which
3 will no longer require -- it will not require special
4 exception or conditional use. It will be simply a limited
5 use in that case. But that just -- neither here nor there.
6 It hasn't happened yet, so we are here to get it today
7 though -- the approval.
8 MS. ROBESON: Okay. All right. How soon do you
9 think -- we typically leave the record open for 10 days to
10 receive the transcript.
11 MS. CARTER: Sure. Mmm-hmm.
12 MS. ROBESON: Is that enough time for you -- can
13 you get us CDs of the site plan, and is that the floor --
14 interior floor plan? I forget what we called it.
15 MS. CARTER: Okay. Yes.
16 MS. ROBESON: Of Exhibits 25 and 24?
17 MR. OROBONA: Mmm-hmm.
18 MS. CARTER: So those are the two that you need
19 electronic versions of, is that correct, just those two?
20 MS. ROBESON: Yeah.
21 MS. CARTER: Okay. And Damon is the expert on
22 that, so can you tell me what --
23 MR. OROBONA: We can get it today.
24 MS. ROBESON: Okay. I'm just looking through to
25 see if there is anything else.

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1 MS. CARTER: I mean I entered -- we entered that
2 tax map. I don't if you --
3 MS. ROBESON: No, I don't need the large --
4 MS. CARTER: You don't need to have that?
5 MS. ROBESON: I can scan that.
6 MS. CARTER: Okay. And --
7 MS. ROBESON: I guess that's -- I'm just looking
8 through your plans -- I guess that is probably only --
9 MS. CARTER: Oh, I know. Did you need anything in
10 terms of the Written Statement of Operations? Do you need
11 us to modify that again to incorporate any of the conditions
12 that have been proposed --
13 MS. ROBESON: No.
14 MS. CARTER: -- or is it sufficient the way you
15 have it?
16 MS. ROBESON: It's sufficient the way it is.
17 MS. CARTER: And you have that already?
18 MS. ROBESON: As modified. Doctor, I'm sorry. I
19 forgetting if it's Wehrli (pronounced Verli)?
20 THE WITNESS: Wehrli (pronounced Wurly).
21 MS. CARTER: Wehrli.
22 MS. ROBESON: Wehrli (pronounced Wurly).
23 THE WITNESS: If you are speaking German it would
24 be Wehrli (pronounced Verli), but we are not in Germany so
25 --

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1 MS. ROBESON: Okay. Well that's good to know. As
2 long as he has agreed to the conditions recommended by the
3 Planning Board, I am not going to ask you to update that.
4 MS. CARTER: Great. Okay. And I presume that you
5 received that in a format that you needed in terms of Word?
6 MS. ROBESON: If you could include that; that
7 would be helpful.
8 MS. CARTER: Okay. So the revised statement, not
9 changing it any further, what's already submitted; just make
10 sure that you have that in Word.
11 MS. ROBESON: Exactly.
12 MS. CARTER: Ensure in Word. And that may well
13 have been done. I wasn't involved at that point, so I'm not
14 sure.
15 MS. ROBESON: And we have the affidavit, so you
16 can keep this.
17 MS. CARTER: Yes. Okay.
18 MS. ROBESON: I'm returning the copy you gave me
19 before, for the record.
20 MS. CARTER: Sure.
21 MS. ROBESON: All right. What I'm going to do is
22 leave the record open for 10 days, which would be until
23 Friday, October 3rd --
24 MS. CARTER: Okay.
25 MS. ROBESON: -- to receive the transcript and to

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1 receive the electronic version of these exhibits. And then,
2 as you know -- then I have 30 days to issue my report and
3 recommendation to the Board of Appeals. The Board makes the
4 final decision. If you don't like or if you disagree with
5 my recommendation, then you have the ability to request oral
6 argument within 10 days. We do try not to take the entire 30
7 days to write our report, especially in an unopposed case;
8 so hopefully we will be able to get it out to you sooner
9 than that. But we do need the transcript to begin -- you
10 know, to complete the report.
11 All right?
12 MS. CARTER: Thank you.
13 MS. ROBESON: With that, I'm going to adjourn this
14 case subject to the record being open until October 3rd.
15 Thank you very much.
16 MS. CARTER: Okay. Thank you.
17 MR. OROBONA: Thank you.
18 DR. WEHRLI: Thank you.
19 (Whereupon, at 10:18 a.m., the hearing was
20 concluded.)
21
22
23
24
25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Common Ownership Communities for Montgomery County in the matter of:

Petition of Family Pet Veterinary Practice LLC

BOA Case No. S-2874

OZAH No. 14-03P

By:

Patricia L. Destajo, Transcriber

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