

**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**

IN THE MATTER OF: *

DR. MEREDITH A. MIKLOZEK *

d/b/a DIAMOND VETERINARY HOSPITAL *

Petitioner *

Dr. Meredith Miklozek, DVM *

Gary Modjeska, Real Estate Broker *

For the Petitioner *

Martin Klauber, Esquire, People’s Counsel *

In Support of the Petition *

Kathy Coakley *

Community Participant *

Neither in Support nor Opposition *

Board of Appeals Nos. S-2752
(OZAH No. 10-1)

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

In Petition No. S-2752, Dr. Meredith Miklozek d/b/a Diamond Veterinary Hospital seeks approval of a Special Exception under Zoning Ordinance §59-G-2.32 to allow continued operation of a veterinary hospital, which has been operating at this location as Registered Home Occupation No. 491 since 1988. Petitioner no longer lives on site, so a special exception is required. The subject property is located at 17000 Longdraft Road, Gaithersburg, Maryland, in the RE-2 Zone.

On July 22, 2009, the Board issued a notice of a public hearing before the Hearing Examiner on November 16, 2009 (Exhibit 14). Letters of support for the petition were filed by three adjacent property owners, Phyllis and Bill Childers (Exhibit 16), Abe and Daisy Henderson (Exhibit 17) and Murphy Knox (Exhibit 19).

A report issued by Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), dated October 25, 2009 (Exhibit 20), recommended approval of the Petition, with conditions.¹ The Montgomery County Planning Board reviewed the matter on November 5, 2009, and voted unanimously to recommend approval (Exhibit 21).

The hearing went forward as scheduled on November 16, 2009. There was no opposition, although an adjacent neighbor, Kathy Coakley, testified as to some concerns she wanted to be addressed. The record was held open until December 21, 2009, for the filing of revised plans and other documents by Petitioner and commentary by Technical Staff, the Department of Permitting Services (DPS) and interested parties.

Petitioner made the required filings (Exhibits 25 and 27, and their attachments), and a submission was received from DPS (Exhibit 26). On December 14, 2009, a letter was received from a neighbor, Ed Mitchell, complaining about exterior lighting on the site (Exhibit 28). Although Petitioner responded to Mr. Mitchell's letter (Exhibit 29), the Hearing Examiner felt that Technical

¹ The Technical Staff Report, Exhibit 20, is frequently quoted and paraphrased herein.

Staff should review the lighting situation to insure that it is residential in nature and does not spill light into adjacent properties. Since Technical Staff was not able to inspect the premises in the evening until after the record closed, the Hearing Examiner reopened the record to receive Staff's submission and any further public comments (Exhibit 31).

Technical Staff's supplemental report regarding exterior lighting (Exhibits 30 and 30(a) – (d)) was filed on December 28, 2009. Staff found that the lighting was residential in nature and did not spill into adjacent properties. No further commentary was received, and the record closed again on January 22, 2010.

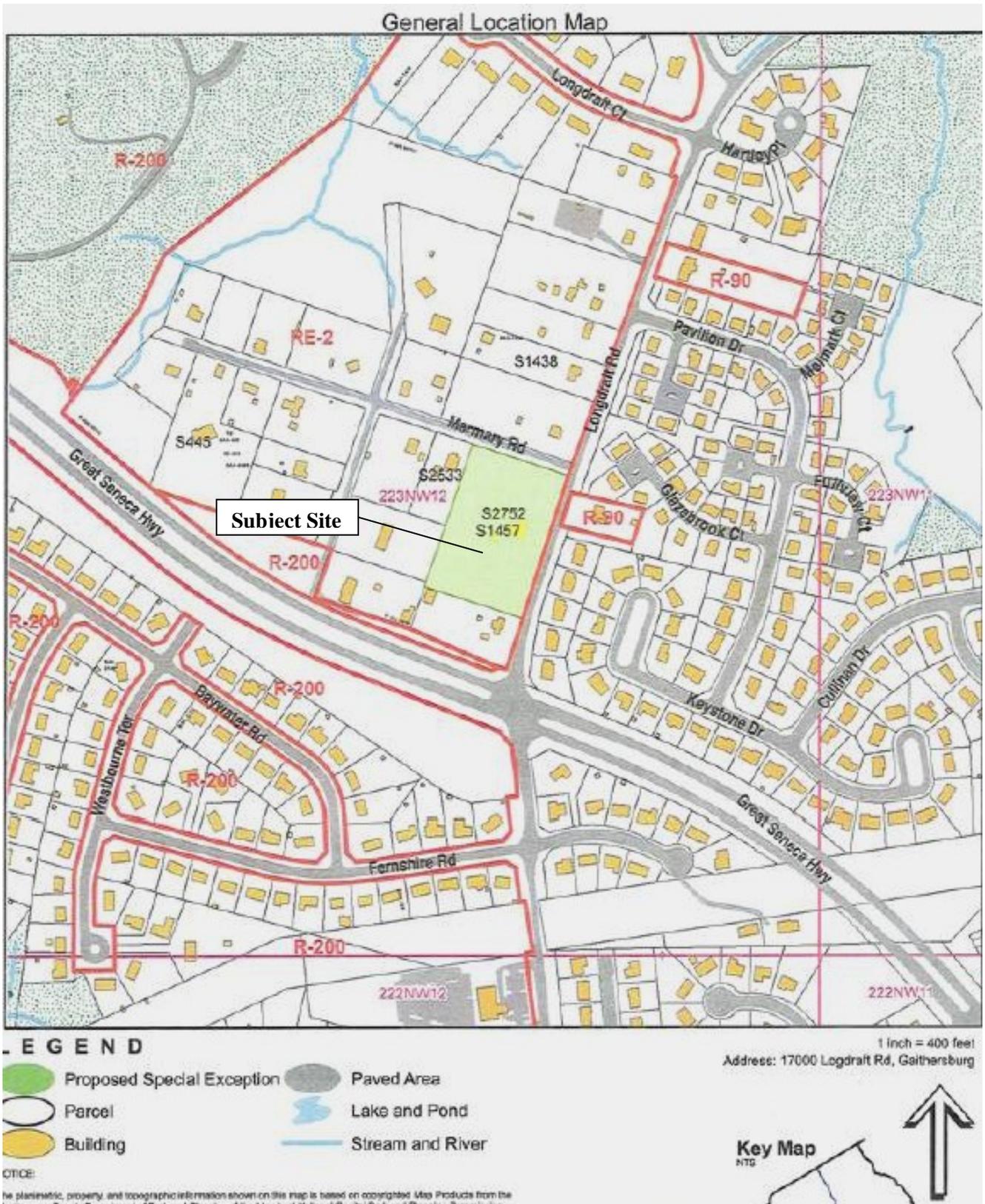
For the reasons set forth below, the Hearing Examiner recommends approval of the Special Exception petition.

II. FACTUAL BACKGROUND

A. The Subject Property and its Current Use

The subject property is located at 17000 Longdraft Road, Gaithersburg, Maryland, on the southwest corner of the intersection of Marmary Road and Longdraft Road. It contains a total of 3.0 acres, and is in the RE-2 Zone. Its location is depicted below in an aerial photo from Exhibit 9(d) and on the following page in a General Location Map appended as Attachment 1 to the Staff report:





The site contains an existing single-family detached house (Building A) and two accessory structures owned by the Petitioner, a storage building (Building B) and a small shed (identified on the Site Plan as a “Block Spring House”). According to Technical Staff (Exhibit 20, p. 3), the site is generally flat; however, it slopes downward toward Marmary Road and contains many oak and evergreen trees. These trees are generally mature and are along the northern and western boundaries. Environmental Staff reports that “[t]here are no existing forests, streams, wetlands or floodplains on the site.” Attachment 6, p. to the Staff Report.

The subject property is depicted in the following photographs taken by Mr. Gary Modjeska, a real estate broker assisting Petitioner in the case (Exhibits 9(a) and (b)). Those pictures are followed by photographs supplied by Technical Staff in Attachment 2 to Staff’s report:

Diamond Veterinary Hospital Exterior



Front



Entrance



Buildings B and A

ATTACHMENT 2



Figure 1: Existing Structure



Figure 2: View from Marmary Lane



Figure 3: Rear of Property (view from driveway)



Figure 4: View of SE property line



Figure 5: Looking SW along Longdraft Rd (from across Longdraft Rd, towards special exception site)



Figure 6: Parking Area



Figure 7: Looking NE of site from driveway edge (Longdraft Rd)



Figure 8: Front of building



Petitioner reports the following history of the use in her statement in support of the petition (Exhibit 3, p. 2):

The petitioner, Dr. Meredith Miklozek founded the Diamond Veterinary Hospital on Diamond Avenue in Gaithersburg in 1980. In 1987 she purchased the 3-acre property at 17000 Longdraft Road and applied to the Board of Appeals for a special exception (S-1457). Upon learning that the intended use could be permitted as a home occupation, the petition for special exception was withdrawn. The veterinary practice was subsequently permitted as a home occupation and relocated to the property in 1988. Dr. Miklozek currently holds a Certificate of Registration of Home Occupation (No. 491) from the Department of Permitting Services.

Diamond Veterinary Hospital has operated peacefully with the surrounding properties and general neighborhood for the past twenty years. . . .

The petitioner proposes to continue to operate a small animal veterinary hospital practice. The veterinary care consists of routine examinations, treatments, wormings, and surgeries such as spays, neuters, dentistries, and growth removals. The sale of pet food, medicine and supplies is an accessory operation that will not exceed 20% of gross sales. The equipment used is that typically found in the practice of veterinary medicine, such as x-ray machine and processor, blood chemistry, ultrasound, and EKG machines, and surgical instruments.

B. The Surrounding Neighborhood

Technical Staff reports that the property immediately to the north of the site is zoned RE-2 and is a single-family residential dwelling; however, Marmary Road separates this parcel from the subject site. The property immediately west operates under a home occupation special exception. South of the site is a single-family detached house and Great Seneca Highway. To the east of the site and across Longdraft Road is Seneca Creek Estates, a subdivision of single-family detached homes. Exhibit 20, p. 3.

The surrounding area is defined by Technical Staff as bounded “by Longdraft Court to the north, a private drive to the west, Pavilion Drive to the east, and Great Seneca Highway to the south.” Exhibit 20, p. 3. Staff depicts the surrounding area on a map appended as Attachment 3 to the Staff report. It is shown on the next page. The Hearing Examiner notes that the area outlined on

that map does not exactly coincide with Staff’s textual description on the east, and the Hearing Examiner has therefore drawn the neighborhood boundaries on the map reproduced below to coincide with Staff’s textual description. The Hearing Examiner accepts that description as defining the general neighborhood in this case.



Staff notes that properties within the surrounding area are mostly zoned RE-2 (Residential, one-family); however, a sliver of R-200 and R-90 (Residential, one-family) exists. Two special exceptions have been approved within the surrounding area.

C. The Master Plan

The subject property lies within the Smokey Glen Area of the 1985 Gaithersburg Vicinity Master Plan, as amended. Staff reports that the Master Plan does not specifically address the site, other than including it in the area designated for residential use under the RE-2 zone. The Master Plan does emphasize the protection of mature trees in the site area (Plan, p. 50), but Petitioner does not intend any clearing of existing trees, and therefore the petition does not run afoul of the Master Plan. Community-Based Planning staff concluded that the proposed special exception is consistent with the Master Plan.

It should also be noted that the Master Plan recommended the existing RE-2 zoning, and the subject use is permissible by special exception in that zone. The Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the Master Plan.

D. The Proposed Use

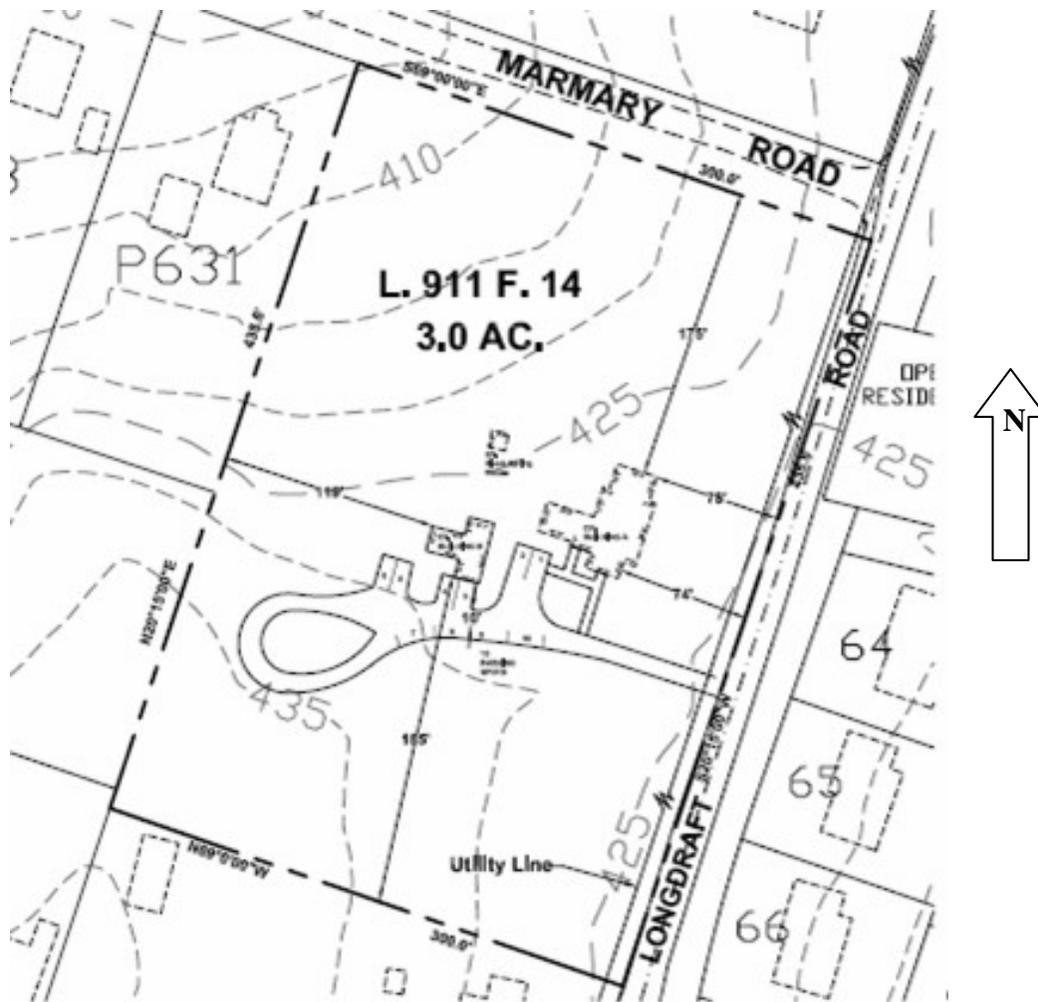
The Petitioner currently operates the animal hospital located on the Property. The Hospital provides a range of general medical and surgical services, as discussed on page 9 of this report. The application for S-2752 seeks a special exception pursuant to Section 59-G-2.32 (Veterinary Hospital) of the Zoning Ordinance to permit continued operation on Monday through Saturday, from 8 a.m. to 6 p.m.² As set forth in Petitioner's Statement of Operations (Exhibit 25(a)), there will be no boarding of animals, except for medical necessity, and there will be no exterior areas for the exercising,

² The hours will not change from the current operation. Dr. Miklozek clarified that the hours will be 8 AM to 6 PM, not 7 AM to 6 PM as erroneously suggested by the Planning Board's letter. Tr. 15-16.

running, or keeping of animals. The number of employees potentially on site at any one time would increase from the present three (one vet³ and two support staff) to six (two vets and four support staff).

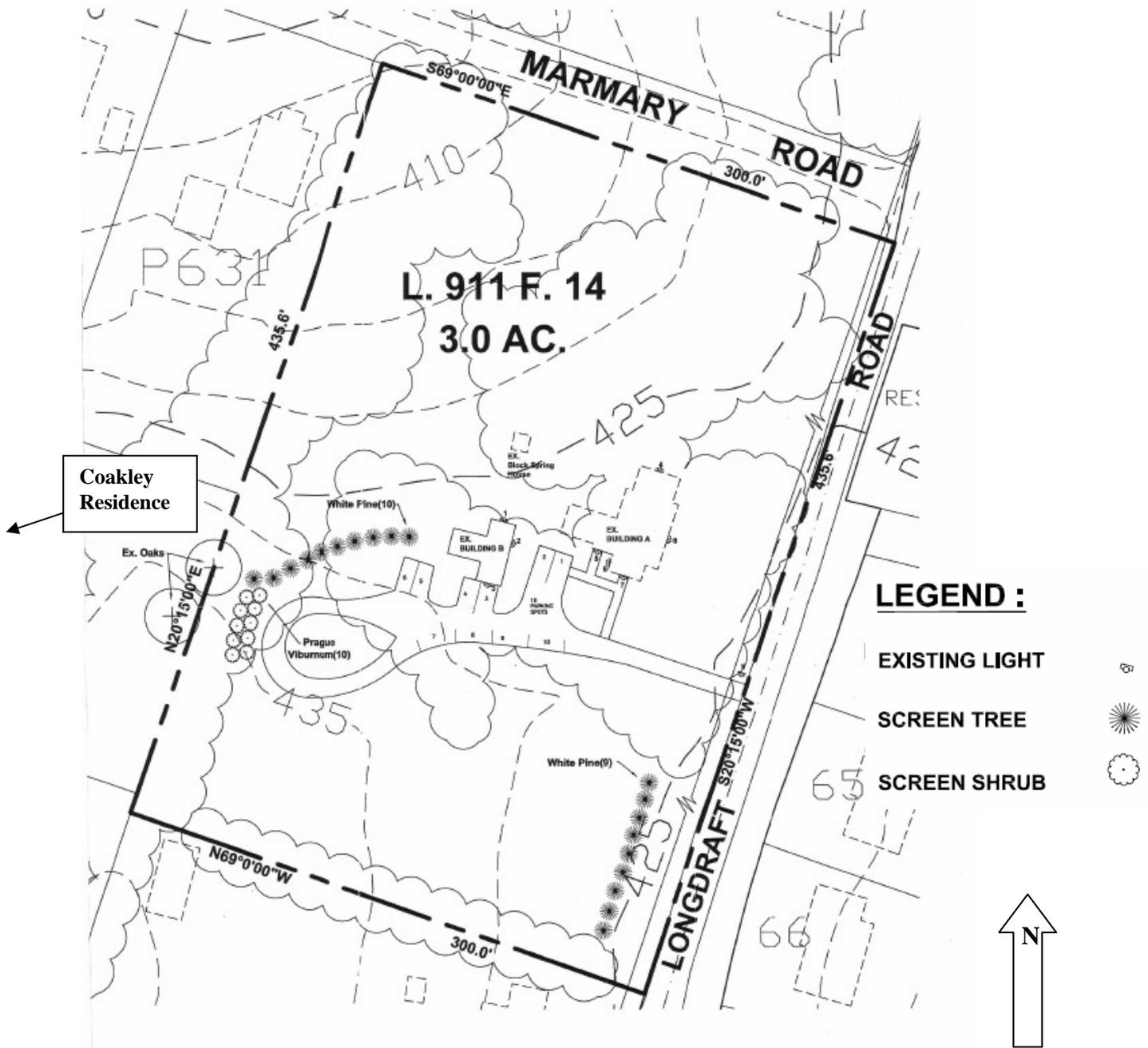
Client visits are scheduled by appointment only, and appointments are staggered throughout the day. Exhibit 3. The Statement of Operations provides that there will be no more than 225 visits per week, and a written log of all appointments and drop-in and emergency client activities will be kept and be available for inspection by County authorities.

Petitioner does not plan any exterior changes, except for additional screening, and the Site Plan (Exhibit 4(a)) is shown below. Ten parking spaces are delineated on site:



³ Petitioner testified that another vet currently comes on Friday, but Dr. Miklozek is not there at the same time.

In order to better screen the residence to the west, Kathy Coakley's home, from headlights, additional screening will be added as shown on the Landscape and Lighting Plan (Exhibit 27(b)), reproduced below (with its light and plant schedule on the next page):



**LANDSCAPE AND LIGHTING PLAN
17000 Longdraft Road**

LUMINARIE SCHEDULE

Light Number	Type of Light
1	75w Incandescent Double Flood Light
2	75w Incandescent Double Flood Light
3	150w Metal Halide Light
4	100w Incandescent Porch Light
5	150w Incandescent Wallpack Light
6	75w Incandescent Double Flood Light
7	150w Incandescent Wallpack Light
8	100w Double Incandescent Porch Light
9	Florescent Sign Light (Permit# S12142)

PLANT SCHEDULE

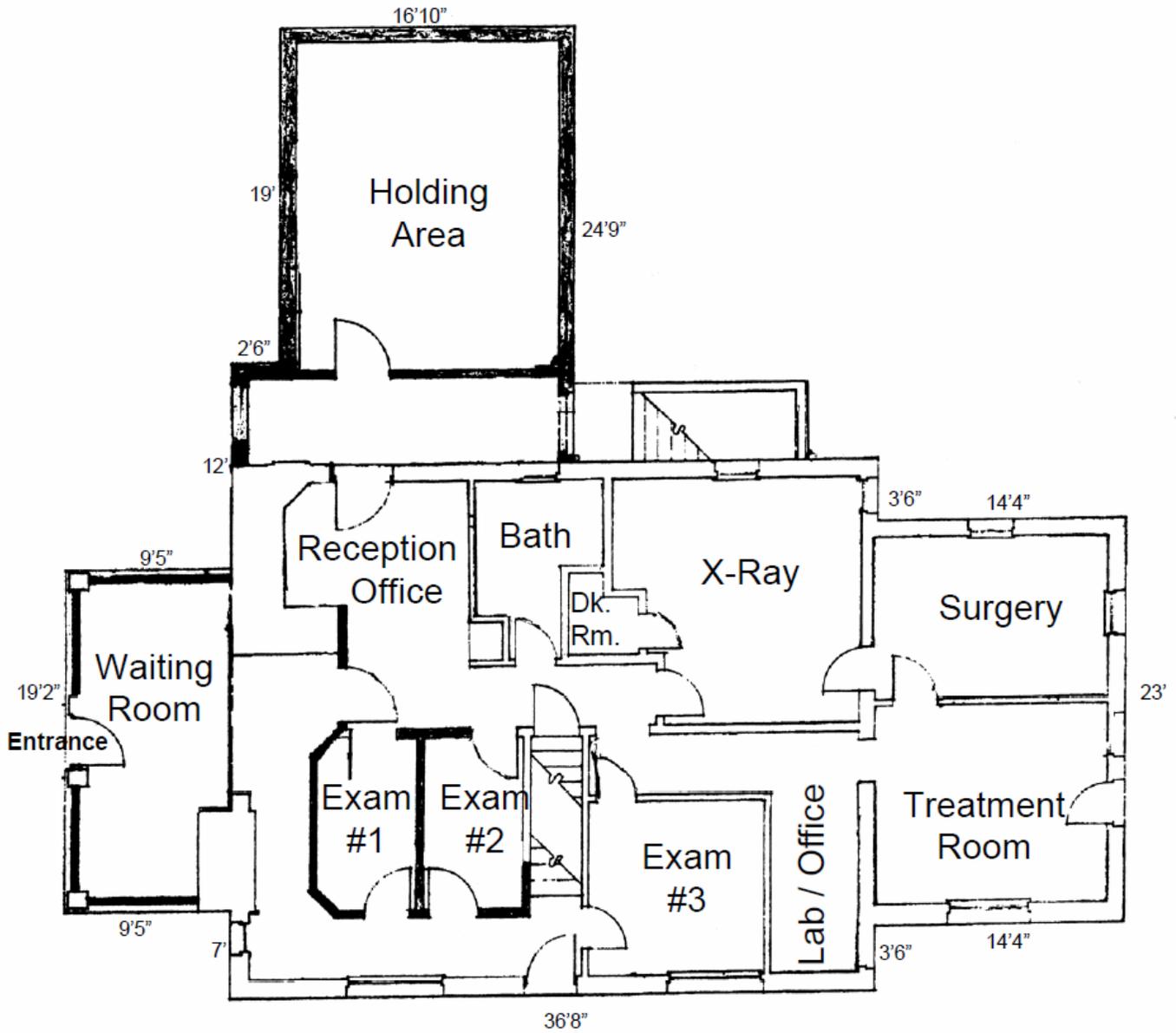
QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING
19	<i>Pinus strobus</i>	Eastern White Pine	6'-7'	10'
7	<i>Viburnum x pragense</i>	Praque Viburnum	7 Gal.	10'

There will be no more that 25 pick-ups and/or deliveries per week to the site, and they will not occur outside the hours of 7:00 a.m. – 7:00 p.m., Monday – Saturday. Typical pick-ups and deliveries are listed in the Statement of Operations. No large trucks will be used. Tr. 37-38.

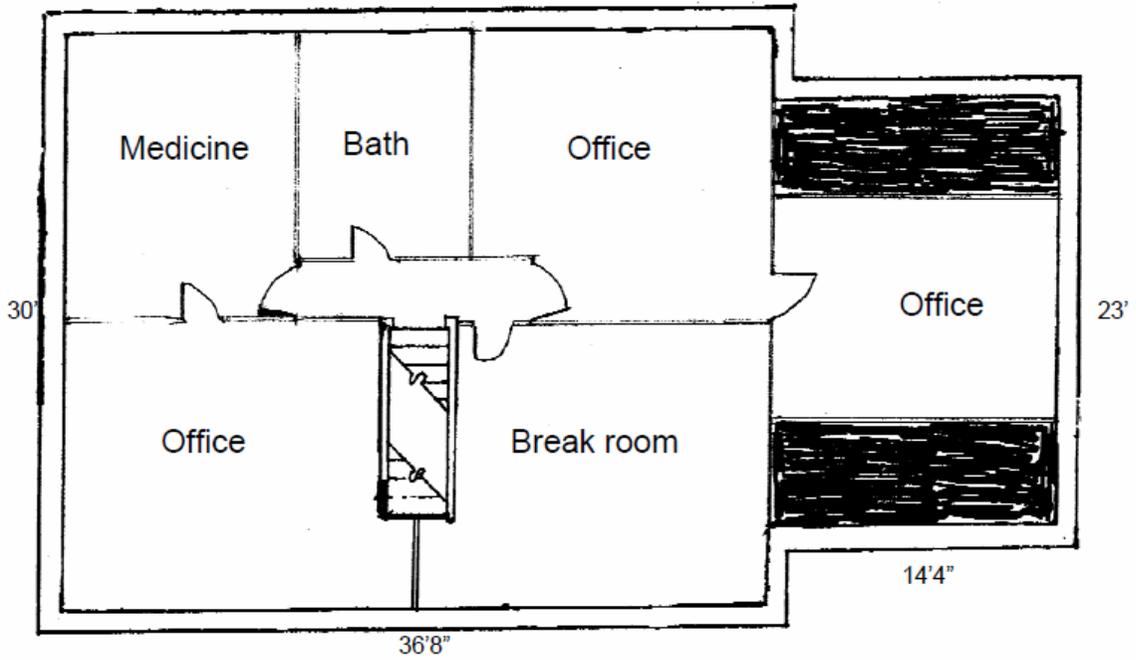
The sale of pet food, medicine and supplies as an accessory operation will not exceed 20% of the gross sales. Signage in the reception area will be displayed to instruct visitors who need to walk their pets on the property to use plastic bags provided by the hospital for the disposal of animal waste. Exhibit 25(a).

Petitioner has also supplied floor plans for the two buildings on site (denominated Building A and Building B). Building A is used as the veterinary hospital and Building B is used for storage. The floor plans (Exhibits 6(a), (b) and (c)) are reproduced on the following pages:

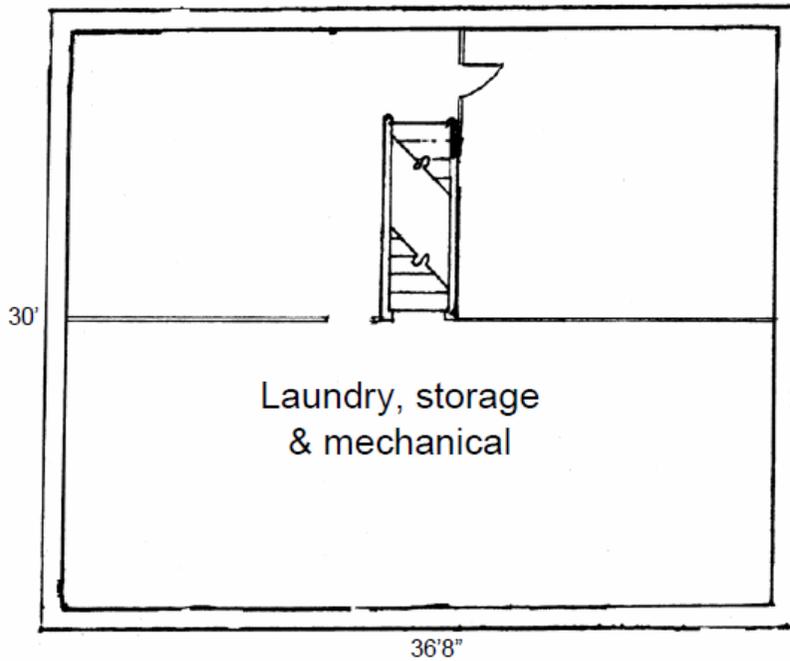
Diamond Veterinary Hospital Floor Plans



Ground Floor
Building A

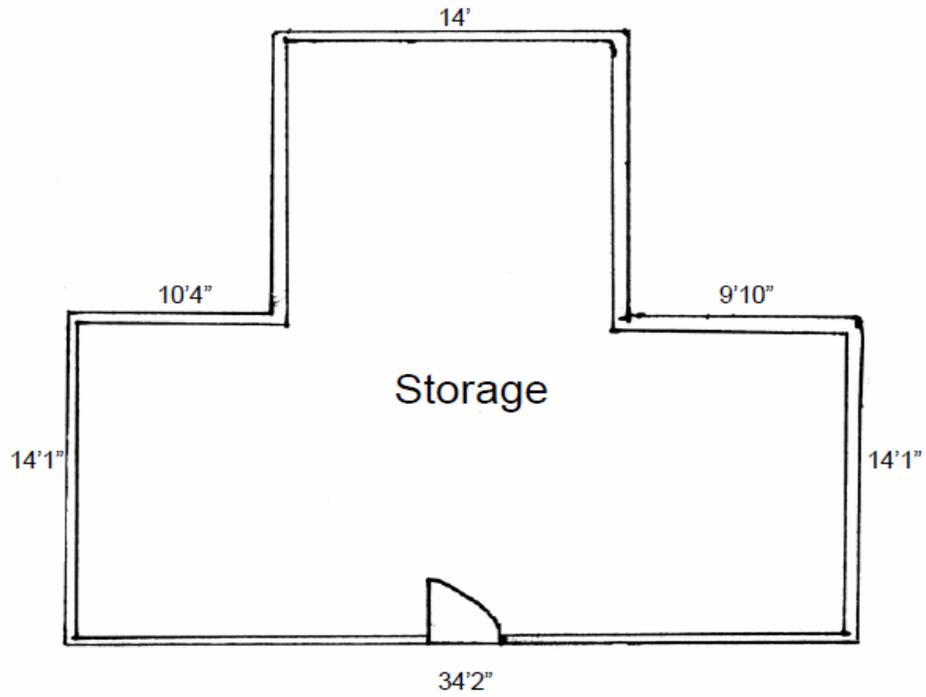


2nd Floor
Building A



Basement
Building A

Building B



There is an existing, lighted sign on the site, as depicted in Exhibit 9(a), shown below:



Longdraft Road Signage

Petitioner indicated she already has a sign permit for the lighted sign, and she was instructed by the Hearing Examiner to file a copy with the Board of Appeals. Tr. 63-64. A condition to that effect has been proposed in Part V of this report.

E. Transportation Impacts

A “Traffic Statement” was filed in support of the petition by Lenhart Traffic Consulting, Inc. (Exhibit 10); however, Mr. Lenhart was not called as a witness at the hearing, and the Hearing Examiner will rely instead on the analysis by Technical Staff, which reports that no transportation impacts would result from the proposed use. “The site would generate less than 30 peak hour trips and less than 3 new peak hour trips; therefore the special exception application is not subject to either Local Area Transportation Review (LATR) or Policy Area Mobility Review (PAMR). The existing vehicular access and pedestrian circulation system on the nearby road system would not be affected by the proposal.” Exhibit 20, pp. 3-4. There is no evidence to the contrary in the record, and the Hearing Examiner accepts these un rebutted findings.

Some concern was raised by neighbor Kathy Coakley about parking at the site on Saturdays (Tr. 32-35), but she did not indicate that parking has overflowed onto neighboring property. Petitioner replied that there is “plenty of space” for parking (Tr. 36), and Technical Staff found that the parking was more than adequate for the proposed use (Exhibit 20, p. 8):

Under §59-G-2.32(b)(9)), no less than five parking spaces are required for a veterinary hospital special exception. The applicant is providing 10 parking spaces, which is ample given the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. . . .

Given Staff’s opinion on the subject, the Hearing Examiner finds that the proposed parking will be adequate.

F. Environmental Impacts

The application was also reviewed by Environmental Planning Staff to determine if it meets the requirements of Chapter 22A of the Montgomery County Code, the Environmental Guidelines, Noise Guidelines, and other related requirements. Environmental Staff concluded that Petitioner qualifies for a forest conservation exemption, since the proposed use will not result in the clearing of existing forest or trees. A copy of that exemption is in the record as Exhibit 7(a). Staff noted that a tree save plan is not required because no existing trees will be affected by the proposed change. Exhibit 20, p. 4.

The issue of potential noise from the veterinary hospital was studied by acoustical engineers at Polysonics, Inc. Their report is in the record as Exhibit 11, and their conclusion was (p. 3):

Based on our measurements and observations, the interior sound levels at the Diamond Veterinary Hospital are expected to be reduced to 40 dBA or less, measured at 10 feet from the building. Further, the sound levels measured and observed at the closest property line, as a result of animals present in the Diamond Veterinary Hospital, are expected not to exceed 60 dBA. Sound levels at the nearest property line are expected not to exceed the characteristic ambient noise levels by more 3 dBA at any time.

Environmental Staff reviewed Polysonics' report and found the petition to be in compliance with the noise findings required in the Zoning Ordinance. Exhibit 20, Attachment 6. Technical Staff concluded that "there are no environmental impacts associated with the application . . ." Exhibit 20, p. 4. The Hearing Examiner accepts these un rebutted findings.

G. Community Response

As mentioned in Part I of this report, letters in support of the petition were filed by three adjacent property owners, Phyllis and Bill Childers (Exhibit 16), Abe and Daisy Henderson (Exhibit 17) and Murphy Knox (Exhibit 19). All the letters indicate that the special exception would be compatible with their neighborhood.

There has been no opposition to the special exception request, but there have been some community concerns raised about a few issues. Ms. Kathy Coakley, the abutting neighbor to the west of the subject site, was most concerned by headlights from the site shining into her backyard. She also wanted to know how to report compliance problems if they arise, and how to get reassurance that pets relieving themselves on the site were not contaminating her well, which is only 20 feet from the property line. Tr. 6, 31-46.

Ms. Coakley's concerns about headlights were addressed by revising the landscape plan to add additional screening in the critical area. She was also told that the Department of Permitting Services (DPS) enforces compliance. As to the issue of possible well water contamination, Petitioner inquired of DPS, and the Hearing Examiner received a letter from John P. Hancock of DPS indicating that "the dog walking activities are not a specific concern" for the well on Ms. Coakley's property, due to distance and grading. Exhibit 26.

The only other concern expressed by the community was contained in a December 14, 2009, letter from a neighbor, Ed Mitchell, complaining about exterior lighting on the site (Exhibit 28). Although Petitioner responded to Mr. Mitchell's letter (Exhibit 29), the Hearing Examiner felt that Technical Staff should review the lighting situation to insure that it is residential in nature and does not spill light into adjacent properties. Technical Staff visited the site in the evening and filed a supplemental report regarding exterior lighting on December 28, 2009. Exhibits 30 and 30(a) – (d). Staff found that the lighting was residential in nature and did not spill into adjacent properties.

The People's Counsel, Martin Klauber, Esquire, stated at the hearing that he recommends approval of the petition, as conditioned. Tr. 59.

Given this record, the Hearing Examiner concludes that all community concerns have been appropriately addressed and do not warrant denial of this petition.

III. SUMMARY OF THE HEARING

Petitioner and her real estate broker, Gary Modjeska, testified at the hearing. Martin Klauber, the People's counsel, participated but did not call any witnesses. An adjacent neighbor, Kathy Coakley, testified as to her concerns, but did not oppose the petition. There were no other witnesses at the hearing.

A. Petitioner's Case

1. Dr. Meredith Miklozek, DVM :

Dr. Meredith Miklozek testified that she accepted the findings and conclusions of the Technical Staff and its report (Exhibit 20) as part of her testimony. Tr. 14. She also agreed to the conditions that they recommended. Tr. 7-8. Dr. Miklozek clarified that the hours will be 8 AM to 6 PM, not 7 AM to 6 PM as suggested by the Planning Board's letter.

Dr. Miklozek further testified that she has operated a veterinary hospital at the site since 1988, and currently has three staff members, including herself. There is only one vet there at a time. Another doctor comes on Friday, but Dr. Miklozek is not there at the same time. The other two staff members are a receptionist and technician. Dr. Miklozek plans to expand by having two doctors and four technicians on site at an given time. The hours will not changed and there will be no boarding of dogs except for medical necessity. Tr. 15-16.

Dr. Miklozek identified site, landscape and floor plans that she had filed, and photos taken by Mr. Modjeska. Dr. Miklozek testified that she added lines to mark off 10 parking spaces, but there are other areas in which clients can park. "There's plenty of space." Tr. 36.

Dr. Miklozek testified that she has always provided bags for her clients to pick up the waste from their animals, and she does not think there is a frequent problem. [The Hearing Examiner

instructed Petitioner to get a response from the Department of Permitting services to insure that Ms. Coakley's well water would not be affected by occasional animal droppings.] Tr. 47-50.

Dr. Miklozek stated that the existing small sign is lighted, and she has a permit for it. Tr. 63-64.

2. Gary Modjeska:

Gary Modjeska testified that he is a real estate broker, and he is assisting Dr. Miklozek with her petition. He has been careful to avoid the unlicensed practice of law. Tr. 3-4.

Mr. Modjeska testified that it was Petitioner's intention that the data accompanying the petition would serve as a Statement of Operations, but he would be happy to provide one with the necessary information. Tr. 12. No other changes are proposed except for additional landscaping to buffer parking, and Petitioner will submit a landscape and lighting plan showing it. Tr. 17. Mr. Modjeska identified photos that he had taken of the premises, as well as Google aerial photos of the site. He testified that there would be no large trucks (*i.e.*, no semi-tractor trailers) making deliveries. Tr. 37-38. In response to Ms. Coakley's concern about screening trees, Mr. Modjeska indicated that Petitioner had planned white pines as screening but would be happy to submit additional screening in a landscape and lighting plan for everyone's review (*i.e.*, the parties and Staff). Tr. 41-43.

B. Community Testimony

Kathy Coakley:

Ms. Kathy Coakley testified that she lives at 11836 Marmary, Road in Gaithersburg, adjacent to and immediately to the west of the subject site, close to its southwestern point. Tr. 31- 32. She characterized her testimony as neither in support nor in opposition, but rather "expressing concerns." Tr. 6.

Ms. Coakley has some concerns about the continued operation of the veterinary clinic on

Longdraft, specifically because the past use of the veterinary clinic, she felt, hasn't always, abided by the conditions that were imposed upon it. She therefore had questions about the conditions that may be imposed in the granting of a special exception, how those are monitored, and how someone would go about reporting failure to follow the conditions.

The back of Ms. Coakley's property looks directly at the veterinary clinic. Dr. Miklozek has not lived there for 220 days per year for the past 12 years. Ms. Coakley wanted to know, if the property is sold, does that special exception convey so long as there is no change in use? She was also concerned about parking availability if there is an expansion to two vets, since the parking lot sometimes fills up on Saturdays. Tr. 32-35.

Ms. Coakley further testified that the issue of delivery trucks would not be important if proper screening is in place. Every vehicle that pulls in there at night shines its lights into her house. At one point there were trees planted for screening, but they weren't maintained, and there's nothing there now. Tr. 39.

Ms. Coakley's final concern was that clients at the site allowing their pets to relieve themselves might contaminate her well, which is only 20 feet from the property line. Tr. 44-46.

C. People's Counsel

Martin Klauber, the People's Counsel, did not present any witnesses at the hearing, but he did participate, and he recommended solutions to some of the issues (such as providing a landscape plan and a statement of operations) and conditions for the special exception.

Assuming the filing of a statement of operations and a landscape and lighting plan showing both the existing screening and the proposed screening, the office of the People's Counsel recommended that the requested special exception be approved by the Board of Appeals. Tr. 59.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards 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 she complies with the recommended conditions (Exhibit 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 conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 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 § 59-G-1.21. 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 seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a veterinary hospital use. Characteristics of the proposed use that are consistent with the “necessarily associated” characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the “necessarily associated” characteristics of veterinary hospitals, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggested the following inherent characteristics of a veterinary hospital use (Exhibit 20, p. 4):

- (1) the daily arrival and departure of veterinary staff and intermittent entry and exit of customers;
- (2) noise and odors of animals;
- (3) deliveries of mail and small parcels;
- (4) specialty medical equipment needing servicing, mostly by technicians in regular vehicles; and
- (5) the transport of pets to and from the parking area into the veterinary hospital.

The Hearing Examiner accepts that listing as a fair description of the inherent adverse impacts of a veterinary hospital, but would add a more direct reference to the traffic, parking and lighting routinely created by such a use. Noise could also be an inherent effect, but acoustical conditions of the special exception circumscribe any such noise characteristics.

Technical Staff found (Exhibit 20, p. 4):

There are no non-inherent adverse effects that are likely to result from the activities associated with the application. The residential character of the

dwelling will be retained. Staff finds that the size, scale, and scope of the proposed expansion are minimal and are not likely to result in any unacceptable noise, traffic, or environmental impacts.

The Hearing Examiner agrees with Staff that no non-inherent adverse effects are likely to result from the activities associated with the application. The use is relatively small, and the site is large enough, with sufficient trees and other buffers to insulate the facility. The only concerns about potential adverse effects have been appropriately addressed by the Petitioner.

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, the Hearing Examiner, or the District Council, as the case may be, 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 RE-2 Zone, pursuant to Zoning Ordinance §59-C-1.31(d).

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

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 §59-G-2.32.

- (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: As noted in Part II.C. of this report, the subject property lies within the Smokey Glen Area of the 1985 Gaithersburg Vicinity Master Plan, as amended. Staff reports that the Master Plan does not specifically address the site, other than including it in the area designated for residential use under the RE-2 zone. Community-Based Planning Staff concluded that the proposed special exception is consistent with the Master Plan.

Since the Master Plan recommended the existing RE-2 zoning and the subject use is permissible by special exception in that zone, the Hearing Examiner agrees with the Technical Staff's conclusion that the application is in conformance with the Master 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. The Board or Hearing Examiner must consider whether the 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: Both the traffic generated and the on-site parking are within required limits. The proposed use will continue to be in harmony with the neighborhood because the design, scale and bulk of the structures remain unchanged. The type of activity,

traffic and parking have co-existed harmoniously with the neighborhood for many years, and the proposed use will not change that relationship. Technical Staff reports, and the Hearing Examiner finds, that the site is adequately served by public facilities and will continue to be adequately served under the growth management policies in effect when the application was filed. Exhibit 20, p. 7.

- (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: The evidence supports the conclusion that the requested use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site. All activities related to the proposed use will take place within the interior of the main building.

- (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: The property has been improved with this veterinary hospital for 22 years. The use has caused no objectionable noise, vibrations, fumes, odors, dust illumination, glare, or physical activity in the past. The requested special exception will not substantially change those operational characteristics. There is no new lighting proposed, and Technical Staff has confirmed that the existing lighting is residential in nature and does not spill into adjacent properties. An acoustical study confirms that noise levels will be within code standards.

- (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: Technical Staff observes that two special exceptions have been previously approved within the defined neighborhood. The special exceptions include a home occupation and a landscape contractor. Staff found that the addition of this special exception “will not result in an excessive concentration of special exception uses and will not adversely affect the area or alter its residential character.” Exhibit 20, p. 6. Based on the evidence in this case, the Hearing Examiner finds that the proposed use, which has existed for many years as a registered home occupation, will not affect the area adversely or alter the predominantly residential nature of the area.

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

Conclusion: The evidence supports the 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 continuation of the veterinary hospital that has existed for 22 years at this location will continue to provide needed health care for local pets, and will have no adverse effect on any of the listed individuals.

(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.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public facilities (Exhibit 20, p. 7), and the evidence supports this conclusion.

(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 does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board 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 special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (“LATR”) and Policy Area Mobility Review (PAMR). As indicated in Part II. E. of this report, Technical Staff did do such a review, and concluded that the veterinary hospital use would generate fewer than 30 peak hour trips and fewer than 3 new peak hour trips; therefore the special exception application is not subject to either Local Area Transportation Review (LATR) or Policy Area Mobility Review (PAMR). Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (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: Technical Staff’s found that “[v]ehicular safety will not be diminished, since only a minimal increase in traffic is expected and no visual obstructions from the driveway onto the street are apparent.” Ex. 20, p. 7. Based on this record, the Hearing Examiner finds that the use will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards: Veterinary Hospitals.

The specific standards for a veterinary hospital are found in Zoning Ordinance § 59-G-2.32. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed use would be consistent with these specific standards, 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.*
- (2) All areas for the keeping of animals must be soundproofed.*

Conclusion: Not applicable; the property is not in a commercial, CBD or transit station zone.

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

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

Conclusion: Not applicable. The property is not in these zones; it is zoned RE-2.

- (2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line 200 feet and screened from adjacent residential properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.*

Conclusion: No exterior areas are proposed to be used for exercising, walking or keeping of animals.

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

Conclusion: According to an acoustical expert's report prepared by Polysonics Corp., the sound levels outside of Petitioner's facility are fully compliant with Zoning Ordinance §59-G-2.32(b). See Exhibit 11. Environmental Staff reviewed Polysonics' report and found the petition to be in compliance with the noise findings required in the Zoning Ordinance. Exhibit 20, Attachment 6. Technical Staff concluded that "there are no environmental impacts associated with the application . . ." Exhibit 20, p. 4. The Hearing Examiner accepts these un rebutted findings. Based on this uncontradicted record, the Hearing Examiner finds that Petitioner complies with this provision.

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

Conclusion: All existing buildings and accessory structures are setback from the property lines a minimum of 65-feet. Exhibit 20, p. 8.

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

Conclusion: The hours of operation for the veterinary hospital will be 8:00 AM to 6:00 PM. All activities relating to this petition are to be indoors; therefore, Petitioner complies with this standard.

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

Conclusion: As mentioned in Part II. F. of this report, the issue of potential noise from the veterinary hospital was studied by acoustical engineers at Polysonics, Inc. Their report is in the record as Exhibit 11, and their conclusion was (p. 3):

Based on our measurements and observations, the interior sound levels at the Diamond Veterinary Hospital are expected to be reduced to 40 dBA or less, measured at 10 feet from the building. Further, the sound levels measured and observed at the closest property line, as a result of animals present in the Diamond Veterinary Hospital, are expected not to exceed 60 dBA. Sound levels at the nearest property line are expected not to exceed the characteristic ambient noise levels by more 3 dBA at any time.

Environmental Staff reviewed Polysonics' report and found the petition to be in compliance with the noise findings required in the Zoning Ordinance. Exhibit 20, Attachment 6. Technical Staff concluded that "there are no environmental impacts associated with the application . . ." Exhibit 20, p. 4. The Hearing Examiner accepts these un rebutted findings.

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

Conclusion: The Hearing Examiner recommends a condition to this effect, as proposed by Technical Staff.

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

- (i) Acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.*
- (ii) Detailed floor plans that show all the interior areas and their use designations,*

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

Conclusion: An acoustical engineering report prepared by Polysonics Corp. was submitted by Petitioner as Exhibit 11; detailed floor plans were submitted as Exhibit 6, and a site plan was submitted as Exhibit 4(a). No outdoor areas are to be used to exercise, walk or keep animals, and the site plan provided therefore shows no area to be designated for such an activity.

- (9) *The Board must specify a minimum number of off-street parking spaces, taking into consideration the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. This number must in no case be less than 5.*

Conclusion: The parking lot provides 10 parking spaces, which Technical Staff finds “is ample given the size of operation and the maximum number of employees on-site.” Exhibit 20, p. 13. Petitioner must provide a minimum of one handicapped parking space, which is recommended as a condition of approval. A condition is also recommended requiring maintenance of at least the current 10 parking spaces.

- (10) *The Board may regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept.*

Conclusion: Petitioner is not requesting to board animals, except for overnight hospital stays when medically necessary; nor does the special exception include exercise or run areas.

Therefore, this standard is not applicable.

- (11) *The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling; abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and*

drop-in and emergency client activities must be kept, to be available for inspection by County authorities.

Conclusion: Technical Staff supports the office hours proposed by the Petitioner (8:00 AM to 6:00 PM, Monday through Saturday). Appointments will be limited to 225 per week. A veterinary hospital is permitted to have non-scheduled emergency visits and customers may pick up prescriptions and pet-related items, but only during office hours. Petitioner is required under this special exception to keep a written log of all appointments, as well as drop-in and emergency client activities. The log must be available for inspection by County authorities. A condition embodying these terms is proposed in Part V of this report.

(12) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%.

Conclusion: Petitioner is proposing that no more than 20% of receipts be from the sale of pet food, medicine and supplies. This is recommended as a condition of approval.

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

Conclusion: Petitioner has indicated that all animal disposal, including waste products and surgically removed products, will be properly disposed through an agreement with service providers, as specified in the Statement of Operations (Exhibit 25(a)).

(14) Animals may be kept overnight at the hospital only for medical purposes. If animals are kept for non-medical purposes, a separate application for an animal boarding place must be approved.

Conclusion: No boarding is proposed; only holding of animals for medical recovery. A condition embodying these terms is proposed in Part V of this report.

- (15) *If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect.*

Conclusion: According to Technical Staff, this site is served by public water and sanitary sewer, and therefore this requirement is not applicable.

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

Conclusion: No physical enlargement of the veterinary hospital is proposed. Additional staff will be added, and Technical Staff recommends permitting a maximum of six employees, consisting of two veterinarians and 4 support staff on-site at any one time. A condition establishing this limit is recommended in Part V of this report.

D. General Development Standards

In addition to the other general and specific standards set forth above, “*Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, RE-2] except when the standard is specified in Section G-1.23 or in Section G-2.*” For this special exception, minimum setbacks are specified in Section 59-G-2.32. In any event, no structural changes are proposed.

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: This site is located in the RE-2 zone. A comparison of the proposed special exception with the development standards of the RE-2 Zone is shown in the following Table from the Technical Staff report (Exhibit 20, p. 8). It demonstrates that the proposed

special exception complies with all development standards:⁴

Table 1: Development Standards, RE-2 Zone.

Development Standards	Requirement	Provided
Minimum Tract Area (§59-C-1.321(a))	Not applicable	
Lot Area (§59-C-1.322(a))	87,120 sq. ft.	130,680 sq. ft.
Lot Width (§59-C-1.322(b)): @ Front of Bldg Line @ Street	150-feet 25-feet	435-feet 435-feet
Yard Requirements (main building): From Street (§59-C-1.323(a)) Corner lot From Adjoining Lot Side Yards (§59-G-2.37(b)(3)) Rear Yard (§59-C-1.323(b))	50-feet 20-feet 17-feet (one side) 35-feet (both sides) 35-feet	65-feet ⁵ 160-feet 160-feet ⁶ 210-feet 175-feet
Yard Requirements (accessory building)(§59-C-1.326(a)): An accessory building or structure must be located in a rear yard and must not occupy more than 20% of the rear yard Setback (minimum) from the street line from a rear lot line from a side lot line	20% 80-feet 10-feet 15-feet	<1% 145-feet 119-feet 185-feet
Building Height (maximum) (§59-C-1.237)	50-feet	<50-feet
Coverage (maximum net lot area) (§59-C-1.328)	25%	±2%

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

Conclusion: As noted in Part II. E. of this report, §59-G-2.32(b)(9)) requires no less than five parking spaces for a veterinary Hospital special exception. Petitioner is providing 10 parking spaces, which Technical Staff considers “ample given the number of

⁴ Some of the setbacks in the Staff report contained typographical errors, which have been corrected by the Hearing Examiner based on scaling the setbacks on the Site Plan (Exhibit 4(a)) and consulting with Technical Staff.

⁵ The Site Plan does not contain a measurement from the closest point on the main building to the street, which is 65 feet. The Site Plan shows a 74-foot measurement, but that is not taken from the closest point of the building to the street line. The difference is immaterial because the minimum setback is 50 feet.

⁶ The Site Plan shows the measurement from the main building to the northern boundary as 175 feet, while scaling the distance reveals a setback of 160 feet. Once again, the difference is immaterial because the minimum setback is 50 feet under Zoning Ordinance §59-G-2.32(b)(4). The differences are noted in the interest of accuracy.

employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries.” Exhibit 20, pp. 8-9. Staff also notes that the parking area is well screened with many trees, and more will be added by Petitioner.

Parking and Loading facilities for a special exception use in a residential zone (§59-E-2.83) require each parking and loading facility, including each exit and entrance driveway, to be set back not less than the applicable building (or structure) front and rear yard setbacks, and twice the building side-yard setback of the zone. According to Technical Staff, the petition satisfies the setback requirement of §59-E-2.83.

(c) **Minimum frontage** * * *

Conclusion: Not applicable to this special exception. In any event, the proposed use satisfies the minimum frontage requirements of the RE-2 zone.

(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: Not applicable. The use is exempt per Exhibit 7(a).

(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: Not applicable. A water quality plan is not required since the site is not in a Special Protection Area.

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

Conclusion: There is a small, lighted sign posted at the entrance to the site, at a location shown on the landscape and lighting plan. A photo of the sign is shown on page 17 of this report. No new signage is proposed with this special exception request. According to Staff, sign permit S-12142 has been issued for the existing sign. A condition is proposed requiring Petitioner to file a copy of the permit with the Board of Appeals.

(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: Not applicable. Petitioner is not proposing to reconstruct or alter either the existing single-family house where the veterinary hospital is located, or the accessory buildings. No new structures will be added. The structures' scale, bulk and materials will therefore remain residential in appearance and compatible with the neighborhood.

(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: According to Technical Staff, the existing lighting on the site is residential in nature and does not spill into adjacent properties. Exhibit 30. No additional lighting is proposed.

59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: Not applicable. As noted above, Petitioner is not proposing to reconstruct or alter the existing structures, and no new structures will be added.

Based on the testimony and evidence of record, I conclude that the special exception proposed by Petitioner meets the specific and general requirements for the use, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2752, which seeks a special exception for a veterinary hospital located at 17000 Longdraft Road, Gaithersburg, Maryland, be **granted**, subject to the following conditions:

1. The Petitioner shall be bound by all of her testimony and exhibits of record, and by the testimony of her witnesses and her representations identified in this report.
2. The special exception is limited to a maximum of six employees, consisting of two veterinarians and 4 support staff on-site at any one time.

3. Hours of operation are limited to 8:00 AM – 6:00 P.M., Monday through Saturday;
4. Per §59-G-2.32(b)(7) of the Zoning Ordinance, dogs must not be walked or exercised in outdoor areas that are off-site.
5. Per §59-G-2.32(b)(10) and (14) of the Zoning Ordinance, no animals may be boarded (except for overnight medical purposes), exercised, walked or kept in runs or similar areas.
6. Client visits must be scheduled by appointment only, except in emergencies, and are limited to 225 per week. Per § 59-G-2.32(b)(11) of the Zoning Ordinance, Petitioner must keep a written log of all appointments, drop-ins and emergency client activities, and make it available for inspection by the County.
7. Per §59-G-2.32(b)(12) of the Zoning Ordinance, accessory operations, such as the sale of pet food and supplies, must not exceed 20% of revenue.
8. Petitioner must maintain at least 10 parking spaces on site, re-stripe one of the provided parking spaces and post a sign for an accessible parking space.
9. All litter and animal waste must be contained and controlled on the site.
10. Petitioner must comply with the requirements of her Statement of Operations (Exhibit 25(a)).
11. Petitioner may maintain the sign currently posted, but must file a copy of the sign permit therefor with the Board of Appeals.
12. Petitioner must provide bags to allow clients to pick up any droppings from their pets, and a sign should be posted in the reception area as described in the Statement of Operations.

13. Petitioner 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: February 4, 2010

Respectfully submitted,

Martin L. Grossman
Hearing Examiner