

**BEFORE THE MONTGOMERY COUNTY  
BOARD OF APPEALS**

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

<b>IN THE MATTER OF:</b>	*
<b>FAMILY PET VETERINARY PRACTICE,</b>	*
<b>LLC</b>	*
	*
Petitioner	*
	*
Nathan Wehrli, DVM	*
	*
For the Petition	*
	*
Susan Carter, Esquire	*
Damon Orobona, Esquire	*
Attorneys for Petitioner	*
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Board of Appeals Case No.  
S-2874  
(OZAH Case No. 14-03)

Before: Lynn A. Robeson, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. Statement of the Case

Filed on January 28, 2014, this petition seeks approval of a special exception for a veterinary hospital under §59-G-2.32 of the Zoning Ordinance in effect prior to October 29, 2014.<sup>1</sup> The public hearing was originally scheduled for May 30, 2014, (Exhibit 12(b)), but was postponed at the request of the Petitioner to address concerns raised by Technical Staff of the Montgomery County Planning Department. Exhibit 15. The Petitioner amended its application in March and May of 2014. OZAH then issued a notice of Petitioner's motion to amend the petition and rescheduled the hearing date for September 23, 2014. Exhibits 13, 17, 18.

On August 29, 2014, Technical Staff issued its report recommending approval of the application with several conditions. Exhibit 20. The Planning Board also recommended approval but modified one of the conditions recommended by Technical Staff. Exhibit 19.

The public hearing proceeded as scheduled on September 23, 2014, and the record was held open for an additional 10 days to receive the transcript and electronic versions of the site plan (with a note regarding the pet relief area included on the plan), the interior floor plan, and a word version of the Statement of Operations. T. 41.<sup>2</sup> These were submitted on September 24, 2014. Exhibit 27.

On October 3, 2014, OZAH received a letter from Ms. Sandra Magwood, owner of the business adjacent to the proposed use, opposing the application. Exhibit 28. The Hearing Examiner re-opened the record until October 27, 2014, to accept the letter and to

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<sup>1</sup> Because this application was filed prior to the effective date of the current zoning ordinance (ZTA 14-09, Ordinance No. 17-52), it is processed under the zoning ordinance in effect prior to October 29, 2014. *Montgomery County Zoning Ordinance*, 7.7.1.B.1.

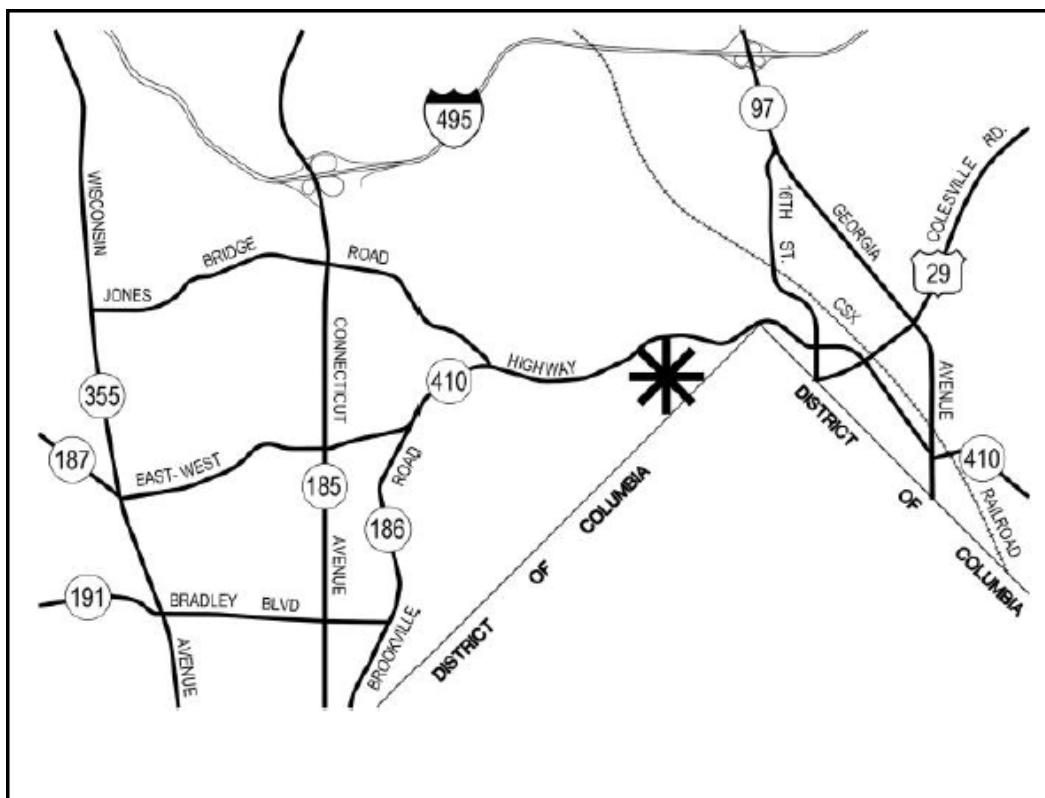
<sup>2</sup> All transcript citations are to the transcript of the September 23, 2014, public hearing.

provide the applicant with an opportunity to respond. Exhibit 29. The Petitioner did so, and the record closed as scheduled. Exhibit 31. On November 26, 2014, the Hearing Examiner extended the time to issue her report to December 10, 2014. Exhibit 32.

## **II. Factual Background**

## A. Subject Property

Nathan Wehrli, DMV, and Family Veterinary Practice, Inc., propose to lease 3,702 square feet of space in the Rock Creek Center, an existing shopping center in the C-1 Zone, for a veterinary hospital. The shopping center is located at 8313 Grubb Road, Silver Spring, Maryland, and is described as parcel N642 in the Rock Creek Gardens Shopping Center. The general location of the property is shown below (Exhibit 20, p. 1):

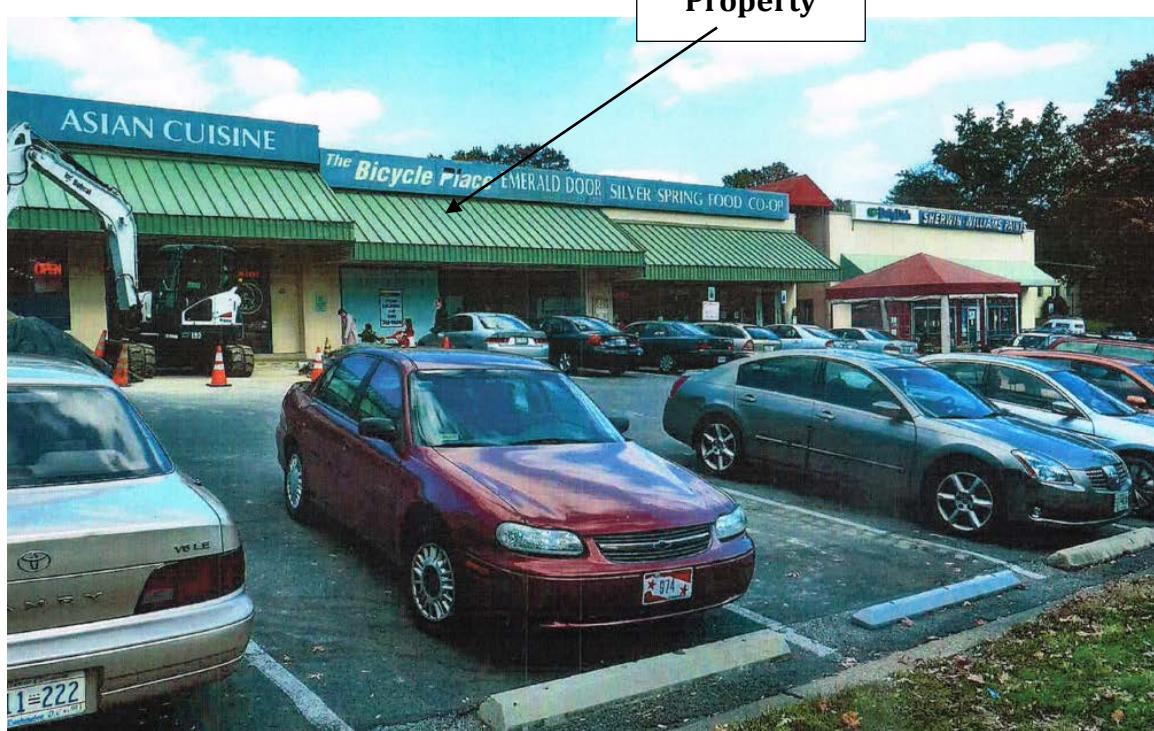


The shopping center consists of approximately 2.61 acres in the C-1 Zone. It has a total of 169 spaces, 20 more than the minimum required. Access is provided from a single curb cut to the west along Grubb Road, and three curb cuts along Washington Avenue (Exhibit 20):



The area immediately surrounding the leased premises is shown in photographs submitted by the Petitioner, shown below and on the following page (Exhibits 8(b), 8(e)):





**Exhibit 8(e)**

### **B. Surrounding Area**

Technical Staff defined the surrounding area as East-West Highway to the north and east, the District of Columbia line to the south, and Ellington Drive to the west. To the north and east are three R-20 (multi-family medium density) garden apartment buildings. Just beyond these is a high-rise residential multi-family building in the R-10 Zone. To the west are single-family detached homes in the R-60 Zone; Staff reports there is one special exception in the area (S-1926) for elderly housing at the corner of East West Highway and Washington Avenue. Exhibit 20.

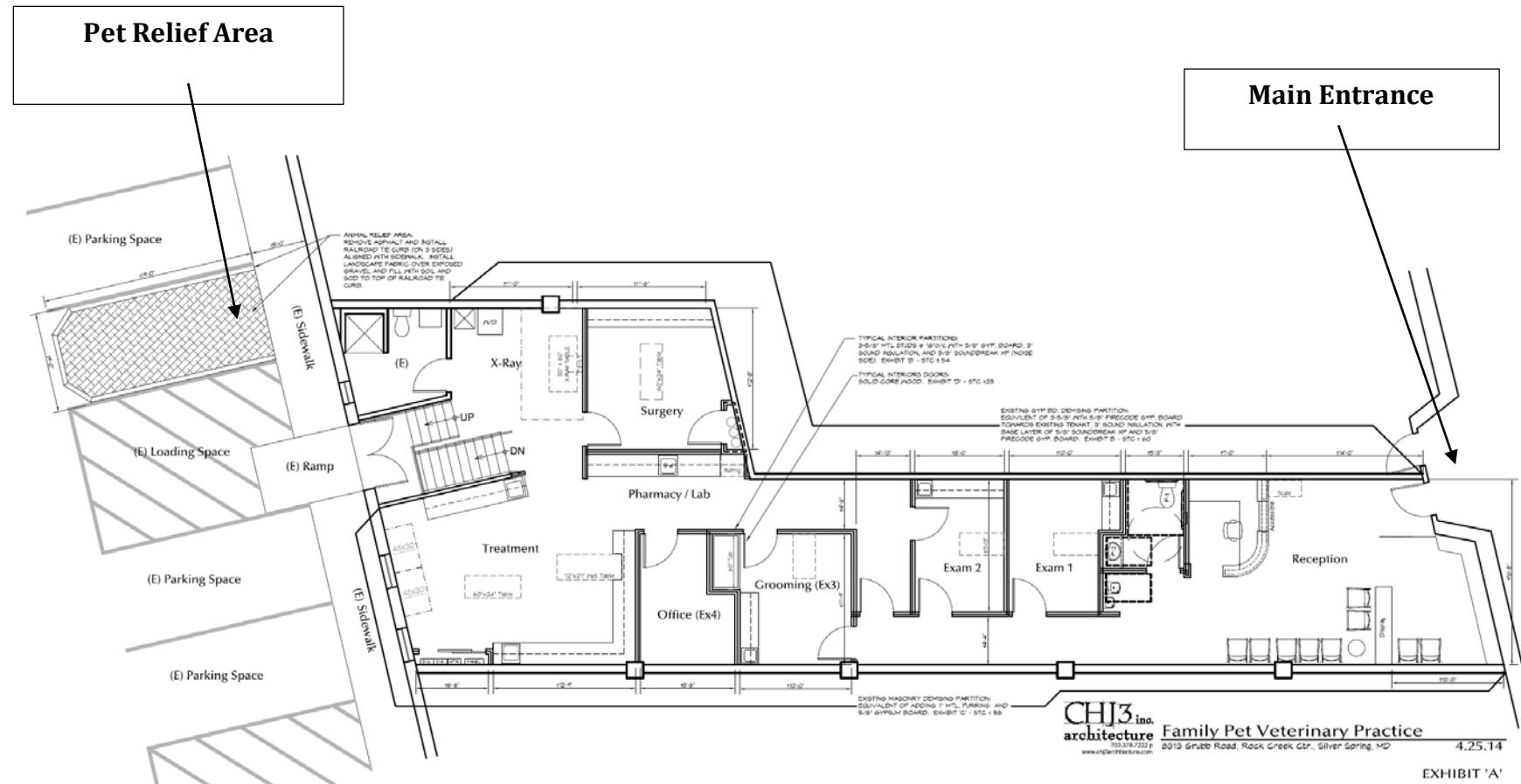
The Hearing Examiner finds that the surrounding area is characterized by commercial retail immediately surrounding the special exception area and multi-family residential immediately beyond the shopping center.

### C. Proposed Use

Dr. Wehrli plans to serve primarily small animals that serve as pets, 90% of which he believes will be cats and dogs, although he will see some small exotic pets, like rabbits, guinea pigs, and the occasional turtle. T. 13. He anticipates that some of the appointments will be wellness exams, where he would do vaccines or preventative care, although there may be injured animals as well. He plans to provide grooming as a “minor” service. He will not be boarding animals, except those that must stay for surgeries, and no boarding will occur overnight. T. 14-15.

The interior of the veterinary clinic will include a reception area, two exam rooms, a small room for grooming pets, a treatment area, office, and surgery. The floor plans are shown on the following page (Exhibit 25). A door leads from the treatment area to an outside space that is designated as a “pet relief area” for dogs or other animals to relieve themselves outside. *Id.*

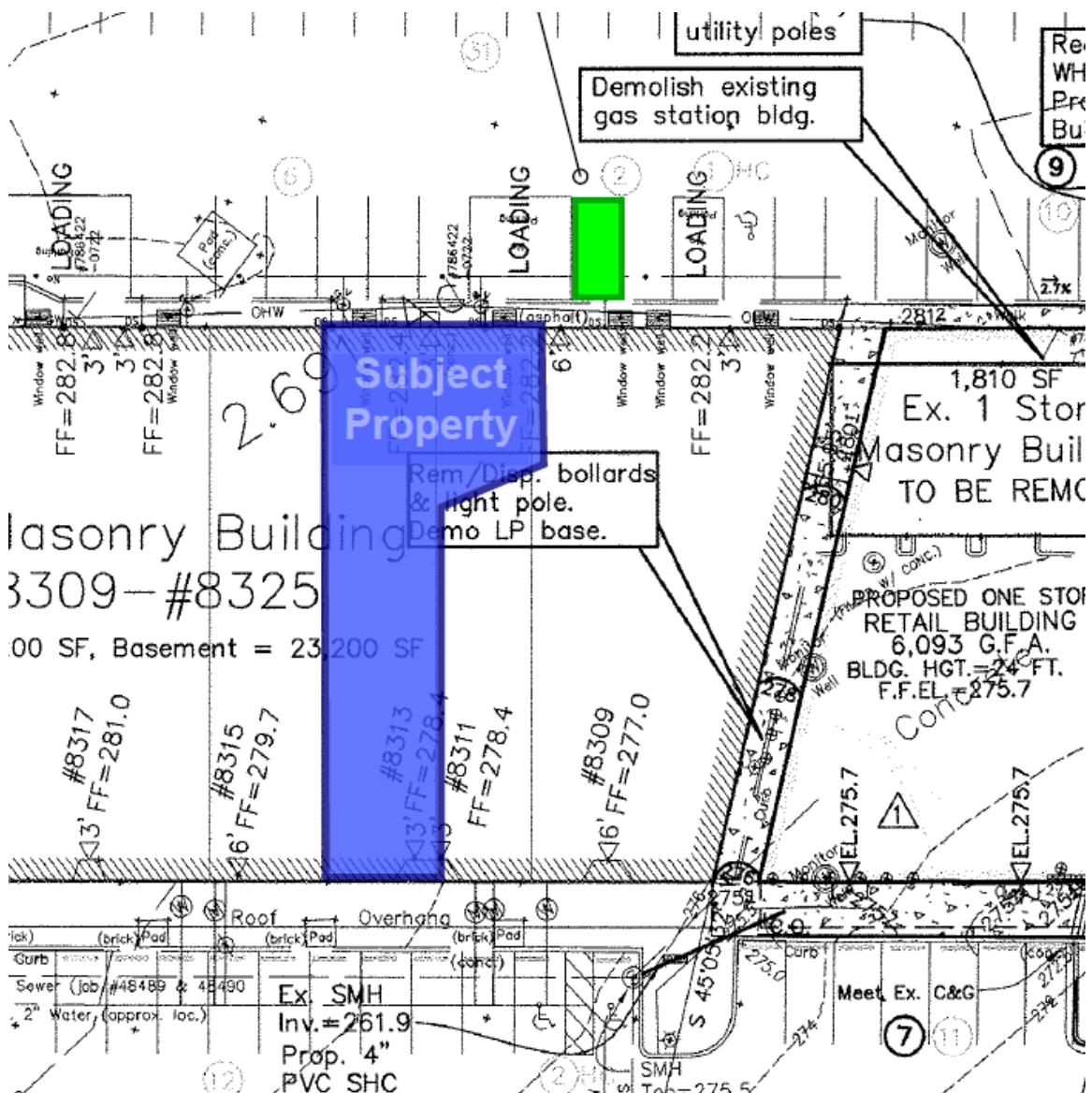
The pet relief area will not be used for exercise or a kennel. Once pets have relieved themselves, they will return indoors immediately. The pet relief area is contained within a parking space on the rear of the area that will be covered with artificial grass. There are special kinds of artificial grasses that are very realistic and are textured so it looks like grass. It’s placed on a porous surface, so rain will drain through it. A substrate underneath the surface will help to eliminate odors and drain the waste. This particular artificial grass, made by a company called Pro-Green, is specifically designed for pet relief and has been used in parks and urban areas. T. 16-17. Staff will clean up pet waste immediately, place it in a plastic bag, and put it in a receptacle placed in that area. They will also hose the



**Floor Plan**  
**Exhibit 25**

grass down every day and a hose spigot will be placed near the area. Signage will be installed to indicate that parking spaces adjacent to the pet relief area will be for veterinary hospital staff only.. T. 18.

The relationship between the veterinary hospital (shaded in blue) and the rear pet relief area (shaded in green) is also shown on an excerpt from the site plan (Exhibit 27(a)) submitted by the Petitioner, below:



*1. Operations:*

*a. Hours of Operation:* The hours of operation will be from 8:00 a.m. until 7:00 p.m. on weekdays, and 8:00 am until 1:00 pm on Saturday. T. 20. Dr. Wehrli has agreed to a condition suggested by the Planning Board to limit staff to no more than 7 on site at any one time. The exact staff persons (i.e., veterinarians, assistants, groomers) permitted at any one time will be flexible.

*b. Staffing:* The practice will open with one veterinarian, but may expand to two veterinarians in the future. At maximum capacity, Dr. Wehrli proposes to have the two veterinarians, three full-time technicians, one full-time receptionist, and one full-time pet groomer.

*c. Patient Visits:* Dr. Wehrli anticipates that each veterinarian will see approximately four patients per hour for an average of 15 minutes each, although some may extend to one-half hour depending on the reason for the visit. He agreed to maintain a written log of all appointments, drop-ins, and emergency client activities for inspection by the County. T. 20-22. Dr. Wehrli testified that medical waste is deposited in biohazard disposal buckets. Medical waste includes needles, blood samples, and broken glass. When the containers are full, a medical waste company will pick them up and dispose of them properly. T. 19. Non-medical waste will be placed in the dumpsters located within the shopping center. Exhibit 20, p. 4.

*d. Retail Sales:* Dr. Wehrli plans to sell some pet supplies, mostly as a convenience to clients. These will include flea and tick preventatives, medicated shampoos, and things of that nature. He does not anticipate people coming in from the street simply to buy supplies. T. 19-20.

*2. Parking:*

Technical Staff reports that the shopping center currently has 169 spaces, 20 above the minimum requirement of 149. Staff advises that, even with the loss of the single space for the pet relief area, there will be ample parking for the proposed use. Exhibit 20.

*3. Signage:*

Signage for the practice will be consistent with other signs in the shopping center (shown in Exhibit 8(e) on page 3 of this Report). There is a building sign frame on the building now that runs the length of the façade. He is not sure whether it will need a variance, but agreed to get one if necessary or, alternatively, change the sign to conform to the regulations. T. 23-25.

*4. Noise:*

The Petitioner submitted a report from Mr. Charles Joch, III, who also testified as an expert in architecture. Mr. Joch testified that he specializes in animal hospitals and medical/dental facilities throughout the area. T. 29. Mr. Joch opined that total “soundproofing” does not occur, but the proposed use will have a level of sound mitigation typical for veterinary hospitals and secured environments.

The suite has an existing concrete masonry unit (CMU) wall on the north, east, and the non-glazed portion of the west wall. The CMU wall is already very good at mitigating noise; he proposes to install 1” metal furring and 5/8” thick gypsum board. With these materials, the Sound Transmission Rating (STC) improves to +/- 58, which is an acceptable level.

The south wall is made up of drywall, which mitigates noise less than CMU walls. Petitioner proposes to remove the portion of the drywall-framed wall on the hospital side

and leave the side nearest the adjacent tenant intact. They will install 3" of sound insulation with a base layer of Soundbreak XP Gypsum Board, as well as other gypsum board. With these materials, all walls will have a 60 STC rating, which is about the best possible with standard construction materials. In addition, all interior walls will be sound rated, which deadens noise in the interior space and keeps it from getting loud. T. 33.

Mr. Joch's report states the following (Exhibit 17(d)):

Veterinary hospitals typically experience noise levels of between 65 and 95 decibels. The frequency (measured in Hertz (Hz) of a barking dog is between 300 and 500 Hz, or the equivalent of 70 to 80 decibels. Sound Transmission Classification (STC) ratings measure the effectiveness of a wall to block or reduce airborne sound transmission through the wall. The higher the STC number, the greater the transmission loss, which is measured in decibels. In a commercial building, the International Building Code (IBC) requires that partition walls have a STC rating of 50.

The report concludes that installation of the materials proposed will achieve an STC of 58 on the north wall and 60 on the partition wall, well above the minimum IBC requirements. *Id.*

##### *5. Agency recommendations:*

Technical Staff recommended approval of the petition, subject to the following conditions (Exhibit 20, p. 2):

1. Hours of operation are limited to Monday through Friday, 8:00 am to 7:00 pm, and Saturday, 8:00 am to 1:00 pm.
2. The special exception is limited to a maximum of seven employees, consisting of two veterinarians, three veterinary technicians, one pet groomer, and one receptionist/administrative aide on-site at any one time.
3. Patient appointments are limited to a maximum of eight patients during any one-hour period.
4. The applicant must keep a written log of all appointments, drop-ins and emergency client activities and make it available for inspection by the County.

5. No animals may be walked or exercised in outdoor areas that are beyond the limits of the shopping center.
6. No animals may be boarded overnight.
7. The animal relief area must be sited in the designated parking space as shown on the submitted Site Plan dated May 5, 2014.
8. The applicant must install a hose spigot near the relief area and clean and maintain this area daily.
9. The applicant must install a pet waste bag dispenser with appropriate signage adjacent to the relief area.
10. The parking space between the animal relief area and the two rear loading spaces shall be designated for parking by veterinary staff only.
11. Prior to the Hearing Examiner's public hearing, the applicant must add the following note to the special exception site plan:

The relief area will be made of artificial turf, known as ProGreen K9, Deluxe 60, (or a similar artificial turf grass material). The existing asphalt within the relief area will be demolished and replaced with a raised curb-like edging (made of landscape timbers, blocks, etc.). The soil within the relief area will be mixed with additional topsoil as needed. Permeable aggregate fill will be imported and placed to create the final grade. The aggregate fill will interface with the underlying amended soil allowing infiltration from the surface. A permeable overlay of artificial turf grass will be installed to surface the relief area. The final details and approval of the relief area will be coordinated through the Department of Permitting Services (Division of Zoning and Site Plan Enforcement) prior to issuance of a use and occupancy permit for the veterinary clinic.

The Planning Board adopted Technical Staff's recommendations with one change.

The Petitioner agreed to limit the number of employees on-site at any one time to seven employees, but desired flexibility to decide which employees would be there. As a result, the Planning Board recommended the following change (in italics) to Condition No. 2 (Exhibit 19):

The special exception is limited to a maximum of seven employees *on-site at any one time.*

## **D. Master Plan**

The Rock Spring Center is located within the geographical area covered by the North and West Silver Spring Master Plan (Master Plan or Plan). The Master Plan specifically considers the center and describes it as a “small-scale, neighborhood retail desired by many County residents.” *North and West Silver Spring Master Plan (Approved and Adopted 2000)*, p. 35. The Plan notes the “challenge” for the center is to maintain and fill vacancies when they occur with neighborhood oriented retail, because of the location away from highways. *Id.* The Plan recommends that any redevelopment continue the existing center’s function as a community focal point. *Id.* Technical Staff concluded that a veterinary practice is the type of neighborhood-serving use recommended for the center. Exhibit 20, p. 6. The Hearing Examiner agrees and finds the proposed use consistent with the Master Plan.

## **E. Traffic**

### **1. Local Area Transportation Review/Transportation Policy Area Review**

Because the proposed use is expected to generate fewer than 30 trips, the Applicant submitted a “Traffic Statement” rather than a full traffic report (Exhibit 17). Technical Staff agreed that the use would generate fewer than 30 trips, and therefore advises that the special exception will have no adverse traffic impacts. Exhibit 20, p. 7. A table from the Technical Staff Report (Exhibit 20) showing the trips generated by the use is shown on the following page.

**TABLE 1**  
**SUMMARY OF SITE TRIP GENERATION**  
**PROPOSED VETERINARY HOSPITAL**

	<b>AM Peak Hour (total)</b>	<b>PM Peak Hour (total)</b>
3,702 SF Veterinary Hospital <sup>1</sup>	20	20
3,702 SF Ex. General Retail	6	26
Net Increase/ Decrease	+14	-6

<sup>1</sup> (8) 15 minute veterinarian appointments per hour = 16 trips (8 in/ 8 out), and (2) 30 minute grooming appointments per hour = 4 trips (2 in/ 2 out) = a maximum of 20 peak-hour trips

Staff's finding is based on the Petitioners Revised Statement of Operations, which states that (Exhibit 17(b), p. 2):

The Practice will commence operations as soon as space renovations are completed with one veterinarian, 2 technicians, a receptionist and a pet groomer. The Petitioner anticipates approximately one patient every 15 minutes for each veterinarian, or generally, 4 patients per hour during morning and afternoon hours. Technicians will not see animals independent of a veterinarian. Technicians assist veterinarians by checking patients into rooms, restraining animals, taking bloodwork or x-rays examinations, running diagnostic tests, trimming nails, checking blood pressure, filling prescriptions, or assisting in surgeries and treatments where necessary. Dr. Wehrli plans to hire a second veterinarian and a third technician within the next 3 to 5 years. It is anticipated that the second veterinarian will see patients on a similar schedule so that there will be a maximum of 8 visits per hour.

The site is located in the Silver Spring-Takoma Park Policy Area. To meet the Transportation Policy Area Review (TPAR) requirements, applicants that seek to expand floor area must pay 25% of the general district impact tax. Because the Petitioner proposes to use an existing space without adding new floor area, no payment of the impact tax is required here.

## **2. Pedestrian and Vehicular Circulation**

Because this petition does not alter existing access points to the shopping center, Technical Staff found that there was no adverse impact to traffic circulation. Originally,

the Petitioner proposed the pet relief area in the landscaped buffer separating the parking lot from the adjacent residential uses. Staff determined that use of the landscaped buffer would create pedestrian/vehicular conflicts within the shopping center and would have eliminated three parking spaces. Exhibit 20, p. 6. As a result, Petitioner now proposes the pet relief area in a single parking space adjacent to the rear exit door of the hospital, finding that, “[T]his location eliminates the need to routinely cross the entire width of the parking lot with animals and it limits any potential impacts associated with the relief area on the adjacent multi-family residential properties.” *Id.*

#### **F. Environment**

As the proposed use will be located within an existing structure, it is exempt from the requirements of the Montgomery County Forest Conservation Law (Chapter 22A of the *Montgomery County Code*), and an exemption for this application was approved by the Planning Department on November 26, 2013. Exhibit 20, Attachment B.

Because Staff did not approve location of the pet relief area along the natural turf in the landscaped buffer to the shopping center, Petitioner now proposes to utilize an existing parking space with artificial turf. The existing asphalt within the parking space will be demolished and replaced with soil and permeable aggregate fill to permit urine to infiltrate from the surface. Petitioner proposes to place artificial turf grass over the fill. Exhibit 20, pp. 8-9.

In order to better dilute urine, Staff recommended a condition requiring the Petitioner to install a hose spigot near the relief area, and requiring hospital staff to clean up other waste immediately. Staff also recommended a condition requiring installation of pet bags and appropriate signage to notify individuals of the intended use of the area.

Finally, Staff recommended that this condition be noted on the special exception site plan, which the Petitioner has done. Exhibits 20, 27.

### **G. Opposition**

Although no one appeared at the public hearing opposing this petition, the Hearing Examiner did receive a letter from the tenant of the adjacent retail space within the shopping center. Ms. Sandra Magwood stated that her business, known as “The Emerald Door Spa,” promotes “a host of services in a quiet, relaxing eco-friendly environment.” Exhibit 28. Ms. Magwood expressed concerns about the health hazards imposed by objectionable noise, fumes, waste, and chemical and medicinal odors and requests that an acoustical study or design be implemented prior to commencing business. She also asserts that odors from fecal and urine waste will negatively impact her customers, and that “animal noises and equipment vibrations” would “destroy the soothing client experience.” *Id.* She requests some assurance that her clientele will be safe from animals entering and exiting the hospital. Ms. Magwood also objected to a dog run in the rear parking area. *Id.*

The Petitioner responded that the issues related to animal waste, odors, and noise had already been thoroughly addressed by Technical Staff and the Planning Board. Exhibit 31. Petitioners also stated that dogs entering the hospital will be on leashes.

### **III. SUMMARY OF TESTIMONY**

Dr. Wehrli testified regarding the site plan and operation of the proposed use. Mr. Charles Joch, III, qualified as an expert in architecture and testified regarding noise mitigation. Their testimony is set forth where relevant in other sections of this Report.

### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided

that pre-set legislative standards and conditions are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if it complies with the recommended conditions. Exhibits 19, 20.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the recommended conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code Section 59-G-1.2.1 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 “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code Section 59-G-1.2.1. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the

particular use, or adverse effects created by unusual characteristics of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified five inherent characteristics necessarily associated with a veterinary hospital: (1) vehicular trips to and from the site; (2) noise and odor of animals; (3) deliveries of mail and small parcels; (4) specialty medical equipment needing servicing, mostly by technicians in regular vehicles; and (5) drop-off and pick-up of pets in parking areas. Technical Staff found that there are no non-inherent adverse effects associated with the proposed use and that the size, scale and scope of the proposed use are minimal. Exhibit 20, p. 10.

The Hearing Examiner accepts that listing as a fair description of the inherent adverse impacts of a veterinary hospital.

Because this use is located in an existing shopping center, the Hearing Examiner agrees with Staff that no non-inherent adverse effects are likely to result from the activities associated with the petition. The shopping center is a mix of retail and commercial uses focused on serving the neighborhood. This use will do so as well. Expert testimony and evidence adequately demonstrates that the noise levels will be sufficiently mitigated by the acoustical interior and exterior walls so that operation of the hospital will meet the soundproofing requirement in Section 59-G-2.32(a)(2).

Under these circumstances, the Hearing Examiner concludes that there will be no adverse effects sufficient to warrant denial of the petition.

## B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General Conditions:

(a) *A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:*

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

*Conclusion:* A veterinary hospital is a permitted special exception in the C-1 Zone under the Zoning Ordinance in effect prior to October 29, 2014.

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

*Conclusion:* As discussed in Part IV.C., below, the proposed use would comply with the standards and requirements set forth for the use in Code Section 59-G-2.32. In this case, the proposed special exception is in a commercial zone, and is evaluated under Section 59-G-2.32 (a)(1)-(2) of the Zoning Code, because the standards set forth in Section 59-G-2.32 (b) apply only to hospitals in residential or rural zones.

(3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a*

*particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *North and West Silver Spring Master Plan*. For reasons set forth in Part II.C of this report, the Hearing Examiner finds that the planned special exception use, a veterinary hospital in the C-1 zone, is consistent with the goals and objectives of the Plan.

- (4) *Will be in harmony with the general character of the neighborhood, considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Technical Staff concluded that a veterinary hospital will be in harmony with the general character of the neighborhood because it consists of 3,702 in an existing shopping center of 52,493 square feet of commercial uses. No changes to the center are planned, except for the elimination of a single parking space for the pet relief area. Because the center has more parking than required, this should not adversely affect the surrounding uses.

The Hearing Examiner notes the objections of the spa next to the proposed hospital. While concerns related to noise, odor, and security are understandable, the Hearing Examiner finds that Technical Staff and the Petitioner have addressed these concerns in detail in this petition, and will be further addressed in the conditions for approval. Ms. Magwood also raises a concern about dog runs in the rear; Petitioner does not propose any dog runs. Potential odors and runoff from the pet relief area

have been addressed in detail by Staff and a condition requiring maintenance is set forth on the site plan. In light of the expert testimony regarding noise levels, and the mitigation measures proposed by the applicant, the Hearing Examiner finds that the proposed use is in harmony with the uses within the shopping center.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: There is no evidence indicating that the requested special exception will be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. Based on the evidence before it, the Hearing Examiner finds that the proposed use meets this standard.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the sound study submitted by the Petitioner, Staff concluded that, “[T]he proposed use will not create any noise inconsistent with noise levels that now exist in the area.” The evidence and expert testimony before the Hearing Examiner further confirm that soundproofing materials installed by the Petitioner will bring noise into acceptable levels. The Hearing Examiner finds that this requirement has been met.

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

**Conclusion:** There is only one other special exception (for elderly housing) in the defined neighborhood. Based on this evidence, the Hearing Examiner finds that the veterinary hospital will not increase the intensity of special exception uses in the area, as did Technical Staff.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

**Conclusion:** The evidence supports Technical Staff's conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The only possible evidence to the contrary are the objections raised by Ms. Magwood. Many of these objections, however, were addressed in detail by Technical Staff and the Petitioner, resulting in numerous conditions on the proposed use. With these conditions, the Hearing Examiner finds that the application has met the above standard.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

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

- (B) *If the special exception:*  
*(i) does not require approval of a preliminary plan of subdivision; and*  
*(ii) the determination of adequate public facilities for the site is not currently valid for*

*an impact that is the same as or greater than the special exception's impact:  
the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The shopping center has already been subdivided and therefore, the Board of Appeals must make the determination that roadways facilities are adequate. This use is replacing another retail use and the traffic statement indicates that traffic impacts are minimal and the property is exempt from both full LATR and TPAR requirements. With the condition limiting the number of appointments per hour, the Hearing Examiner finds that roadways are adequate to accommodate the hospital.

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

Conclusion: Access points to the site will be those already approved as part of the shopping center development. There is no evidence that the proposed use will cause these to be unsafe. The pet relief area has been relocated adjacent to the rear door of the hospital, thus avoiding potential for pedestrian/vehicle conflicts. Based on this record, the Hearing Examiner finds that the proposed use will not reduce the safety of vehicular or pedestrian traffic.

### C. Special Standards: Veterinary Hospital

The relevant special standards governing a special exception for a veterinary hospital are found in Section 59-G-2.32. The Technical Staff report and the Petitioner's

written evidence and testimony provide sufficient evidence that these special standards would be satisfied in this case, as outlined below.

*Sec. 59-G-2.32. Veterinary Hospital.*

*(a) In any commercial, central business district or transit station zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements:*

*(1) There must be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space.*

Conclusion: According to the evidence and testimony, all activities, including pet grooming, will take place within the leased premises, with the exception of the pet relief area. This area will not be used for exercise or dog “runs”, and the animal will be returned immediately to the interior of the facility. The Hearing Examiner finds that this standard has been met.

*. (2) All areas for the keeping of animals must be soundproofed.*

Conclusion: Technical Staff concluded that the material and methods for soundproofing proposed by Petitioner should “serve to sufficiently mitigate the noise typically associated with the proposed use.” Petitioner’s expert in architecture further testified that installation of the materials proposed would bring noise levels well under what is required by the International Building Code. Having no evidence to the contrary, the Hearing Examiner finds that the use as proposed meets this standard.

#### **D. General Development Standards**

In addition to the general and special standards applicable to this special exception request, the Code contains additional development standards which may

be relevant to this use, as outlined below:

### *Section 59-G-1.23. General Development Standards:*

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

**Conclusion:** Technical Staff found that the structure meets all of the development standards in the C-1 Zone, as summarized in the chart below (Exhibit 20, p. 13), shown on the following page. Having no evidence to the contrary, the Hearing Examiner finds that this requirement has been met.

### **Development Standards Table for C-1 Zone**

Minimum lot area	N/A	2.69 acres (117,220 square feet)
Maximum building height	42 feet	24 feet
Minimum setbacks		
Front	10 feet	78 feet
Side	10 feet	25 feet
Minimum rear setback	10 feet	145 feet
Minimum Green Area	10%	10.3%

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

**Conclusion:** Staff concluded that there is adequate parking for the proposed use. While 59-E-3.7 does not contain minimum requirement for veterinary hospitals in commercial zones, it requires a minimum of 5 parking spaces for hospitals in rural or residential zones. Staff reasoned that (Exhibit 20, p. 13):

As shown on the submitted site plan, the proposed use will be located in an existing shopping center that is zoned C-1, a commercial Zone. Parking at this center totals approximately 168 spaces, which are shared with other retail uses. If the standard for 5 spaces in a residential or rural zone were applied to this site, existing parking can

accommodate the proposed use.

The Hearing Examiner is persuaded that parking is adequate because the center has approximately 20 parking spaces more than required and no parking problems are evident in this record. Even if one parking space is eliminated (for the pet relief area), the center has well above the minimum required. The Hearing Examiner finds that parking is adequate to serve the proposed use.

*(c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) Rifle, pistol and skeet-shooting range, outdoor.*
- (2) Sand, gravel or clay pits, rock or stone quarries.*
- (3) Sawmill.*
- (4) Cemetery, animal.*
- (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) Equestrian facility.*
- (7) Heliport and helistop.*

Conclusion: This development standard is not applicable to this special exception.

*(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: This special exception is exempt from the forest conservation requirements set forth in Chapter 22A of the Code. Exhibit 20, Attachment B.

*(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with*

*the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: The shopping center is not located in a special protection area and no water quality plan is required.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: Staff advises that the sign area will be 16 feet long and 2-3 feet high and will be designed similar to the signs on other portions of the shopping center. Technical Staff advises that this area is well within that permitted for signs in commercial zones. Exhibit 20, p. 14. Petitioner has agreed to obtain a variance should one be required, and this will be incorporated as a condition of approval. The Hearing Examiner finds that signage on the site will comply with Article 59-F.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As the property is located in a commercial zone, this requirement does not apply.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: This requirement does not apply because the property is within a commercial zone. No additional outdoor lighting is proposed.

## V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2874, which seeks a special exception for a veterinary hospital located at 8313 Grubb Road, in the Rock Creek Shopping Center, Silver Spring, Maryland, be **granted**, subject to the following conditions:

1. The Petitioner shall be bound by all testimony and exhibits of record, including its revised Statement of Operations (Exhibit 17(b)) and by the testimony of witnesses and representations identified in this report.
2. Hours of operation are limited to Monday through Friday, 8:00 am to 7:00 pm, and Saturday, 8:00 am to 1:00 pm.
3. The special exception is limited to a maximum of seven employees on-site at any one time.
4. Patient appointments are limited to a maximum of eight patients during any one-hour period.
5. The applicant must keep a written log of all appointments, drop-ins, and emergency client activities and make it available for inspection by the County.
6. No animals may be walked or exercised in outdoor areas that are beyond the limits of the shopping center.
7. No animals may be boarded overnight.

8. The animal relief area must be sited in the designated parking space as shown on the approved site plan (Exhibit 24).
9. The applicant must install a hose spigot near the relief area and clean and maintain this area daily.
10. The applicant must install a pet waste bag dispenser with appropriate signage adjacent to the relief area.
11. The parking space between the animal relief area and the two rear loading spaces shall be designated for parking by veterinary staff only.
12. The relief area will be made of artificial turf, known as ProGreen K9, Deluxe 60, (or a similar artificial turf grass material). The existing asphalt within the relief area will be demolished and replaced with a raised curb-like edging (made of landscape timbers, blocks, etc.). The soil within the relief area will be mixed with additional topsoil as needed. Permeable aggregate fill will be imported and placed to create the final grade. The aggregate fill will interface with the underlying amended soil allowing infiltration from the surface. A permeable overlay of artificial turf grass will be installed to surface the relief area. The final details and approval of the relief area will be coordinated through the Department of Permitting Services (Division of Zoning and Site Plan Enforcement) prior to issuance of a use and occupancy permit for the veterinary clinic.
13. Petitioner must obtain a permit for the proposed sign, measuring approximately 16-feet long by 2 to 3 feet high. Should Petitioner require a variance, Petitioner shall either obtain approval of the variance or conform the size of the sign to the requirements of Section 59-F of the Zoning Ordinance. Petitioner shall file a copy of the sign permit with the Board of Appeals.
14. Petitioner additionally 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 special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception 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.

Dated: December 10, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lynn A. Robeson".

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Lynn A. Robeson, Hearing Examiner