

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
COZY CATS VETERINARY, LLC

Applicant

Hannah Levy, DVM

For the Petition

Jody Kline, Esq.

Attorney for the Applicant

Before: Andrea LeWinter and Lynn Robeson Hannan, Hearing Examiners

Decision by: Andrea LeWinter, Hearing Examiner

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OZAH Case No. CU 22-06

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on November 12, 2021, the Applicant, Dr. Hannah Levy, DVM for Cozy Cats Veterinary, LLC, seeks a conditional use for an Animal Boarding and Care Facility at 10 Post Office Road, Silver Spring, Maryland, located in the Neighborhood Retail (“NR”) Zone, under Section 59.3.5.1 of the Zoning Ordinance.¹ Cozy Cats Veterinary, LLC also intends to operate as a Veterinary Office/Hospital, which is permitted as a limited use in the NR zone (Section 59.3.5.1.C). The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on February 18, 2022. Exhibit 17.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued a report recommending approval of the application on January 31, 2022, subject to five conditions. Exhibit 18. The Planning Board also recommended approval, adopting the conditions recommended by Staff. Exhibit 14. On February 11, 2022, Hearing Examiner Lynn Robeson Hannan requested additional information from Staff, including details on hours for drop off and pick up, lighting, traffic (peak hour and trip credit), exemption from site plan requirements, parking, the proposed condition on staffing, parking, and Adequate Public Facilities (APF) compliance. Exhibit 20. In response, on February 14, 2022, Staff supplemented the subject conditions for approval to include four clarifying conditions on pick-up and drop-off of boarding cats. Exhibit 22.

The February 18, 2022 public hearing proceeded as scheduled. In response to testimony and evidence presented at the hearing, the Hearing Examiners requested additional information from the Applicant. The record was held open for ten days after the hearing to receive the transcript and the Applicant’s Pre-Hearing Statement, as the Applicant stated during the hearing that the Pre-

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

Hearing Statement had been provided to OZAH prior to the hearing but had not been docketed. The record closed on February 28, 2022, with the Pre-Hearing Statement and the Applicant's cover electronic mail message entered as Exhibits 24 and 25.

For the following reasons, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and Decision (Decision).

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property will occupy approximately 4,000 square feet of existing commercial space on the second floor of a landmark historic structure known as the "The Castle," located at 10 Post Office Road. The Castle contains approximately 12,100 square feet of total building area as well as a surface parking lot with 48 spaces located to the rear and side of the building. Mr. Nimord Levy, owner of the Castle, also owns a small triangle-shaped parcel directly across from the Castle off Post Office Road to the southwest that may be used for additional parking, although one will have to cross Post Office Road from this parking area to access the Castle and the Animal Boarding and Care Facility. T.21.

The subject property is recorded as Lots 7 and 8 on Plat No. 22215, dated 2002. Exhibit 18, p.5 and Exhibit 10. A vicinity map from the Staff Report (Exhibit 18, p. 4, on the next page) shows the general location of the property.

Access to the Property is from Post Office Road and a gated entry point accessed from Forest Glen Road. Post Office Road may be reached from Capitol View Avenue and Seminary Road. The Property occupies a small triangular outcropping situated at the nexus of Seminary Road, Forest Glen Road, Post Office Road, Capitol View Avenue, Linden Lane, and train tracks, approximately a tenth of a mile from Interstate 1-495.

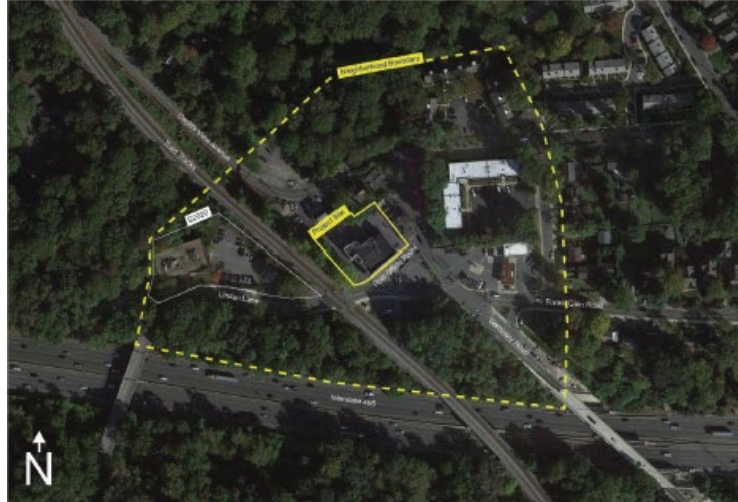
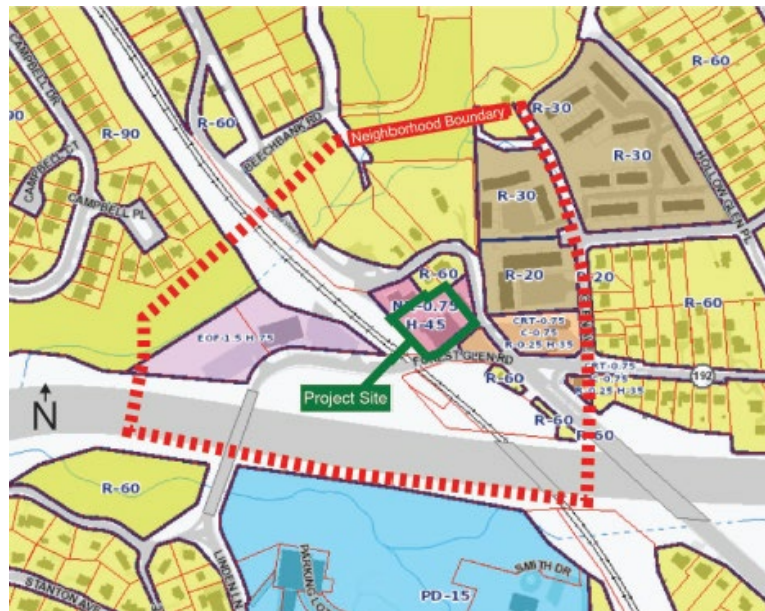


Exhibit 18 - Vicinity Map with Subject Property highlighted in solid yellow and Staff-defined Neighborhood Boundary in yellow dash

B. Surrounding Area

To determine the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding area” (i.e., the area that will be directly impacted by the proposed use.) Staff did not articulate the boundaries of the surrounding area but included a Zoning Map (below) that highlights the subject property in green and the staff-defined neighborhood boundary in red. Exhibit 18, p.5.



**Exhibit 18, Surrounding Area
(shown in red)**

The area outlined is a pentagon bounded by Interstate I-495 to the south, the north-south portion of Glen Avenue to the East (drawing an imaginary line from the southern end of Glen Avenue to a point of intersection with Interstate I-495), Linden Lane to the west extending north past Linden Lane's curve to the east to bound the commercial building on Linden Lane, turning northeast across the railroad tracks and Capital View Avenue, and last turning to be parallel with the townhomes off Holman Avenue to connect with an imaginary extension north of Glen Avenue. Having no evidence to the contrary, the Hearing Examiner adopts the area delineation recommended by Staff.

Staff characterized the area as an established commercial node located within the larger Forest Glen residential neighborhood with commercial establishments serving Silver Spring, Montgomery Hills, Lyttonsville, Kensington, and Forest Glen, including a restaurant, gas station, railroad tracks, commercial buildings -- both across the railroad tracks to the west and to the northeast, and a pool company in a former residential building directly behind the Castle at 9710 Capitol View Avenue. The Staff-defined area also contains one (1) approved/existing and operating conditional use: S-2137 for a Public Utility Building and Public Utility Structure at 2900 Linden Lane. The Castle and the parcels immediately northwest and northeast are zoned NR. The parcel directly north is R-60 as are those across Capitol View Avenue to the north and east. The parcels to the west across Capitol View Avenue are R-20 and there is one small CRT parcel. There are some residences in the Staff-delineated neighborhood, including a few homes abutting the subject property along Capitol View Avenue. The Zoning Map shows that the surrounding area to the south is almost exclusively zoned for commercial uses, while areas to the north and west are zoned for single-family detached and multi-family uses. The Hearing Examiner characterizes the surrounding area as primarily commercial to the south and immediately adjacent to the site, while the area to the north and east is predominantly residential. The Hearing Examiner finds the

character of the delineated area to be primarily commercial bordering on both commercial and residential communities.

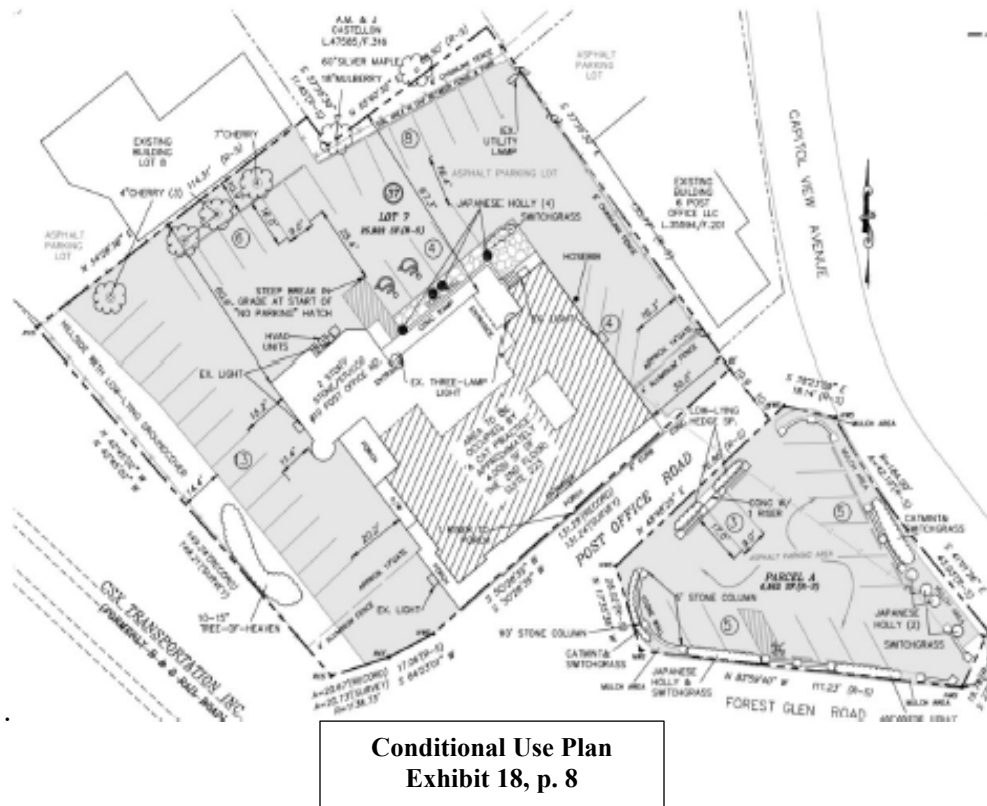
C. Proposed Use

Dr. Hannah Levy, DMV owner and veterinary doctor for Cozy Cats Veterinary, LLC, described the origin of and her vision for the project. Dr. Levy detailed that she joined the Cozy Cats Veterinary, LLC practice in 2015, purchasing the practice in 2018. T. 36-77. In the course of her practice, she has noted that there is a significant need for cat boarding options in Montgomery County. T. 38. She believes as a veterinarian able to oversee a boarding facility co-located with a veterinary clinic, she can provide comfortable and safe feline boarding that reduces illness and stress amongst boarding animals. T. 37-38.

1. Conditional Use Site Plan

Because this facility will serve only cats, there will not be a need for an outdoor recreation area. Instead, the existing indoor space will be configured to accommodate the boarding animals recreation needs. Thus, no external changes to the building are proposed or necessary. The existing site design is grandfathered and no conditional use site plan is statutorily required as per Section 59.7.7.1(A)(1) “A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased”² The Conditional Use Site Plan (reproduced in the Staff Report) is shown on the next page (Exhibit 18).

² Conditional Use Section 7.3.1 only requires a site plan if the accordant use standards have such a requirement. The Section setting forth the standards for Animal Boarding and Care, §3.5.1.B.2.b.ii, does not include a site plan as a requirement for Employment Zones, which include the NR Employment Floating Zone, it only requires that the use be “soundproofed.” However, the Applicant also intends to operate a veterinary clinic, a limited use, with the animal boarding and care facility. The Limited Use of a Veterinary Office/Hospital does require a site plan under Section 59.3.5.1.C.2.a.iii. In consultation with the Office of General Counsel, Staff determined that the Existing Conditions



Mr. Norton explained that storm water management improvements and forest conservation plans also are not required because there will be no external site changes, all proposed construction will be internal. T. 56; Exhibit 12. Planning staff concurred that Chapter 22A, *Forest Conservation*, is not applicable as per Chapter 22A-4, *Applicability*, exempts conditional uses of less than 40,000 square feet, subsection (b), and the site requires no grading, subsection (g). Exhibit 18, p. 13. Additionally, the site contains no regulated environmental features. Exhibit 18, p. 13. Mr. Norton stated that the plan meets all development standards under the Zoning Ordinance for Animal Boarding and Care in a NR zone and that public facilities are present and adequate. T. 57. He testified that there is a six-foot chain link fence and plastic screen around the perimeter of the property and limited landscaping, T. 53, and that the plan does not need to comply with screening

Site Plan, Exhibit 7, submitted by the applicant would meet or exceed the qualifications for a site plan, as long as the other requirements for Animal Boarding and Care and Veterinary Hospital/Office were met.

requirements because it is utilizing an existing site design, T. 59-60.

2. Operations

Dr. Levy plans to house the cats in a dedicated room that will contain a series of approximately 20 cat “townhomes” -- distinct, multi-level units that allow each cat the space to sleep, eat, toilet, and recreate yet remain independent from cats not from their home environment. T. 38-40. Each unit can hold up to 2 cats, and the maximum occupancy of the facility will be 30 cats. T. 40. There will also be an open “recreation” area in the boarding room that cats will be allowed to explore in turn individually or in their household units under staff supervision. T.40. During boarding, cats will be fed, administered prescribed medications, and provided stimulation. T. 38-41. Dr. Levy has identified a company to remove waste weekly and this service is available for twice weekly service, if needed. T. 41-42. Boarding staff will ensure that the recreation area and cat townhomes are cleaned and maintained. T. 45.

Dr. Levy anticipates that cats will board for periods of one weekend to two weeks, with peak boarding times from Fridays to Mondays and during Thanksgiving and the winter holidays. T. 42. She will have staff on site as early as 7:30 a.m. and staying through 6:00 p.m., but the facility will only accept cats for boarding between 9:00 a.m. and 3:00 p.m. T. 42-43. Cat drop off and pick up will be on an appointment basis as they will be easier to accommodate if scheduled and scheduling will avoid congestion. T. 43. Dr. Levy predicts drop off and pick up will only take a few minutes. T. 43. She believes emergency situations where a cat needs immediate boarding will be rare and that even these should allow for scheduled drop off times. T.44.

The boarding facility will be staffed with two-to-three employees and served by the same receptionist that serves the veterinary clinic. T. 44. Dr. Levy does not believe that staff should need to stay overnight. T. 45. In her veterinarian capacity, Dr. Levy will visit the boarding room daily

and provide additional supervision as needed. T. 46-47.

3. Site Circulation, Parking, and Access

Mr. Levy described the building, parking, and the location for pick-up and drop-off of cats. Again, the pick-up and drop-offs will be by appointment so that cats will not arrive unexpectedly. Mr. Levy explained that traffic is designed to travel one-way around the building and there are parking spots at both the front and back. T. 26. Clients of the boarding facility should prefer to park in the back of the building as the back is the location of the door that leads to Cozy Cats Veterinary, LLC's reception and also has immediate access to the elevator that can transport clients and their cats to the second floor. T. 27-28. Mr. Levy identified existing light fixtures and categorized the lighting as adequate for facility's needs, such that no additional lighting is planned. T. 28-29. Mr. Levy noted that boarding facility staff may enter at the front of the building through a covered walkway, but stressed it would not be the logical entrance for boarding clients because it does not directly connect with Cozy Cats Veterinary, LLC's reception area. T. 29.

Because the proposed use is replacing an existing use, a traffic study was not required. See Exhibit 18, p. 12 and Exhibit 22, p. 2-3. Mr. Levy relied on his experience operating the building to note peak traffic times based on when the parking lot is filled and emptied. T. 49. Planning staff reviewed projected peak-hour morning and evening trips based on the Institute of Transportation Engineers' (ITE) trip generation rates for animal hospital/veterinary clinic and the Kensington/Wheaton Orange Policy Area mode split assumptions and concluded that the proposed uses will generate only 20 person-trips in the AM peak hour and 17 in the PM peak hour, fewer than the 50 person-trips during each weekday AM and PM peak hours threshold necessary to trigger a Traffic Impact study. Exhibit 18, p. 10-12; Exhibit 22, p. 5. Planning staff also concluded that, in accord with Local Area Transportation Review (LATR) Guidelines, vehicle trips generated

from the 4,000 square feet of the General Office use originally assigned to the building should be assumed to convert into an identical number of Animal Boarding and Care/Veterinary Clinic vehicle trips, Exhibit 18, p. 12 and Exhibit 22, p. 2-3, resulting in no traffic impact from the proposed conditional use.

In terms of parking availability, Mr. Levy noted that the existing parking spaces have been adequate for the prior uses and, as the new use will likely be less intensive since boarding clients will only park for short periods as compared to previous occupants who would park for the entire work day, there should be a sufficient parking spots. T. 49-51.

Planning Staff advises that the proposed use will require 4-10 parking spaces as well as 4 spaces for guest parking. Exhibit 18, p. 9. Staff also calculates that the existing tenants require 20 spaces. As the existing on-site parking spaces number 48, there will be adequate parking for the boarding facility as well as the existing tenants ($48 > 14+20$), exceeding the minimum requirement of 35 spaces set forth in Section 59.6.2.4.B. Exhibit 18, p. 9-10.

Mr. Norton attested that the parking includes Americans with Disabilities Act (“ADA”) accessible spots and access includes an ADA-compliant entrance ramp. T. 55.

4. Noise

Section 3.1.5.B.2.b.1 of the Zoning Ordinance requires the Applicant to submit an acoustical study demonstrating that the animal boarding and care facility will meet the noise levels mandated by the Montgomery County Code. The Code limits noise levels in residential areas to 65 dBA in the daytime (from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays) and 55 dBA in the nighttime (from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays). *Montgomery County Code*, §31-5(a)(1).

The Applicant submitted an acoustical study prepared by Mr. Gary Ehrlich, acoustical engineer, of Hush Acoustical, LLC. Exhibit 16. Mr. Ehrlich explained that, in completing his study, he first looked to the parameters of the ordinance, which uses the term “soundproof.” He said that he then made certain assumptions because “soundproof” is not a term used by acoustical engineers and decided to use the functional definition of human speech being inaudible. T. 63-64. He testified that the property line dBA threshold is 62, which is the level of normal human speech, so if the noise is inside the building, it is not possible for it to be louder than 62 dBA at the property line. T. 64. He testified that the walls of the building will reduce the noise by 20 dBA as it travels outside, emphasizing how unlikely a noise ordinance violation will be. T. 64. (62 dBA - 20 dBA = 42 dBA < 55 dBA for nighttime noise levels.) To fully ensure soundproofing, however, he advised Dr. Levy to: insulate the ceiling below the boarding facility, consistent with remediation efforts done between new residential units to achieve a sound transmission rating of 50; affix acoustical seals to the doors; and, ensure that the windows are fixed and inoperable. T. 65. These measures will minimize sound traveling into the public corridor. *Id.* He testified that, as cats are quieter than people, noise remediation efforts are likely unnecessary, and opined that the facility will be “soundproof” with his recommended improvements. T. 65-66.

D. Community Response

The record contains no opposition to this application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW³

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both general and specific. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*,

³ All findings of fact are based on a preponderance of the evidence. *Zoning Ordinance*, §7.1.1.

§7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, an animal boarding and care facility. *Id.*, §59.3.1.5.

Weighing all the testimony and evidence in the record under a “preponderance of the evidence” standard (*see Zoning Ordinance* §7.1.1), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, will satisfy all of the general and specific requirements for the use.

A. Necessary Findings (Article 59.7)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance.⁴ Standards pertinent to this approval, and the Hearing Examiner’s determination for each finding, are set forth below:

1. *To approve a conditional use application, the Hearing Examiner must find that the proposed development:*
 - a) *satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

Conclusion: Preliminary Plan 120020100 was approved on January 17, 2002, to allow up to 19,425 square feet of general office space on the Subject Property. The Subject Property currently contains 12,100 square feet of general office space, which is unaffected by this Conditional Use application. Therefore, the Hearing Examiner finds that this application satisfies this standard.

- b) *satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

Conclusion: As discussed in Parts III.B and D of this Report, the Hearing Examiner finds that this application satisfies this standard.

- c) *substantially conforms with the recommendations of the applicable master plan;*

⁴ The requirements of Section 59.7.3.1.E.3 through 59.7.3.1.E.6 do not apply to the Subject Property

The Subject Property is located within the area subject to the 1982 Capitol View & Vicinity Sector Plan ("Sector Plan"). Planning Staff determined that the proposed use conforms to the Sector Plan (Exhibit 18, p. 15):

The Sector Plan notes that most of the developed land within the Plan area is used for Residential purposes (p. 15). It states that less than 1 percent, or 1.5 acres, of the total land is devoted to commercial uses. The commercial area includes the Subject Property, as the Sector Plan located the C-1 zone at the Forest Glen Road/Seminary Road/Linden Lane intersection (Plan, page 60). The Subject Property is currently zoned NR and continues to have commercial use. The proposed Animal Boarding and Care Facility and Veterinary Office/Hospital uses conform to the Sector Plan and do not result in an overconcentration of conditional uses within this neighborhood. The primary use of the existing structure will remain a commercial one. The exterior of the established building on the Site is commercial in nature and is not proposed to change. The proposed use is modest in intensity and is compatible with surrounding commercial and residential uses.

Conclusion: The Hearing Examiner agrees with Staff's determination and, having no evidence to the contrary, finds that this application conforms with the applicable 1982 Capitol View & Vicinity Sector Plan.

d) is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Planning Staff concluded (Exhibit 18, pp. 16-17):

The surrounding Forest Glen neighborhood is largely residential in character as noted in the Sector Plan and remains that way today. However, the Subject Property is in the commercial/retail area of the Sector Plan, which includes a neighboring restaurant, gas station, railroad line, commercial buildings -- both across the railroad tracks to the west and to the northeast, and a pool company in a former residential building directly behind the Castle at 9710 Capitol View Avenue. There are some residences in the area, including a few to the rear (north) of the Castle located on Capitol View Avenue. But, the proposed business use of Animal Boarding and Care Facility use will be located in a long-standing commercial/retail building and in an employment zone. No alterations are proposed to the exterior of this building or the surrounding site.

Conclusion: For the reasons stated by Staff, the Hearing Examiner finds that the proposed Animal Boarding and Care Facility use will not alter the character of the neighborhood in a manner

inconsistent with the Sector Plan. She also notes that no changes are proposed to the exterior of the building, which is currently part of the existing character of the neighborhood.

- e) *will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Planning Staff found that the application meets this standard (*Id.*, p. 17):

The Staff-defined neighborhood contains one (1) approved/existing and operating conditional use: S-2137 for a Public Utility Building(s) and Public Utility structure located at 2900 Linden Lane. The Animal Boarding and Care Facility use will not impact the area adversely and the neighborhood will remain predominantly residential outside the established commercial area. The proposed use and the Veterinary Office/Hospital are limited to cats and, therefore, will not require outside pet relief or play areas (as would be required if this use catered to dogs) and will not generate a substantive sound impact. While the addition of this conditional use will add to the total number of conditional uses within the surrounding neighborhood, it does not increase the intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area outside the established commercial area.

Conclusion: The Hearing Examiner agrees with Staff and finds that the proposed use, which conforms with the recommendations of Sector Plan and makes no changes to the property's current exterior, will not adversely impact or alter the residential nature of the area and satisfies this standard. The only other active conditional use (formerly "special exception") in the area is a utility use and does not add to the existing commercial use of the area.

- f) *will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
 - i. *if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by*

adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;

Planning Staff found that the application meets this standard:

Public services and facilities such as public sewer and water, natural gas, and phone service are available to adequately serve the proposed conditional use. The property is currently served by public water and sewer and the Applicant asserts that the proposed use will not generate any increased demand on those services. A Local Area Transportation Review (LATR) is not required because the proposed use generates fewer than 50 person-trips during the weekday morning and evening peak hours. School capacity is not a material consideration in this case, as the proposed conditional use does not generate schoolchildren. Fire service is provided from Silver Spring Volunteer Fire Station located 0.9 miles southeast on Seminary Road at 1945 Seminary Road, Silver Spring. Montgomery County Police Department's Glenmont station is less than 4 miles away directly north on Georgia Avenue. Exhibit 18, p. 17-18.

Conclusion: A preliminary plan of subdivision is not required for approval of the conditional use because the use is located on an existing lot (Lot 7). Evidence in the record demonstrates that the application does not require a traffic study and that existing utilities and services presently serve the use sufficiently. The Hearing Examiner finds that this application will be served by adequate public services and facilities.

- ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;*

Conclusion: This provision is not applicable.

- g) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
 - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
 - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood.

Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use.

Planning Staff identified five inherent adverse effects necessarily associated with an Animal Boarding and no non-inherent adverse effects. The inherent effects are:

1. Vehicular trips to and from site;
2. Noise and odor from animals;
3. Deliveries of mail and small parcels;
4. Specialty medical equipment needing servicing, mostly by technicians in regular vehicles;
5. Drop-off and pick-up of pets in parking areas.

To this, the Hearing Examiner adds commercial parking areas to serve the use.

Staff determined that there are no non-inherent characteristics of the proposed use (Exhibit 18, p. 19), reasoning that trip generation will be minimal and will be staged to avoid morning and evening peak hours. Staff also found that the noise study submitted demonstrates that noise will meet the levels required by County Ordinance, and that adequate parking is available on-site.

Conclusion: The Applicant has provided an acoustic study and promised to abide by its recommendations to soundproof the facility from any noise created by the cats being boarded. Such efforts are in fact supplemental as the acoustical engineer stated that, as cats are quieter than humans, the existing conditions should be more than sufficient to soundproof the facility and fully

comply with noise ordinances. Odors should be contained within the facility and the Applicant has accounted for the regular disposal of animal waste, with the option to increase service if necessary. Deliveries and contract service providers should also have minimal impact on traffic or parking. As explained by Mr. Levy and shown on the Site Plan, adequate parking is available on-site; and, as detailed by Mr. Levy and Dr. Levy, all drop-offs and pick-ups will be scheduled. Further, limitations on hours will be conditions of the use. These efforts will minimize congestion. As there are no changes proposed to the exterior of the existing building on the Site, the proposed use will not have any non-inherent effects. Based on this evidence, the Hearing Examiner finds that the proposed Animal Boarding and Care Facility use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects in any of the above noted categories, as all inherent adverse effects will be mitigated and no non-inherent adverse effects exist.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Conclusion: This provision is not applicable. The Subject Property is not in a Residential Detached zone and no structure is planned to be constructed, reconstructed, or altered as part of the Subject Application.

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.*

Conclusion: The appropriateness of application approval is not reliant on the fact that the application satisfies all specific requirements for the conditional use, but on the substantial factual support that the proposed use will have no known adverse impact on the surrounding area and that

the Applicant will be subject to additional conditions that will mitigate any potential adverse impacts.

B. Standards Specific to Animal Boarding and Care Facilities (Article 59.3)

The proposed the Animal Boarding and Care Facility is a Conditional Use in the Subject Property's NR zone and must comply with the following specific use standards under Article 59.3.5.1.B.2 (Animal Boarding and Care):

- (b) Where Animal Boarding and Care is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:⁵*
- ii. In the Employment zones, any part of a building used for animal boarding or care must be soundproofed.*
 - iii. In the zone, an outdoor exercise yard is allowed if:*
 - (1) it is fenced and set back a minimum of 50 feet from any Residential zone; and*
 - (2) any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.*

As explained by the Applicant and acoustical engineer Mr. Ehrlich, cats are quieter than humans. Mr. Ehrlich testified that humans are unlikely to violate any noise ordinance as normal human speech at the property threshold would be within regulatory limits, and any sound will be further reduced by 20 dBA by the Castle's walls, such that further noise remediation for sounds softer than human speech are likely unnecessary. Still, as the term "soundproofed" is undefined, the Applicant attested to adopting all of Mr. Ehrlich's recommendations and provide for ceiling, window, and door insulation that will mitigate noise. These extensive efforts should account for any possible sound concerns and meet any reasonable definition of soundproof.

Conclusion: The Hearing Examiner finds that the proposed use satisfies this standard, subject to the conditions in Part V of this Decision. No animals will be outdoors, and the Hearing Examiner imposes a condition of approval requiring the Applicant to comply with the recommendations

⁵ The requirements of Section 3.5.1.B.2.b.i do not apply because the Subject Property is not in the AR, R, RC, RNC, RE-2, RE-2C, RE-1 or R-200 zones.

contained in the Acoustics Report submitted (Exhibit 16). With this condition, this standard is met.

C. Development Standards of the Zone (Article 59.4)

In order to approve a Conditional Use, the Hearing Examiner must also find that the application meets the development standards of the NR Zone, contained in Article 59.4.6 of the Zoning Ordinance.

Staff concluded that the existing site improvements meet all of the development standards of the NR Zone, demonstrated by a table in the Staff Report (Exhibit 18, p. 16, below).

Standard	Required	Proposed
Green Area (min) (old code)	10%	10%
Lot Area (min)	n/a	~25,822 sf
Lot Width at Front Building Line (min)	n/a	168 feet
Lot Width at Front Lot Line (min)	n/a	168 feet
Density (max)	.75 FAR	.47 FAR
Coverage (max)	n/a	~23.6%
Front Setback	0'	0 feet
Side Setback	0'	~35 feet
Rear Setback, abutting Residential Detached Zone	30'	~70 feet
Rear Setback, abutting all other zones	0'	~68 feet
Height	45'	26'

Conclusion: Based on this evidence in the record, the Hearing Examiner finds that the proposed use meets the development standards of the NR Zone under Section 59.4.6.3.C as the application does not propose any external change to the existing site.

D. General Development Standards (Article 59.6)

Article 59.6 sets requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the proposed use meets these requirements, are discussed below.

1. Site Access Standards

Because the improvements are grandfathered as existing site design under Section 59.7.7.1 of the Zoning Ordinance, this standard does not apply.

2. Parking, Queuing, and Loading Standards

Parking, queuing, and loading standards are governed by Section 59.6.2 of the Zoning Ordinance. Section 6.2.2(A) requires uses to “provide off-street parking that permits a vehicle to enter and exit the property” and necessitates “recalculation of the parking requirement” for “[a]ny change in floor area, capacity, use, or parking design.” Thus, the conditional use proposal requires a recalculation of parking sufficiency at the Subject Property.

Section 6.2.3. establishes:

The minimum number of vehicle and bicycle parking spaces required in all zones is the sum of the number of spaces required for each applicable land use in the tables in Section [6.2.4.B](#) and Section [6.2.4.C](#), unless the total number is reduced under Section [6.2.3.I](#).

The table at Section 6.2.4.B sets out the requirements for Animal Services, the proposed conditional use, and Office and Professional, the existing uses contained within the Subject Property.

	Metric	Baseline Minimum
COMMERCIAL		
Animal Services		
Animal Boarding and Care	Employee	1
		plus 3
Veterinary Office/Hospital Employee	Employee	1
	Plus each Doctor practicing simultaneously	2.5
		(Minimum of 5)
OFFICE AND PROFFESIONAL		
Office	1,000 SF of GSA	2.25

Table 6.2.4.B

Staff advised that Section 59.6.2.4.B establishes 35 parking spaces as the minimum requirement for a building of the Castle’s square footage and use in the NR zone (Exhibit 18, p.

10). Because the Subject Property contains 48 on-site parking spaces across two parcels, the minimum requirement is exceeded. Mr. Levy confirmed that there is more than sufficient on-site parking for the proposed use. No concerns with queuing or loading were noted by Staff or in the evidence presented. Mr. Norton also reported that there is adequate ADA-accessible parking.

Conclusion: The Hearing Examiner finds that application meets site access standards as the parking availability on site exceeds requirements and there is no evidence of queuing or loading issues.

3. Site Landscaping

Minimum standards for landscaping are set forth in Division 6.4 of the Zoning Ordinance, with a stated intent to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” *Id.*, §59.6.4.1. Mr. Norton testified that there is a six-foot chain link fence and plastic screen around the perimeter of the property and limited landscaping. He stated that the plan does not need to comply with screening requirements because it is utilizing an existing site design. Staff did not address site landscaping, presumably because the exterior improvements are grandfathered.

Conclusion: As the exterior improvements are grandfathered under Section 59.7.7.1.A.1, this section does not apply. Nevertheless, the Hearing Examiner has already found that these the existing improvements are compatible with the surrounding area.

4. Outdoor Lighting

The Zoning Ordinance Section 59.6.4 mandates certain design requirements for installing outdoor fixtures, including a requirement to have fixtures that “direct light downward and minimize the amount of light spill, any outdoor lighting fixture must be a full or partial cutoff fixture” and requirements regarding the height of fixtures. The Applicant proposes only to use

existing light fixtures, which are wall-mounted and operating from dusk to dawn. Pictures were provided by the Applicant in Exhibit 8.

Conclusion: This standard applies only to new lighting, so does not impact this application.

5. Parking Lot Landscaping and Lighting

No additional landscaping standards apply to this conditional use as it has greater than 9 parking spaces (§59.6.2.9.B).

6. Signage

The applicant is not proposing any freestanding signage, so there are no compliance issues to assess.

IV. Conclusion

As set forth above, the application meets all the standards for approval in Divisions 59.7, 59.3, 59.4 and 59.6 of the Zoning Ordinance, with the conditions imposed to mitigate adverse impacts from the use.

V. Decision

Based on the foregoing findings and conclusions and a thorough review of the record, the application of Cozy Cats Veterinary, LLC (CU 22-06) for a conditional use to operate an Animal Boarding and Care at 10 Post Office Road, Silver Spring, Maryland, under Sections 59.3.1.2 and 59.3.5.1 of the Zoning ordinance is **granted**, subject to the following conditions:

1. Improvements to the property are limited to those shown on the existing site plan (Exhibit 7).
2. The Animal Boarding and Care Facility is limited to a maximum of 4,000 square feet.
3. The Animal Boarding and Care Facility use is limited to cats.
4. No more than 30 cats may be boarded at any one time.
5. Outdoor animal relief/play areas are prohibited.
6. The Applicant will install all noise mediation recommendations included in the Acoustics Report, Exhibit 16.

7. The Animal Care and Boarding Facility will include a staff of 4 veterinarians, 8 technicians, 5 assistants, 2 receptionists, 1 pet groomer and 2 kennel assistants. A maximum of four staff on-site will be permitted. No staff person will sleep overnight in the facility unless there is a situation in which a boarded animal needs close monitoring and attention.
8. A maximum of 4 staff for the boarding and care facility will be permitted on-site at any one time.
9. The facility may only serve customers from Monday through Sunday from 7:00 a.m. to 9:00 p.m.
10. No pick-up or drop-offs of cats for boarding are permitted between 8:00 a.m. and 9:00 a.m., Monday through Friday.
11. Pick-up and drop-offs of cats for boarding may occur on Saturday between 8:00 a.m. and 3:00 p.m.
12. All pick-ups and drop-offs of cats for boarding will be based on pre-scheduled appointments to reduce client congestion.
13. Pick-up and drop-offs of cats for boarding in emergency situations may occur outside of the times listed above but in no event will they be before 7:00 a.m. or after 9:00 p.m. any day of the week.
14. The Applicant will maintain a written log recording boarding drop off and pick up dates and times. Logs must be provided to the County upon request to ensure compliance with conditions 9-13. Boarding logs must be maintained for a minimum of two years before they may be disposed of.
15. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.



Andrea LeWinter
Hearing Examiner

Issued this 22nd day of March 2022.

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If

the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

Any party wishing to appeal this decision should visit the [Board of Appeals'](#) website, review the [Notice of Re-Opening](#) or contact Board of Appeals Staff for office hours and filing instructions, as these may change.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website.

NOTIFICATIONS SENT TO:

Jody Kline, Esquire
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Parker Smith, Planning Department
Matthew Folden, Planning Department
Carrie Sanders, Planning Department
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director of Finance
Cliff Royalty, Esquire, Office of the County Attorney