

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF CLAWS AND PAWS :
ANIMAL HOSPITAL, LLC : Case No. S-2871
: OZAH No. 13-20
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A hearing in the above-entitled matter was held on July 26, 2013, commencing at 9:32 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Tammy CitaraManis
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Jody S. Kline, Esq.

Miller, Miller & Canby

200-B Monroe Street

Rockville, Maryland 20850

P R O C E E D I N G S

1 MS. CITARAMANIS: This is a public hearing in the
2 matter of Paws & Claws Animal Hospital, LLC. This is a
3 request for a special exception for a veterinary hospital
4 located at the existing Damascus Shopping Center at 9815
5 Main Street, which is Maryland 108, Damascus, Maryland 20872
6 which is in the MXTC, mixed use town center zone.

7 The shopping center, the location is 9811 Main
8 Street, Parcel N-575, tax account number 1201721150. The
9 owner of the shopping center is Damascus Center, LLC, and
10 care of, is it --

11 MR. KLINE: Company.

12 MS. CITARAMANIS: Thank you. My name is Tammy
13 CitaraManis and I am the hearing examiner in this case. I
14 will take the evidence and write a report and recommendation
15 for the Board of Appeals. The Board of Appeals will make
16 the final decision. Our case number is OZAH 13-20. So at
17 this point I will ask the parties to identify themselves.
18 Attorneys?

19 MR. KLINE: Good morning. For the record, my name
20 is Jody Kline. I'm an attorney with the law firm of Miller,
21 Miller & Canby with offices at 200 Monroe Street here in
22 Rockville. So if you ever needed something quick, we're
23 across the street --

24 MS. CITARAMANIS: Okay.

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Melissa Birken		13		
Tim Ober		37		
Daniel Sur		51		95

E X H I B I T S

Exhibit No.		Marked/Received
27	Color Copy of 102(a)	27 130
28		73 130
29		129 130
30		129 130

1 MR. KLINE: I can get it pretty quickly. And I'm
2 actually the junior varsity fill-in for Ms. Sue Carter of my
3 office, who had the good sense to be at the beach this week.

4 MS. CITARAMANIS: Nice.

5 MR. KLINE: We anticipate calling three witnesses.

6 MS. CITARAMANIS: Okay.

7 MR. KLINE: And I can either give you their names
8 or, at this time, or --

9 MS. CITARAMANIS: Why don't you go ahead and give
10 them to me now so at least the court reporter has them and
11 if she wants to know what the spellings are, we can --

12 MR. KLINE: All right. Well, beside me and who is
13 the principal of the applicant is Dr. Melissa Birken, B-I-R-
14 K-E-N, who will be the bulk of our testimony. Mr. Tim Ober,
15 O-B-E-R, will be testifying. And Mr. Daniel Sur, S-U-R,
16 will be testifying, also. And I think I estimated, or Sue
17 estimated about two hours, and I think probably an hour and
18 a half is more realistic.

19 MS. CITARAMANIS: Okay. Well, certainly it goes a
20 little quicker when there's no opposition, although I did
21 receive -- just for the record, I did receive a, one letter,
22 I don't know if you have it, dated July 17, 2013, and it's
23 identified as Exhibit 25. It is a letter to Dr. Birken from
24 it looks like Dr. Pamela Armstrong.

25 MR. KLINE: We have a copy of it.

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1 MS. CITARAMANIS: Do you have that? Okay.
2 MR. KLINE: Yes.
3 MS. CITARAMANIS: I mean, it's not necessarily in
4 opposition. The way I read it it seemed more like wanted to
5 clarify the record in terms of the comments. Is that fair?
6 MR. KLINE: That's a fair characterization.
7 MS. CITARAMANIS: Okay. I was looking for
8 something that addressed any of the criteria, but it didn't.
9 But I just wanted to put that on the record. Obviously, if
10 you do this all the time you're familiar with how we're
11 going to proceed. We don't have any opposition, so I will
12 turn the case over to you. Just for the record, I guess I
13 need to explain that the nature of the special exception,
14 basically it's, the veterinary hospital is statutorily
15 permitted in this zone, an MXTC zone. I've provided the
16 general and specific requirements for veterinary hospital
17 are met which those requirements are stated in the technical
18 staff report. And you all have a copy of that?
19 MR. KLINE: Yes.
20 MS. CITARAMANIS: And you have a copy of the
21 Planning Board --
22 MR. KLINE: Yes.
23 MS. CITARAMANIS: -- report? I did have one
24 preliminary question for you, Mr. Kline, with regards to --
25 I have your affidavit of posting which has been marked as

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1 Exhibit 26 and signed by Dr. Birken. And with regards to --
2 I understand she's the tenant and we have a letter in there
3 saying that she is --
4 MR. KLINE: Authorization, yes.
5 MS. CITARAMANIS: Yes.
6 MR. KLINE: Yes.
7 MS. CITARAMANIS: It's the first veterinary
8 hospital case that I've had to do. Do you normally have to
9 put in a lease, a copy of the lease?
10 MR. KLINE: Well, we have to provide that and I
11 think the way this is ordinarily set is demonstrate that we
12 have the right to prosecute the case.
13 MS. CITARAMANIS: Right.
14 MR. KLINE: Certainly we can provide the lease.
15 When I have done them in the past, we always line out a lot
16 of financial information that's kind of personal or
17 sometimes do an, or basically just a summary of the
18 arrangement. If at the conclusion of the hearing you don't
19 think the letter from the shopping center is adequate, we
20 can provide you some, something more legalistic looking as
21 to the right to be there.
22 MS. CITARAMANIS: Okay, because generally we
23 require in other cases a copy of the deed.
24 MR. KLINE: Yes.
25 MS. CITARAMANIS: And this certainly wouldn't be

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1 inappropriate since she's going to be the lessee. So if you
2 can provide me with, I guess, just something that, whether
3 you block it out or you represent that --
4 MR. KLINE: We'll strike; I guess we have signed
5 the lease.
6 MS. CITARAMANIS: That's why we ask the question.
7 MR. KLINE: We'll make sure that anything that's
8 sort of private is the one that will come out.
9 MS. CITARAMANIS: That's fine. All we're looking
10 for is that she has an interest in the property. All right.
11 So if -- do you have any other preliminary matters that --
12 MR. KLINE: Well, no, I was going to -- the
13 affidavit of posting, we've taken care of that already.
14 MS. CITARAMANIS: Right.
15 MR. KLINE: I was going to raise a question that I
16 thought maybe under the budget constraints, the County no
17 longer provided water, but I see Ms. Forbes already took
18 care of that also. So that's, that's --
19 MS. CITARAMANIS: You're -- yes, you're in luck
20 today.
21 MR. KLINE: That's everything. That's everything.
22 MS. CITARAMANIS: All right. So do you want to --
23 first of all, let me go ahead and swear in everybody --
24 MR. KLINE: Sure.
25 MS. CITARAMANIS: -- so that when you get to it --

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1 MR. KLINE: Sure.
2 MS. CITARAMANIS: So if I could have -- Dr.
3 Birken, raise your right hand.
4 (Witness sworn.)
5 MS. CITARAMANIS: Okay. All right. And the next
6 gentleman? Is this Mr. Ober or Mr. Sur?
7 MR. SUR: Sur.
8 MS. CITARAMANIS: Okay. No.
9 (Witness sworn.)
10 MS. CITARAMANIS: Okay. And Mr. Ober.
11 (Witness sworn.)
12 MS. CITARAMANIS: Okay. And just so that you
13 know, once Mr. Kline is going to be presenting his case and
14 so he will present you all in however order he wants to
15 present you. When one person is testifying, if you feel
16 like you have to clarify something, Mr. Kline will clarify
17 it when you are on the stand. So I ask everybody not to
18 speak when somebody else is technically on the stand.
19 MR. KLINE: Thank you. Since this is wife and
20 husband, so sometimes they're probably going to --
21 MS. CITARAMANIS: Oh.
22 MR. KLINE: -- help each other out.
23 MR. OBER: You'll see my mouth open and close,
24 but --
25 MS. CITARAMANIS: Yes. Yes, I have a husband too.

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1 He does the same thing, but after many years knows when it
2 should shut. No, I'm kidding. I just wanted, just wanted
3 to clarify that because a lot of people hear something and
4 the next thing you know chaos erupts and I like not to have
5 chaos, so if we can go with that. All right, Mr. Kline, if
6 you would like to --
7 MR. KLINE: Well, Ms. CitaraManis, what, the way I
8 usually like to start things out is to kind of just give you
9 an overview of everything. I know you've read the file.
10 Have you made a site visit or are you likely to make a site
11 visit?
12 MS. CITARAMANIS: I have not made a site visit and
13 unless it's requested --
14 MR. KLINE: It's not particularly relevant, except
15 for the one thing you'll hear me mention, but I --
16 MS. CITARAMANIS: Okay.
17 MR. KLINE: -- can do that.
18 MS. CITARAMANIS: I mean you can, at this point I
19 am not, but if it's something that's requested and needed --
20 MR. KLINE: When you're doing an inline facility,
21 it's kind of less important. So what we've done is this is
22 a copy of Exhibit 14, the Zoning Vicinity Map --
23 MS. CITARAMANIS: Okay.
24 MR. KLINE: -- it's in the record of the case.
25 And it should be a replication of the highlighting that's in

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1 the file. And what we did is we, first of all, show you
2 where this master shopping center is located. Basically the
3 contour of Main Street here. We have Woodfield Road over on
4 its east side and Ridge Road. So I'm looking at the
5 highlighted area in yellow and --
6 MS. CITARAMANIS: Okay.
7 MR. KLINE: -- the approximate center of Exhibit
8 14. And we took the liberty of putting a red star on the
9 approximate location of the bays that Dr. Birken is going to
10 be renting for the shopping center itself.
11 MS. CITARAMANIS: Okay.
12 MR. KLINE: Then just to kind of go from the
13 general to the more specific, what I'm looking at now,
14 pointing out, is a copy of Exhibit 4 in the record of the
15 case --
16 MS. CITARAMANIS: Okay.
17 MR. KLINE: -- which they call an overall site
18 plan for the Damascus Shopping Center. And what it does
19 with basically, I'll get the roads here for you. 118 on the
20 east side itself, it is has highlighted the building
21 footprints of the structure there. This large box in gray
22 on the right-hand side of the area of the shopping center is
23 a Safeway grocery store. And so you have a row of buildings
24 on the east side, the right-hand side, my hand is placed
25 over the Safeway store, and then you have on the west side

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1 or north and west side basically a string of bays of areas,
2 of buildings with various retail tenants. And, again, we
3 put a red star on the bays that Dr. Birken will be renting.
4 So you have appreciation of where it's located in the
5 shopping center, kind of really at the primer of the
6 northern point with the whole field of parking immediately
7 in front of the, her front door.
8 And then the last thing I thought might be of
9 interest to you, we put up on this other easel a copy of
10 Exhibit 5B, which is elevations that were provided by the
11 shopping center owner I presume. And in the -- there's
12 three roads showing the different architectural renderings
13 and the different buildings. You can see buildings B, C and
14 D. Building D, where Dr. Birken's offices will be located,
15 is in the row on the bottom of Exhibit 5B that I put up
16 here. And it is the first two bays immediately to the
17 right-hand side of the gap that's on the left-hand side of
18 the drawing. In other words, we have part of another
19 building. There's a gap in between the two. There is a
20 retail bay and then Dr. Birken has the next two. It says
21 signs and then has a raised, I guess we'll call that a
22 parapet to the front. So these two buildings, or these two
23 units represent the area that she's going to be renting.
24 MS. CITARAMANIS: Okay.
25 MR. KLINE: So that just kind of gives you the

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1 context. And the relevance, why I asked the question about
2 where this is located is when you go, make sure you stop at
3 Jimmy Cone, which is the best ice cream store in all of
4 Montgomery County. That's the highlight of your trip to
5 Damascus.
6 MS. CITARAMANIS: Don't they have good chicken out
7 there too?
8 MR. KLINE: Yes.
9 MR. OBER: Supposedly, yes.
10 MS. CITARAMANIS: That's what I hear. Okay.
11 MR. KLINE: So unless you have any questions about
12 the orientation of where everything is located, I'll just go
13 ahead and behind with Dr. Birken.
14 MS. CITARAMANIS: Okay. Great.
15 BY MR. KLINE:
16 Q Dr. Birken, would you please state and spell your
17 name and give us your professional address?
18 A My name is Melissa Birken, and Melissa is spelled
19 M-E-L-I-S-S-A, and Birken is B-I-R-K-E-N. I currently live
20 at 26832 Dix Street in Damascus, Maryland.
21 Q We have the clever name of Paws & Claws that I
22 heard you talking about has actually been used by other
23 people at other places in the United States, but tell us
24 what's your relationship with Paws & Claws? What is that?
25 Is that just a name, or is it a corporate entity, or how is

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1 it set up?
2 A It's an LLC.
3 Q Okay. Okay. So the actual applicant is Paws &
4 Claws, LLC?
5 A Well, it's actually Melissa Birken, LLC, Paws &
6 Claws.
7 Q Okay. Got you. Very good. And, in essence,
8 you're the principle spokesman and the principle of the
9 entire operation?
10 A Yes.
11 Q All right. You've had a chance to read the
12 conditions of the staff report and the Planning Board's
13 recommendation?
14 A Yes.
15 Q And all those conditions are acceptable to you?
16 A Yes.
17 Q Okay. And so if you were lucky enough to have the
18 Board of Appeals approve the special exception, you agree to
19 be bound by any of those conditions --
20 A Yes.
21 Q -- in terms of your operation? Thank you. I
22 guess we probably ought to start with just a little
23 background. What is your academic background and what is
24 your professional background?
25 A Okay. Well, I received my bachelor's degree from

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1 Montclair State in New Jersey. I then got accepted to the
2 veterinary program at Oklahoma State. After graduating from
3 Oklahoma State and receiving my degree, I then decided to
4 move over to Maryland to be closer to my family.
5 So I started off my career in general practice in
6 Gaithersburg. I worked there for about two years also doing
7 relief work at the same time at emergency hospitals. And I
8 wanted to advance my career and my expertise in veterinary
9 medicine, so I decided to go full-time into emergency
10 medicine at an overnight trauma hospital in Hagerstown,
11 where I'm still currently employed and I've been working
12 over the last four and a half years. So I'm using both my
13 skills in both general practice and emergency medicine to
14 hopefully open up a superb and advanced clinic in Damascus,
15 Maryland.
16 Q And what was it about this site or this facility
17 that really appealed to how you wanted to deliver that
18 service to the public?
19 A Well, the first time I went to Damascus I
20 absolutely fell in love with the town. I love the
21 community. And I actually ended up purchasing a home about
22 four years ago in Damascus, so the shopping center is less
23 than two miles from my house. And I also have two other
24 children, a third on the way, and this is going to allow me
25 to be both by my family and also very close to my business.

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1 So, and additionally, in the shopping center there
2 is Safeway, Chipotle, a cleaning service, a hair salon, a
3 nail salon. And me being a mommy, I like convenience, so I
4 like one-stop shops. I hopefully expect people to come in,
5 they can drop off their pets for grooming, for vaccines and
6 at the same time they can go out to eat at Jimmy Cone, all
7 at the same time.
8 Q So is the Damascus Shopping Center sort of the
9 retail core of Damascus? If you're --
10 A Yes.
11 Q -- if you're going to town to do your shopping,
12 you're likely to be coming near this center?
13 A Yes. The number one spot currently too.
14 Q Tell us about the care you intend to provide?
15 What are the type of animals you focus on? What services
16 would you be providing as per that care?
17 A It's primarily going to be dogs and cats, puppies,
18 kittens, senior dogs, senior cats, occasionally pocket pet
19 animals, hamsters, rats and also reptiles. And the services
20 that I'm going to be providing, a majority, since it's
21 general practice, is going to be spays, neuters, cystonmies
22 such as bladder surgery; it's a very common surgery, tumor
23 removal. But now that I have all this emergency care also,
24 I'm going to try to incorporate that into my general
25 practice as well for the animals that have severe surgeries

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1 that need to be done like a bloat, something that I used to
2 refer to specialty hospitals, but I now know how to do
3 myself and respiratory cases. Animals that require oxygen,
4 most general practices are not prepared to set up for that
5 and I will be at this place.
6 Q Will you provide any ancillary services like
7 shampooing, grooming, nail care?
8 A Yes. We will be providing grooming, bathing. We
9 will be selling some products, not a lot because there's
10 also a Pet Value in the shopping center as well. I will be
11 only selling pretty much medicated shampoo, prescription
12 diets and some leashes and collars maybe with a logo on it.
13 Q So by that you mean, you don't have any bulk sales
14 of big 20-pound bags of dog food, things like that?
15 A No. The only dog food that we'll be selling will
16 be prescription dog food.
17 Q Okay. Elaborate on the surgical services that
18 you'll be providing.
19 A Well, the majority of the surgeries that I'm going
20 to be performing are routine surgeries, spays, neutering,
21 cystonomy, tumor removal, but the other ones is if an animal
22 requires a spleen removal, which is something common that I
23 see in the trauma unit, general practice, I will be fully
24 equipped to do that. Or the bloat surgery, I'll be fully
25 equipped to do that as well. I will have a ventilator and

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1 other services that mostly general practices will not have.
2 Q And kind of walk me through how that kind of
3 works, someone stops in early morning, drops the animal
4 off --
5 A Yes.
6 Q -- and then you operate on certain days, certain
7 hours of the day?
8 A Yes.
9 Q How does that work?
10 A When I am the sole doctor there, I'm probably
11 going to be doing surgeries on Tuesdays and Thursday
12 mornings. Most people will be dropping off their animals
13 between 7:00 a.m. and 9:00 a.m. During that time they'll be
14 getting their pre-op blood work, and hopefully the surgeries
15 will start at 9:00 a.m. And they will have time all
16 throughout the day to wake up from surgery, and they will
17 likely be picked up between 5:00 and 7:00.
18 Q And in the instances where the animal needs some
19 maintenance or something, you've got provisions to keep the
20 animal overnight?
21 A Yes. I will -- any animal that requires
22 additional IV fluid care overnight, they can definitely stay
23 in the hospital overnight. I will not be in the hospital
24 with them overnight, but they can definitely stay there
25 overnight for additional treatment.

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1 Q You will not have an animal boarding component,
2 per se, though?
3 A No, there will be absolutely no boarding
4 overnight.
5 Q So the only animals overnight are the ones that
6 just require post-surgical --
7 A Yes, post-surgical care or medical care.
8 Q Okay. Tell us how you set this up in terms of how
9 you move the animals through. Do you have a reservation
10 system, kind of walk in the door just spontaneously? Tell
11 me how you handle those two situations?
12 A Well, pretty much when they come in, they're
13 checked-in at the reception desk. They are then going to be
14 taken over to their ICU ward, which is going to be a
15 separate, closed-in room. Afterwards, they will be set up
16 for surgery. They'll get the IV catheter; they'll be taken
17 into the surgery room. After surgery is over, they will be
18 woken up and then they're going to go back into the ICU unit
19 which has, you can see through the whole unit. It's a clear
20 wall. It's just more isolated so that they don't hear any
21 sounds and we're not hearing any sounds outside so that they
22 can wake up in a nice, tranquil environment.
23 Q And you're comfortable? You've got enough holding
24 facilities to take care of any animals that are there during
25 the day for regular check-ups, plus the surgical animals as

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1 well?
2 A Yes.
3 Q All right. And how do you plan on satisfying the
4 County's requirement of logging all this in so the County
5 inspectors can check and see what's going on? How do you
6 handle that?
7 A Everything is going to be logged into our software
8 system and then backed up on our server and then another
9 back-up system as well.
10 Q Now I guess there would be on other operational
11 question. I need to ask you this. How do you dispose of
12 the waste? How do you take care of the stuff that's in the
13 building? And I guess the question also about animals that
14 you have to euthanize?
15 A Well, the animal waste -- any animal waste is
16 going to be double-bagged and then thrown into the trash and
17 picked up by a waste management company. And the euthanized
18 animals, I am hiring a company that will pick up as needed
19 and all those animals will also be double-bagged and an
20 additional bag that they will be also supplied for us prior
21 to pick-up.
22 Q The next series of questions I'm going to ask you
23 kind of relate to, so the Hearing Examiner can understand
24 the level of intensity to you, so what are the hours of
25 operation you're proposing for your business?

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1 A It will be 7:00 a.m. to 8:00 p.m.
2 Q Okay.
3 A Monday through Friday and then on Saturday it's
4 going to be 8:00 a.m. to 1:00 p.m.
5 Q And just give us a sense of the flow of traffic
6 during those hours. Has the, I mean when are you busiest,
7 when does it slow down, how does it kind of work?
8 A Usually between 7:00 to 9:00 a.m., that's when I'm
9 going to be getting the initial drop-off appointments. I'm
10 going to start seeing appointments at 9 o'clock and
11 appointments will run between 15 minutes to 30 minutes,
12 depending on what they're there for. Like a wellness,
13 initial first visit is going to be 30 and that's versus a
14 toenail trim, might be like 15 minutes. And then we're
15 going to stop seeing patients around 6:00 p.m. and the
16 initial pick-up will likely start again between 5:00 and
17 7:00 p.m., possibly 8:00.
18 Q So what does that mean during the day, how many
19 animals move through the building during the day?
20 A During the day, if I have another veterinarian
21 also there, likely about 30.
22 Q Okay. Since you mentioned another veterinarian,
23 you're obviously -- you've asked for up to 10 people in the
24 building at the same time.
25 A Yes.

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1 Q You're obviously; probably I've got to start with
2 that.
3 A Yes.
4 Q So, kind of walk us through the phasing of how you
5 think it will grow and when it will grow and what you'll
6 ultimately get to?
7 A Initially when I start, I'm going to be hiring two
8 part-time receptionists, a full-time technician and also a
9 full-time manager that will also function as a technician as
10 well. As we grow, I'm hoping to hire another veterinarian,
11 additional technicians and receptionist.
12 Q And is that sort of a two-step phase or I thought,
13 I actually thought there was probably maybe going to be some
14 intermediate steps?
15 A There is, it just depends on the clientele that
16 we're going to be receiving. So the more clientele, if we
17 need more staff, we'll be hiring more of a full-time
18 receptionist at that time and also probably an additional
19 technician as well.
20 Q So when you reach your maximum level of operation,
21 you probably ought to for the Hearing Examiner just kind of
22 break it down as to how many people and what they're each
23 going to be doing?
24 A At max we'll probably have two veterinarians
25 seeing appointments and then five technicians and two

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1 receptionists.
2 Q The -- I know you read the staff report, but you
3 probably said what is inherent and non-inherent? So is
4 there anything unusual about your operation that would for
5 some reason make it inappropriate for this or different in
6 this location than some other type of vet would have there?
7 A No.
8 Q You don't take care of camels or something like
9 that?
10 A No. No camels, no cows, no goats.
11 Q All right. Well, going back to your history, it
12 sounds like you've actually worked in lots of different
13 locations. So taking your experience as a veterinarian and
14 taking your experience in other locations, can the operation
15 you just described, is it harmonious with the setting --
16 A Oh, yes.
17 Q -- and the Damascus scene? And explain kind of
18 why that's the case?
19 A Yes. Well, I feel that most of the people will be
20 able to come to me rather than having to travel for a
21 further distance for specialty invasive care that I'm able
22 to perform, rather than having to travel to, like,
23 Gaithersburg or Frederick to a specialty hospital with some
24 cases.
25 Q Is there anything about the operation that you can

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1 envision that would be bothersome or objectionable or a
2 nuisance to anybody who is shopping in the center or who is
3 occupying the adjacent bays at all?
4 A No.
5 Q No?
6 A And currently there is no one on either side of my
7 bay right now, that there is nothing that's going to be
8 happening to bother anybody else.
9 MS. CITARAMANIS: While you're here, can you just
10 address the one thing that the Planning Board added with
11 regards to the --
12 MR. KLINE: The animals outside?
13 MS. CITARAMANIS: Yes, out in the --
14 MR. KLINE: I just realized I should have asked
15 that earlier.
16 MS. CITARAMANIS: Yes.
17 BY MR. KLINE:
18 Q Well, there's always this tension in terms of
19 taking dogs outside. Explain how you're going to handle the
20 animals in terms of their limited exposure to being outside?
21 A When the animals have to relieve themselves, they
22 will be taken outside to a grassed area that's fenced in
23 already by the Damascus Center. They will relieve
24 themselves. The staff will pick up the waste, put them into
25 a garbage bag, another garbage bag and then the staff and

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1 the animal will come back into the facility.
2 Q Dr. Birken, I'm going to pull out a board that
3 we're going to -- this is a new exhibit or basically an
4 updated exhibit and --
5 MS. CITARAMANIS: Do I have that?
6 MR. KLINE: No. Well, you've got as Exhibit 5C an
7 earlier version of the floor plan and the architect brought
8 this to our meeting. And I realize that's mounted, so it's
9 going to be hard to get it off the board. So I'm going to
10 probably have to submit something to you later on. It's 5C,
11 but with a slightly revised interior floor plan.
12 MS. CITARAMANIS: Okay. Well, let me at least
13 find 5 -- oh, actually I'm holding 5C -- and just make
14 sure -- so you're saying what I have up here is --
15 MR. KLINE: The, they reorganized some of the
16 setup inside.
17 MS. CITARAMANIS: Well, because I see it has a
18 little A at the bottom and this one has A1.1 sheet.
19 MR. KLINE: It, well, it probably --
20 MS. CITARAMANIS: Which one should, which one
21 should I be working off of?
22 MR. KLINE: This is, well, first of all, I would
23 not normally be even bothered to get into the interior
24 because that's, you know, that's not something you use in
25 your rendering. I was going to have Dr. Birken explain the

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1 flow of the building and where she would be able to exit and
2 where this space was in the back. So what I'd like to do is
3 give you the new floor plan and put it in the record.
4 MS. CITARAMANIS: Okay.
5 MR. KLINE: Unfortunately because it's matted and
6 I can't get it off the board, I'm going to have to leave
7 this with you and then replace it with a -- I'm sorry, you
8 said you got --
9 (Discussion off the record.)
10 MS. CITARAMANIS: Just as I believe that I have --
11 you sent in a disk and I copied the exhibits off that disk
12 and I'm wondering --
13 MR. OBER: It is on there.
14 (Discussion off the record.)
15 MS. CITARAMANIS: Let me see. So I might already
16 have -- I might already have what --
17 MR. OBER: It's going to look like this. You're
18 holding it now.
19 MS. CITARAMANIS: Right, but I have one that's
20 color, because I have a color copier at home, so --
21 MR. KLINE: The County could have forwarded that
22 for you.
23 MS. CITARAMANIS: No, that's mine. I was very
24 pleased to get the disk because that always helps for --
25 MR. KLINE: Well, we had trouble figuring out what

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1 was on -- this was a lot of stuff from a lot of people.
2 MS. CITARAMANIS: I guess I had it, but can I find
3 it? No.
4 MR. KLINE: Well, if you -- I think --
5 MS. CITARAMANIS: Okay. Here's --
6 MR. KLINE: -- Mr. Ober mentioned earlier, I saw
7 something if you actually go in this direction --
8 MS. CITARAMANIS: Okay. So that's the south.
9 MR. OBER: The drawing specifically addresses the
10 soundproofing and that's why it's different.
11 MS. CITARAMANIS: Okay. Let's --
12 MR. KLINE: Well, let me do this --
13 MS. CITARAMANIS: We'll just do -- if this is
14 fine, we will mark this.
15 MR. KLINE: This version of what I posted up here
16 and we'd ask that that be made an exhibit in the record of
17 the case.
18 MS. CITARAMANIS: Okay. So we will mark this as
19 27.
20 (Exhibit No. 27 was marked for
21 identification.)
22 MS. CITARAMANIS: And you, all right, you marked
23 it as Exhibit 27.
24 MR. KLINE: Okay.
25 MS. CITARAMANIS: Or do you want to use that and

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1 have me use this?
2 MR. KLINE: And actually, I'm going to use it as
3 well.
4 MS. CITARAMANIS: Okay.
5 MR. KLINE: So I'll just leave it with you.
6 BY MR. KLINE:
7 Q And, Dr. Birken, all I really wanted to do was
8 kind of walk through the building just real quickly. So on
9 the left-hand side of what's been marked as Exhibit No. 27
10 is your front door and you come in and you've got an entry
11 area in the front?
12 A Yes, there's two entry doors.
13 Q And just to --
14 MS. CITARAMANIS: You can get up there and -- if
15 you want.
16 MR. KLINE: Sure.
17 MS. CITARAMANIS: It would be easier to see.
18 MR. KLINE: Yes, maybe that's a better way to do
19 that.
20 THE WITNESS: Okay.
21 BY MR. KLINE:
22 Q Doctor, all I really wanted you to show was where
23 you take animals out of the building on the back side and
24 then what's the character of the situation in the back of
25 the building that you would use for the animals to relieve

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1 themselves?
2 A Okay. So --
3 Q And you're just going to need to have to point out
4 for her because it's being transcribed what you're pointing
5 at, upper right-hand corners, something like that.
6 A Okay. In the middle of the hospital is the ICU
7 ward, so this, I'm sorry, this is the ICU ward right here.
8 So this is where the animals will be kept pre, prior to
9 surgery and after surgery.
10 MS. CITARAMANIS: This -- oh, I see. ICU recovery
11 room area?
12 THE WITNESS: Yes.
13 MS. CITARAMANIS: Okay.
14 THE WITNESS: And there is a door on the right
15 side of it that leads also into the wards where there are
16 additional dogs back there and additional cages. And then
17 you can go again to the right again and then you can go
18 outside through this exit door and onto the grass area where
19 the dogs would be able to relieve themselves.
20 BY MR. KLINE:
21 Q And what's the size of that space, how large is
22 it?
23 A You're going to have to refer to my husband for
24 that because I don't know of the dimensions on the --
25 Q That's not a problem. But very simply it's

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1 basically protected back there. It's not exposed to the
2 general public?
3 A Yes. It's protected by a fence on either side, on
4 either side and I'm pretty sure the area is 11 feet by, I
5 don't remember the other --
6 Q Sure.
7 A -- dimension.
8 Q I mean I guess for the other stores, it's just a
9 probably a loading area --
10 A Yes.
11 Q -- for the backs of the stores?
12 A Yes.
13 Q Okay. Great. But you've got it set up where
14 you've got actual grass and can use it for this function?
15 A Yes.
16 Q Okay. Sure?
17 MS. CITARAMANIS: Just clarification since I'm
18 going to ask this question anyway.
19 MR. KLINE: Yes.
20 MS. CITARAMANIS: So it's an area that is
21 exclusively for her, it's not part of common area, it's
22 not --
23 THE WITNESS: My area behind me is my area.
24 MS. CITARAMANIS: And it's all grass?
25 THE WITNESS: Yes.

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1 MR. KLINE: And fenced off.
2 THE WITNESS: And fenced off.
3 MS. CITARAMANIS: So it is exclusive for the --
4 MR. KLINE: Exactly.
5 MS. CITARAMANIS: Okay.
6 MR. KLINE: Thank you.
7 BY MR. KLINE:
8 Q And this is the final one and the big one. And
9 the Zoning Ordinance basically says if you build it and
10 operate it the way you just described, is there anything you
11 can conceive about the operation would be basically, that
12 would adversely affect the health, safety or welfare of
13 people in the shopping center or people coming to visit you
14 at all?
15 A No.
16 Q Okay. Because it's a nice, clean --
17 A It's a nice, clean, hygienic environment.
18 MR. KLINE: Ms. CitaraManis, that was all the
19 questions I had to ask.
20 BY MS. CITARAMANIS:
21 Q Okay. Let's see if I have -- with regards to the
22 ancillary services, there's a little confusion in the staff
23 report, maybe it's just me, but you talked about it being
24 less than 20 percent, but there was another pet service? Is
25 that your --

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1 A No. There's a Pet Value, which is similar to
2 Petsmart --
3 Q Oh, okay.
4 A -- in the shopping center.
5 Q Okay. So the ancillary services you're talking
6 about are --
7 A Medical.
8 Q -- that you put up on the shelf?
9 A Like Frontline, Heartguard and the flea and tick
10 preventative medications.
11 Q Okay.
12 A The medicated shampoos that you require a
13 prescription for, the medicated dyes that you require a
14 prescription for that's not sold at a general pet store.
15 Q Stuff we all see when we take our animals into the
16 vet?
17 A Yes.
18 Q Fortunately, they don't clamor and say, I want
19 that, mom. Okay. You explained the grassy area. And you
20 said they would be on leashes?
21 A Yes.
22 Q And is that, the fenced area secure?
23 A Yes.
24 Q With, can you pull up the one where it shows the
25 building height?

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1 MR. KLINE: Oh, yes, sure. The elevation?
2 MS. CITARAMANIS: Just the elevation drawing.
3 MR. KLINE: Sure. Okay.
4 MS. CITARAMANIS: And I understand it's the one on
5 the bottom.
6 MR. KLINE: Yes. I'm pointing to the two bays --
7 MS. CITARAMANIS: Yes. Okay.
8 MR. KLINE: -- that are covered by the lease.
9 BY MS. CITARAMANIS:
10 Q So we're looking head-on to the right. Is anybody
11 in there?
12 A Not currently.
13 Q Okay. And, you know, the space between the next
14 one?
15 A There's no one there either.
16 Q Okay. And in looking at Exhibit 27, just so that
17 I make sure I'm -- the, this would be the exit out into the
18 back? The grassy area is in the back, correct?
19 A Yes.
20 Q Okay. You don't want to assume anything. I'm
21 just making sure. So with regards to -- your office shares
22 a wall with the one, the unoccupied space to the right?
23 A Uh-huh.
24 Q And the surgery room and the ward room are on the
25 corner? They don't share a wall with the next building?

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1 There's an open space, correct? That's what it looks like.
2 There's --
3 MR. KLINE: Yes.
4 BY MS. CITARAMANIS:
5 Q Is it between the --
6 A Well, the, it would be the, if I'm understanding
7 your question correctly, it would be the store, the bay,
8 yes, that bay would be sharing a wall with the radiology
9 room and the surgery room, but there's no one occupying that
10 space currently.
11 Q No, but what I'm saying, but where -- just where,
12 what side of the building would, where the dogs will be
13 housed? I think I'm looking at Ward Room 109.
14 (Discussion off the record.)
15 BY MS. CITARAMANIS:
16 Q The surgery room.
17 A It's going to be on this side.
18 Q This is going to be in the middle of the building?
19 A Well, we're taking up both of these stores.
20 Q Oh, so now that's --
21 MR. KLINE: I guess this is a terminology
22 question. The building is all of Building D. I think she's
23 thinking building maybe in the context of her leased space.
24 MS. CITARAMANIS: Correct.
25 MR. KLINE: Yes.

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1 MS. CITARAMANIS: And now that she's pointed out
2 the two spaces, I was one over.
3 MR. KLINE: Oh, okay.
4 MS. CITARAMANIS: Thinking that it was one over.
5 It's -- she doesn't have the one --
6 MR. KLINE: Adjacent to the little corridor or --
7 MS. CITARAMANIS: Yes.
8 MR. KLINE: -- going to the back? Correct.
9 MS. CITARAMANIS: That's not yours?
10 THE WITNESS: No.
11 MR. KLINE: That's correct.
12 THE WITNESS: No, this one and this one are not
13 mine and they are empty bays right now.
14 MS. CITARAMANIS: Okay. I was just trying to
15 establish how close the pets were to the next office. I
16 assumed that, or at least maybe I thought it was to the end
17 and had the space on the left-hand side.
18 MR. KLINE: Yes.
19 MS. CITARAMANIS: Okay. All right. Thank you.
20 Is there anything in your statement of operations that needs
21 to be amended or changed?
22 THE WITNESS: No.
23 MS. CITARAMANIS: Okay. And somebody else will be
24 addressing the soundproofing?
25 MR. KLINE: Yes.

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1 MS. CITARAMANIS: Okay. I don't think that I have
2 any other questions. Certainly if something --
3 MR. KLINE: We won't be releasing her, so she'll
4 be available if something comes up.
5 MS. CITARAMANIS: Yes, in case, in case something
6 jogs my memory --
7 MR. KLINE: Sure.
8 MS. CITARAMANIS: -- I will ask, but I think we've
9 addressed everything for you. Thank you.
10 THE WITNESS: Thank you.
11 MS. CITARAMANIS: All right.
12 MR. KLINE: Mr. Ober, could you join us, please?
13 MS. CITARAMANIS: And I've already sworn you in,
14 so just listen for Mr. Kline's questions and answer them to
15 the best of your ability.
16 BY MR. KLINE:
17 Q Mr. Ober, how about just spell your name and
18 giving us your home or business address?
19 A Tim Ober, O, B as in boy, E-R. My address is
20 26832 Dix Street in Damascus, Maryland.
21 Q And you're the spouse of Dr. Birken?
22 A I am.
23 Q And it sounds like actively involved in this
24 project?
25 A I have, fortunately for me I've, I could be

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1 probably a veterinarian at this point.
2 MS. CITARAMANIS: If only it were that easy,
3 right?
4 MR. KLINE: Yes. Yes.
5 BY MR. KLINE:
6 Q Actually, you do have a special role in this and
7 you probably need to explain first of all your background so
8 you can explain the comments you're going to be making after
9 that?
10 A I'm a local general contractor in the area
11 specializing in commercial construction. My expertise, I'd
12 like to think that I have expertise in the veterinarian
13 field as well and it's one of our niches in our company.
14 But me and Melissa have been together for many, many years
15 and while she was in med school. So, you know, I've learned
16 a lot through the years of what it takes to take care of an
17 animal, you know, what the noise levels an animal causes,
18 things of that nature.
19 Q In the end, you'll be responsible for getting the
20 interior basically built-out, fitted up and operating?
21 A With the help of my trusted architect behind me,
22 yes, sir.
23 Q Is there anything you can add to the description
24 of kind of the access to the rear? What's the character of
25 that space because I think that's of interest to the Hearing

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1 Examiner, what's going on back there, you know, how it's
2 being used?
3 Q Yeah, actually I'd like to --
4 A Feel free to use any of the exhibits you've got up
5 there.
6 MS. CITARAMANIS: Just make sure you identify --
7 MR. KLINE: Yes.
8 MS. CITARAMANIS: -- what exhibit you're talking
9 about.
10 THE WITNESS: Sure. On Exhibit 27 here, to be
11 very specific, the rear of the building does have common
12 area and the, our space is 40 feet long. Actually, I'm
13 going to refer to another exhibit real quick.
14 MS. CITARAMANIS: Okay. That's fine.
15 THE WITNESS: In Exhibit IB, at the bottom,
16 currently just so you know how many tenants are here,
17 there's only one tenant occupying this entire row. So for
18 any prospective tenants in the future, they would obviously
19 know that a veterinarian clinic is actually present should
20 they choose to stay or they come in and whatnot. Secondly,
21 our space is here and here.
22 BY MR. KLINE:
23 Q And when you say that, just kind of identify again
24 because it's being transcribed.
25 A And our space is --

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1 Q Left-hand side.
2 A From the, my right-hand side we are two spaces in
3 and three spaces, specifically space 102 and 103. As you
4 see this gate right here, this building all the way to the
5 right is at a 45 degree angle and then our space, obviously,
6 is straight. You see this gate here. There's also a gate
7 at the left-hand side here that is flush with this building
8 elevation on the rear of the building. You have the
9 building wall 11 feet from that wall. You have a retaining
10 wall that there's a large hill behind us and a McDonald's on
11 top of this hill setting back probably another 500 to 1,000
12 feet. But the retaining wall itself is 16 to 18 feet,
13 depending upon the elevation of the hill at that current
14 spot. The, going, referring back to --
15 MS. CITARAMANIS: So the retaining wall is in the
16 back?
17 THE WITNESS: That is correct. You have a, you
18 have the actual building wall and then 11 feet from that you
19 have a retaining wall. And that retaining wall is upwards
20 to 18 feet.
21 BY MR. KLINE:
22 Q Okay. And before you leave that, let me go back
23 to Exhibit 4 which is the overall site plan. You can go
24 ahead, why don't you move it over there. Can you see that?
25 A Okay.

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1 Q Walk us through that, would you just describe one
2 more time using --
3 A Sure.
4 Q -- Exhibit --
5 MS. CITARAMANIS: If you can just give me one so I
6 can --
7 MR. KLINE: Yes, sure.
8 MS. CITARAMANIS: -- pull that up so we're on the
9 same page?
10 THE WITNESS: Exhibit 4.
11 MS. CITARAMANIS: Here we go. Okay.
12 THE WITNESS: So, again, on Exhibit 4, up on --
13 this is our row of development.
14 BY MR. KLINE:
15 Q So you're pointing at the building where we have
16 the red star on Exhibit 4 showing the location of the bays
17 you were leasing?
18 A Correct. Immediately behind this building and red
19 star, there's a large hill here. This hill is also owned by
20 the development company or the owner of the property. So
21 McDonald's sits back quite a ways. But this line right
22 north of the red star is the retaining wall and, again, it
23 protrudes.
24 Q So you're referring -- there's a double line? The
25 gray is the footprint of the building itself. There's some

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1 space between it and then there's a double line reflecting
2 your retaining wall?
3 A That is correct.
4 MR. KLINE: Does that make sense?
5 MS. CITARAMANIS: I see it.
6 MR. KLINE: Okay.
7 MS. CITARAMANIS: I do see it.
8 MR. KLINE: Sorry.
9 THE WITNESS: And, again, it's, you know, it's as
10 high as 18 feet in most sections. So it is a natural
11 absorber of sound. But right to the, my left-hand side
12 adjacent to the west parking lot, there's a locked gate as
13 well. So you have, not only do you have a locked gate here,
14 you have a locked gate at every spot around the development
15 that you see that's open.
16 BY MR. KLINE:
17 Q Okay. So I was wrong. There are no basically
18 deliveries around the back? There's accessibility, but you
19 don't have deliveries in the back?
20 A It is advised by the development company that if
21 you can deliver your services to the rear of the building,
22 they would appreciate it, but it's not a requirement. Now
23 the 11 feet from the building to the retaining wall, there
24 is six feet of sidewalk which is the common area. Five feet
25 of grassy area, which is our actual leasehold area. So the

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1 grassy area that Melissa has identified is actually in our
2 lease. The sidewalk would have to remain clear and clean at
3 all times. It's a requirement in our leasehold to deodorize
4 if necessary and to replace any kind of sod that may get
5 mistreated from dog urine or feces.
6 MS. CITARAMANIS: So on the other side of the
7 fence is a sidewalk is what you're saying?
8 THE WITNESS: Adjacent to the building, attached
9 to the building is a six foot sidewalk.
10 MS. CITARAMANIS: Show me.
11 THE WITNESS: This directly right behind the
12 building --
13 MS. CITARAMANIS: Yes?
14 THE WITNESS: -- it's six feet of sidewalk and
15 then five feet of grass and then a retaining wall.
16 BY MR. KLINE:
17 Q Okay. I thought you had a fence?
18 A The fence is only at the end of the, at the end of
19 the buildings.
20 MS. CITARAMANIS: Oh, it's not a, your two lots
21 from there out, it's the whole back is fence?
22 THE WITNESS: It's the whole back, that is
23 correct.
24 MS. CITARAMANIS: So -- okay. So other tenants
25 would have --

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1 THE WITNESS: They could have immediate access to
2 anybody taking their dog out to relieve itself.
3 BY MR. KLINE:
4 Q So the general public doesn't go back there --
5 A Correct.
6 Q -- but individual bay owners can walk back there
7 and enter back doors, right?
8 A Correct.
9 Q And so you cross the sidewalk and use -- because I
10 thought there were perpendicular fences come off the back of
11 the building --
12 A No.
13 Q -- to secure that area?
14 A The only reason why that is not allowed even by
15 Montgomery County is because there's a common area and
16 these, this common area is not a common area by right or
17 privilege, it's because of, what you said, access, you know,
18 for fire access and for, you know, escaping any kind of
19 endangerment.
20 MS. CITARAMANIS: Okay. But the area directly
21 behind these two particular, is common area that's grass,
22 but the whole area is fenced in, it's not just the vet's
23 area that's fenced in?
24 THE WITNESS: All right. Well, somewhat, right.
25 The sidewalk is the common area. The grassy knoll area is

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1 actually in our leasehold. So --
2 MS. CITARAMANIS: Okay.
3 THE WITNESS: -- should there ever be a
4 requirement that we have to create, I don't want to say the
5 word run, but if we had to --
6 MS. CITARAMANIS: Yes, you don't want to say that.
7 THE WITNESS: If I had to secure an animal in some
8 form or way, form or fashion, it's actually that we're
9 paying for that little five foot by 40 feet area.
10 BY MR. KLINE:
11 Q I've got a stupid question, but it's because I
12 guess I'm getting, educating myself. So your lease area
13 actually goes to the retaining wall, but has --
14 A It's minus the six foot of common area sidewalk.
15 Q Which is between the back of the unit and the
16 grassy area. So how, why do we have a leased area with a
17 skip in the middle of it or a --
18 A Specifically --
19 Q -- gap in the middle?
20 A Because we -- the particular service that we're
21 providing we have to provide an area for the dog to
22 relieve --
23 Q Yes, I see.
24 A -- a dog or a cat to relieve themselves and we
25 otherwise cannot do so in --

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1 Q So you're leasing --
2 A -- a parking lot.
3 Q You're leasing two non-contiguous areas?
4 A That's correct.
5 Q I've got it now. Okay. I understand.
6 A And it's in the same fashion as I don't pay for
7 areas that I can't use inside the interior space, i.e., a
8 steel column. You know, I can't use that space, so the same
9 thing for the sidewalk. I can't use the sidewalk because
10 it's a common area or they force the common area on me,
11 so --
12 Q So to pursue the discussion, I guess, what's the
13 treatment of the gate at the right-hand side of the east end
14 of the building D? Is it locked so that it's only
15 accessible by the tenants or is it just --
16 A It's, there is only one tenant there currently and
17 as it's seen --
18 Q Yes, but ultimately?
19 A -- in recent history, the lock hasn't been placed.
20 There's obviously a place that a lock can be attached to it,
21 but I haven't seen them lock it as yet.
22 Q Okay. Fine.
23 A And currently when you enter this gate, this is
24 where the sprinkler house and the electrical room for the
25 entire development here is right here at this corner. So,

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1 again, the need for the six foot of property.
2 Q And the last question is then given all that is
3 back there, what's the purpose for the, well, I'll say the
4 arcade or something, that obviously takes you back to the
5 area in the rear? What -- that's just another way of
6 getting back? You say you can enter from, or walk on the
7 right-hand or east end of the building, do you, and then
8 this median, well, enter the median?
9 A Again, from my professional opinion, you know,
10 this is not a use for loading materials --
11 Q Okay.
12 A -- or retail merchandise. And, again, it's a
13 simple means that you --
14 Q Okay.
15 A -- so going back to your lockability, I don't
16 think that it would be a possibility to lock it because --
17 Q Okay.
18 A -- it's being used as a form of egress.
19 Q Okay.
20 MS. CITARAMANIS: Just real quick. The, I found
21 it. I see a fence between the two?
22 THE WITNESS: Yes, this fence here?
23 MS. CITARAMANIS: That's a pedestrian fence, not a
24 vehicle fence, right?
25 THE WITNESS: That is correct.

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1 MS. CITARAMANIS: Or is it?
2 THE WITNESS: No, that's --
3 MS. CITARAMANIS: A vehicle can't go through
4 there?
5 THE WITNESS: No, ma'am.
6 MS. CITARAMANIS: Okay. And that's locked or
7 that's closed off to the public? I think that's what --
8 THE WITNESS: That's correct.
9 MS. CITARAMANIS: And when --
10 THE WITNESS: The same thing with the side of the
11 building here.
12 MS. CITARAMANIS: Okay. And when you get down,
13 when you get down to the end of the building where the star
14 is, I'm looking at, I guess that would be the west side --
15 THE WITNESS: Here?
16 MS. CITARAMANIS: Yes. Is -- did you say to the
17 back there was a gate there as well?
18 THE WITNESS: Currently there's no gate there.
19 MS. CITARAMANIS: Is there any plans for that to
20 be gated? I mean is it -- and I don't even know if it's
21 necessary, I was just curious --
22 THE WITNESS: Yes.
23 MS. CITARAMANIS: -- just to clarify prior
24 testimony because that's where I thought the gate was until
25 I found this. So --

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1 THE WITNESS: As of right now, there is no plans
2 to put a gate there.
3 MS. CITARAMANIS: Okay.
4 THE WITNESS: But the, there is a gate here --
5 MS. CITARAMANIS: Yes.
6 THE WITNESS: -- south of the red star.
7 BY MR. KLINE:
8 Q Okay. So you're pointing below the Retail
9 Building B on the Exhibit 4?
10 A Yes. So this, right below Retail B, if you want
11 to call this a channel or what have you, the rear of the
12 development, it stops here. Everything is blocked off here.
13 MS. CITARAMANIS: Okay. All right.
14 BY MR. KLINE:
15 Q Suffice it to say, because of the retaining wall
16 and the function, the only people that are going to use it
17 are probably other owners or tenants in the bays, is that
18 correct?
19 A That is correct.
20 Q Okay. All right. I'm going to ask you a
21 question, because I'm not sure who else to ask the question.
22 But in your opinion is the parking adequate for your use,
23 well, first of all with, does your use meet the parking
24 requirements for the shopping center --
25 A Absolutely.

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1 Q -- in terms of --
2 A The, one of the best amenities or the best
3 privileges that we have to come to this location is that
4 it's a new development. And, you know, it's a recent new
5 development that, you know, addresses any kind of handicap
6 or ADA concerns, and parking overwhelmingly addresses this.
7 And we have over 700 spaces in the development which at
8 least at this time are nowhere near utilized. Directly in
9 front of our space we have two handicap stalls. When I mean
10 directly in front, I mean it's smack dab in front of the
11 front door and with ADA ramps and trash can receptacles.
12 Q Because you're sort of in the building business,
13 you probably familiarize yourself with all the development
14 standards in that room. Does the use meet all the
15 development standards required by both the zone and the
16 special exception itself?
17 A Absolutely it does.
18 Q Well, because you've developed an expertise in
19 veterinary hospitals you say, is there anything you know of
20 given the situation you feel would create a situation that
21 would be inappropriate or inharmonious with the surrounding
22 shopping center or the neighborhood?
23 A No, not at all.
24 MR. KLINE: No further questions of Mr. Ober.
25 THE WITNESS: Thank you.

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1 MS. CITARAMANIS: Okay. Just so that I'm clear.
2 You're offering his testimony as, based on his background in
3 construction?
4 MR. KLINE: Yes. The answer is yes.
5 MS. CITARAMANIS: Okay. But --
6 MR. KLINE: He certainly has an expertise in that.
7 MS. CITARAMANIS: But not necessarily to the level
8 of being an expert?
9 MR. KLINE: I wasn't trying to qualify him.
10 MS. CITARAMANIS: Okay. I just wanted to make
11 sure because, I mean I understand what you're saying, but at
12 the same time I want to make sure I'm clear that you're
13 aren't being offered as an expert because I think you'd need
14 a little bit more.
15 MR. KLINE: Well, we'll get into more in a second,
16 yes, but when we were getting together in my office before
17 we came over here, the doctor and I were both listening to
18 these two gentlemen talk. We don't understand what you're
19 telling us, so we needed somebody to kind of give you a
20 little better sense of how some of the things lay out.
21 MS. CITARAMANIS: Okay. Let me just -- and the
22 architect will be addressing the walls and --
23 MR. KLINE: Yes, ma'am.
24 MS. CITARAMANIS: Okay. Okay. I don't have any
25 questions right now.

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1 THE WITNESS: Thank you.
2 MS. CITARAMANIS: Thank you, Mr. Ober. Okay.
3 Mr. --
4 MR. KLINE: When you're ready, Mr. Sur, you let me
5 know.
6 MR. SUR: Let me, yes, let me --
7 MS. CITARAMANIS: You want to take a few minutes?
8 MR. SUR: This, this info for here that we are
9 going to use.
10 MS. CITARAMANIS: Okay.
11 MR. SUR: All this there.
12 MS. CITARAMANIS: Okay. I've already sworn you
13 in, so just wait for Mr. Kline's questions and answer them
14 to the best of your ability.
15 BY MR. KLINE:
16 Q Mr. Sur, would you please state and spell your
17 name and give us your professional address?
18 A Yes. I am Daniel Sur. I am architect registered
19 in the state of Maryland. The company that I am working
20 with is in business in 1983 and they specialize in two
21 particular facilities which is houses for both horses and
22 animal hospital. So, and I was working and joined the
23 company in 2004 and I performed several animal hospitals.
24 So I have good knowledge of how it works and which is the
25 function and which is the -- and particularly I was involved

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1 in another three special exceptions for animal hospitals
2 which is TLC. It's an animal emergency hospital in
3 Leesburg; Leesburg Veterinary Hospital, which is another
4 hospital around 20,000 square feet in Leesburg; and I am
5 working currently with another veterinary called Stream
6 Valley in Ashburn. So also it's under a special exception.
7 MS. CITARAMANIS: Stream Valley?
8 THE WITNESS: Stream Valley, uh-huh, Animal
9 Hospital.
10 MS. CITARAMANIS: Stream Valley?
11 THE WITNESS: Stream Valley.
12 MS. CITARAMANIS: Okay.
13 THE WITNESS: Uh-huh, Animal Hospital.
14 MR. KLINE: Okay. Let me try and catch up now. I
15 have provided a copy of his resume and I'm going to ask him
16 some questions because I'd like to qualify him as an expert
17 in this acoustical issue that the zoning ordinance requested
18 us to address.
19 MS. CITARAMANIS: Okay. And just real quick, and
20 maybe I just missed it, but I don't think he gave his
21 address or did you? I did not hear --
22 THE WITNESS: No.
23 MS. CITARAMANIS: I did not hear your professional
24 address just for the record.
25 THE WITNESS: Yes. The address is 36855 West Main

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1 Street in Purcellville, Virginia.
2 MS. CITARAMANIS: Okay. Thank you.
3 THE WITNESS: And --
4 MR. KLINE: Sure. Well, no, let me ask you some
5 questions.
6 THE WITNESS: Okay.
7 BY MR. KLINE:
8 Q So as you know, the Hearing Examiner has your
9 resume. Just tell us a little bit about your educational
10 training? Could you kind of tell us a little bit about your
11 professional experience, but we'll need to know where your
12 degrees -- what they are and where they come from?
13 A Okay. I am licensed architect in 1991. I am
14 certified architect in the union since 2010 and I am also, I
15 hold a current certification, which allows me to get the
16 state license architect in any state of the Union. So, that
17 answer the question?
18 Q Okay. In the cases you mentioned in Leesburg,
19 were you qualified as an expert in design and noise issues,
20 acoustical?
21 A Yeah, the expertise qualified, but it's when you
22 are entitled as an architect in any state because you obey
23 and follow and protect the welfare, the safety and the
24 security and, yes, and the protection of the neighbor.
25 Q What I think the Hearing Examiner would love to

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1 hear is that someplace in a body similar to this they, or a
2 court of law, they accepted you as an expert in the subjects
3 that I want to talk about?
4 A Yes, they did. Yes, they did. Yes, indeed. I
5 did previously in both special exceptions and in Loudoun
6 County and they accept me as an expert in that project.
7 And --
8 Q And before that, was it a Board of Appeals or a
9 Planning Commission? What was the nature of that forum?
10 A The nature, the nature of that involves, involves,
11 yes, it's a Board of Appeal in Loudoun County for approval
12 of that special exception. It was.
13 Q Okay. And you covered the area of noise --
14 A They asked --
15 Q -- and issues like that?
16 A Yes, this is two important things and two
17 important parts the animal hospital has. One is odor, the
18 other is noise. And --
19 MS. CITARAMANIS: What's the first one?
20 THE WITNESS: Odor. O-D-O-R.
21 MS. CITARAMANIS: Okay.
22 THE WITNESS: And we cover, I covered both
23 aspects. And the first one related to the other that we,
24 it's also an important thing here in this one is how you
25 work with the mechanical system to create positive and

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1 pressure, positive and negative pressure on the building to
2 have the air quality that you need.
3 MR. KLINE: Okay.
4 THE WITNESS: And the second aspect is --
5 MR. KLINE: Okay.
6 THE WITNESS: -- there is the noise.
7 MR. KLINE: Yes. We've got to -- what I'd like
8 you to do is give us your academic training, where you went
9 to school, where -- you've told us where you got your
10 degree.
11 THE WITNESS: Yes. Okay. Yes, my, my, my
12 background. My background starts in Cordoba, Argentina, in
13 1986 is when I finished my, my career. And I would graduate
14 as architect with a high, high level qualification of
15 architect. There is no another qualification like that.
16 Making a comparison here would be a Ph.D. I am a doctor in
17 architecture in Argentina and was working, was working for
18 several towns and addressing the components of public
19 buildings, I mean institute buildings, which is security
20 buildings, which could be a fire station, a police station
21 and was working with hospitals and --
22 Q Okay.
23 A -- moving --
24 Q Go on. Go ahead. And you say you're now
25 registered in how many states?

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1 A Three.
2 Q Three states?
3 A I am registered in Maryland, D.C. and Virginia.
4 Q Okay. And, but you're eligible to be registered
5 in other states because of your --
6 A They --
7 Q -- power?
8 A Yes. I have the National Architectural
9 registration that allow me to register as an architect in
10 any state of the Union.
11 Q And so you have been practicing architecture since
12 when?
13 A Since 1991.
14 Q Okay. And during that time you've worked
15 extensively, I gather, with veterinary clinics as well as
16 other facilities?
17 A Yes.
18 MR. KLINE: Ms. CitaraManis, what I'd like to do
19 based on his background, he's almost a doctor apparently,
20 and his length of time in practice and his certifications,
21 offer him as an expert in architecture and as he will
22 explain qualified to address the acoustical issues.
23 MS. CITARAMANIS: Okay. Have you ever been
24 qualified here in Montgomery County?
25 THE WITNESS: No.

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1 MS. CITARAMANIS: Okay.
2 THE WITNESS: I never, at least anything in
3 Montgomery County.
4 MS. CITARAMANIS: Or any, in any court hearing?
5 THE WITNESS: No, any courtroom in Maryland, no.
6 MS. CITARAMANIS: Okay. So you're looking for, I
7 mean definitely I think he has the qualifications --
8 MR. KLINE: Yes.
9 MS. CITARAMANIS: -- and probably more, but I just
10 want to make sure it's in architectural design and noise, is
11 that what -- I mean --
12 MR. KLINE: Yes.
13 MS. CITARAMANIS: I heard you say that. Can you
14 just tell me what --
15 MR. KLINE: Sure.
16 THE WITNESS: When, when --
17 MR. KLINE: It's okay. Okay. No, if we were
18 doing a freestanding building, I'd be, I'd basically be
19 asking to qualify to describe the building and why it's
20 compatible and everything. Since we're using the inline
21 facility, I think his testimony is obviously almost
22 exclusively a focus on the noise and acoustical issues --
23 MS. CITARAMANIS: Okay.
24 MR. KLINE: -- which kind of flow from the design
25 issues. So I would say an expert in architecture, but for

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1 purposes of the hearing today with a specialty in being able
2 to address acoustical issues.
3 MS. CITARAMANIS: And just one follow-up before we
4 move on. In your experience with other animal hospitals,
5 did you have to deal with the acoustical issues for those
6 particular --
7 THE WITNESS: Yes, because it's part of the
8 special exception.
9 MS. CITARAMANIS: Okay.
10 THE WITNESS: In anything that is patient, noise
11 is a topic.
12 MS. CITARAMANIS: I'm just making sure that --
13 THE WITNESS: Uh-huh.
14 MS. CITARAMANIS: -- you've been down that road.
15 Okay.
16 MR. KLINE: And I'll let you get -- I'll let you
17 talk about --
18 MS. CITARAMANIS: Yes.
19 MR. KLINE: -- others too.
20 MS. CITARAMANIS: Yes. Okay. That's fine. I
21 think you've, he's qualified to speak as an expert on this,
22 that area.
23 BY MR. KLINE:
24 Q Sir, it's interesting, however, this really
25 focuses a lot on the noise issue and as we were talking

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1 before, and in the situation -- it's easier to deal with in
2 the situations where we have detached buildings in
3 residential zones where we have very specific decibel
4 standard --
5 A Uh-huh.
6 Q -- and it's easy to just, well, with a meter you
7 tell us how we're going to meet that number.
8 A Correct.
9 Q It's a little bit different in the commercial
10 setting because all it says is it will be soundproof. So
11 what I'd like you to do is explain for the Hearing Examiner
12 the work you did to demonstrate how you'd be able to satisfy
13 the Court's soundproof standard in the zoning ordinance.
14 A Okay. Before all, there is, there is a reason of
15 why in the sound cove is very short when you are talking
16 about commercial building because in the original design by
17 itself you have to cover, determine amount of decibels.
18 Typical, typically in any commercial building you have the
19 50 number.
20 MS. CITARAMANIS: The what?
21 THE WITNESS: 50, 50 decibels.
22 MS. CITARAMANIS: 5-0?
23 THE WITNESS: 5-0.
24 MS. CITARAMANIS: Okay.
25 THE WITNESS: Uh-huh, decibels. Typically you

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1 have that number when you are designing a commercial
2 building. So when you have that condition, it's more easy
3 to work in, in that commercial condition. In residential,
4 it's totally different, it's totally different in that there
5 is also, apply all the norms and topics and number. So
6 going to the building, I would like to explain there.
7 BY MR. KLINE:
8 Q Yes. Yes. So what we've done is we've put up
9 Exhibit No. 27 which you had prepared and you've -- what I'd
10 like you to do first of all for Ms. CitaraManis is just
11 explain the legend and the coloration you've got on it.
12 A Yes.
13 MR. KLINE: And you have a reduced version of that
14 so you can see it? If not, I, you know, great.
15 MS. CITARAMANIS: Actually, unless you gave me
16 one.
17 MR. KLINE: Yes.
18 THE WITNESS: I did these on three colors.
19 MS. CITARAMANIS: So you're looking at -- identify
20 Exhibit 27?
21 THE WITNESS: This one, yes.
22 MS. CITARAMANIS: Okay. All right.
23 THE WITNESS: So now when you are looking at this,
24 obviously the biggest problem to be soundproof is the
25 dividing walls. The dividing walls, they over here by the

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1 Suite 101 and the dividing walls by Suite 104.
2 MS. CITARAMANIS: Okay. 101 being to the left,
3 104 being to the right?
4 THE WITNESS: Correct. That is the critical walls
5 that need to be isolated. Even though we are making extra
6 protection for the proper building, for the building itself
7 which is the walls indicated with color six, sorry, green,
8 color green and we indicate a little bit the color cyan,
9 which is over existing CMU wall on the rear of the building
10 where the ramps are, where the ramp is.
11 Now particularly in the design of this, in any
12 animal hospital you have a public courier, this is any
13 public courier in the rear of the house.
14 BY MR. KLINE:
15 Q And, Mr. Sur, do me a favor, you are pointing to
16 certain parts of the building. Can you kind of repeat that
17 so the transcript --
18 A Yes.
19 Q Okay.
20 A Yes.
21 Q So you're talking about the western one, or the
22 left-hand one-third?
23 A The area considered public is where the reception
24 and the waiting area is.
25 Q And on that Plan No. 27, what part of that plan is

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1 it?

2 A The first, sorry.

3 Q Yes. On Exhibit 27 you're pointing to the area on

4 the, what I call the left-hand one-third?

5 MS. CITARAMANIS: That would be the front.

6 MR. KLINE: Yes.

7 MS. CITARAMANIS: Is that correct?

8 THE WITNESS: It would be the front, correct.

9 MS. CITARAMANIS: It would be the front? Okay.

10 THE WITNESS: I can put it this way. It's better.

11 So if we consider that an entrance there and the rear of the

12 building is on top. I think I will be, you know, careful.

13 MS. CITARAMANIS: That was very helpful. Thank

14 you. That's how I was holding it.

15 THE WITNESS: Yes. So that is the first, that is

16 the first I am aware I create a protection which is the

17 green. That is the first isolation I create there. So it

18 would be the first barrier from the center of the building

19 where everything happened, because in an animal hospital the

20 treatment area, the treatment area is the heart. From there

21 is where everything happens.

22 So the other reason naturally is the first

23 protection to isolate the noise going to the reception area.

24 MS. CITARAMANIS: Okay.

25 THE WITNESS: So the people who is waiting in the

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1 area where you have the reception and you don't participate

2 with the noise, what's going on inside. The extra area

3 where we isolate is where they, it's called the work room

4 where the runs are.

5 MS. CITARAMANIS: When you say runs, tell me

6 what --

7 THE WITNESS: Run is a, it's a receptacle space

8 that could be built in CTU or could be, could be built with

9 some mechanical, not mechanical, some steel or framing there

10 that could be built in or stand alone.

11 MR. KLINE: Are --

12 THE WITNESS: This is where the dogs are, where

13 you are putting the dog.

14 BY MR. KLINE:

15 Q Are they individual cages for lack of a better

16 description?

17 A Could be individual cages, could be -- in this

18 case we are planning to put in metal cages which is metal,

19 steel frame with a base also in steel, steel, stainless

20 steel.

21 MS. CITARAMANIS: Okay.

22 THE WITNESS: That area is isolated with an

23 acoustic wall, graded acoustic wall there.

24 BY MR. KLINE:

25 Q When you say there, can you tell us what you're

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1 pointing to?

2 A Yes, the demising wall.

3 Q Okay. Along with a common wall with unit number?

4 A Correct. And it's isolated with an in-light there

5 to the facility by itself and it's isolated, reinforce the

6 isolation to the rear of the building because the CNU by

7 itself is an acoustic, is a strong, acoustic barrier. And

8 also in addition of that, I am using one inch metal furring

9 with half inch drywall, the drywall that we are using for

10 isolate also the ramp. So all that could be, we can call

11 that, that is the critical area where the dogs would, will

12 be there.

13 Q I'd like to elaborate on, I think you just asked a

14 question. I was going to do it this way. So when we think

15 about the loudest noise that will be created in the building

16 would be probably a large dog barking?

17 A Yeah.

18 Q All right.

19 A It would be that.

20 Q Right. And so most likely that would occur back

21 in that, what I'll call the left, upper-left corner --

22 A Yes.

23 Q -- because that's where all the dogs would be

24 held?

25 A Uh-huh.

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1 Q All right. So that's the critical area you've got

2 to really focus on?

3 A Yes.

4 Q Okay. Thank you.

5 A That is the critical area that is going to protect

6 not just the neighbor, it's also the same building where you

7 working in.

8 MS. CITARAMANIS: And that was ward, Room 109? I

9 think that's how it's identified?

10 THE WITNESS: Yes, correct.

11 MS. CITARAMANIS: Just, the blue area, what is the

12 blue area? I can't find any blue in here, but that doesn't

13 mean --

14 THE WITNESS: It's exactly right there.

15 MS. CITARAMANIS: Oh, okay, the back --

16 THE WITNESS: It's in addition to this.

17 MS. CITARAMANIS: Oh, see, mine is not showing up

18 blue.

19 THE WITNESS: Yes. It's an addition, it's an

20 addition of the existing CNU. It's an additional protection

21 that we are putting there to create some kind of absorption

22 of the noise.

23 MS. CITARAMANIS: Okay. And that's the only place

24 the blue wall is?

25 THE WITNESS: It's the only one.

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1 BY MR. KLINE:
2 Q You used the term a couple times CNU which doesn't
3 mean, I think it mean, maybe --
4 A Concrete masonry unit.
5 Q -- maybe I'm not hearing you, sir.
6 A Concrete masonry unit.
7 Q All right.
8 A CMU.
9 MS. CITARAMANIS: CMU?
10 THE WITNESS: Yeah, it's an existing concrete
11 block that would be on the back.
12 MS. CITARAMANIS: Concrete masonry, what was that,
13 unit?
14 THE WITNESS: Unit.
15 MS. CITARAMANIS: Thank you.
16 THE WITNESS: That is the reason that one of the
17 exit is talking about how the CMU is working properly to
18 isolate the noise. One of the exit is clear, is part of
19 that.
20 BY MR. KLINE:
21 Q So what I understand you saying is we essentially
22 have a shell that's just a concrete block and then your,
23 your task is to come in and insulate that further with some
24 special materials to absorb that sound and attenuate the
25 noise more than the concrete block would have done, is that

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1 what you're telling us?
2 A Yes, but the one more thing is this CMU is a
3 natural barrier isolation. It's the same thing when you're
4 having the highway and you have monster barrier wall or the
5 right is to protect what's happening on the other side. So
6 that is the natural element to be --
7 Q Noise doesn't penetrate concrete very well --
8 A No.
9 Q -- I presume?
10 A No, no.
11 Q All right.
12 A No.
13 Q Okay. So --
14 A We emphasize in the run also to absorb the
15 potential noise.
16 Q Well, all of the sheets that you've got --
17 A Uh-huh.
18 Q -- attached to your report, I assume then are
19 talking about the materials you apply to the inside of the
20 concrete block wall --
21 A Yes.
22 Q -- to attenuate that noise and absorb it --
23 A Yes.
24 Q -- even more? Just explain to us how that all is
25 accomplished?

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1 A Okay. Basically this talking about the
2 partitions, because the partition doesn't exist now, we had
3 to build the partition between the two buildings. We are
4 proposing, according to my description is a three-fifths
5 eighth metal start framing a double layer, double layer base
6 and with a layer of some brick partition, some brick gypsum
7 board. That is going to give us an STC number of 60. So
8 now we have --
9 Q Hold on.
10 A Now we have --
11 Q You need to explain --
12 A Yes.
13 Q -- sound transmission classification --
14 A Yes.
15 Q -- to the Hearing Examiner.
16 A Yes.
17 Q What is an STC?
18 A The only reason I am reading this --
19 Q Okay. Hold on. I think there's a question --
20 MS. CITARAMANIS: Let me just --
21 MR. KLINE: -- here.
22 MS. CITARAMANIS: Before we move on --
23 MR. KLINE: Yes. Right.
24 MS. CITARAMANIS: -- so I have the full framework
25 correct, the, just so that I understand, the yellow or the

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1 sand, I think you referred to it as the sand color, the
2 three and five-eighths metal stud framing with double layer,
3 is that what separates the two or is there already a wall
4 and then that is an extra layer? That's what I'm --
5 THE WITNESS: That is a new wall.
6 MS. CITARAMANIS: That is the only --
7 THE WITNESS: It is a new wall.
8 MS. CITARAMANIS: Is a new wall?
9 THE WITNESS: Yes. There is nothing there now.
10 MS. CITARAMANIS: So between the units is wide
11 open?
12 THE WITNESS: Right now the units don't have any
13 wall. We are going to provide wall there, a demising wall,
14 and we are going to provide another demising wall there on
15 the other side, so --
16 MS. CITARAMANIS: And when you say mason wall,
17 you're not talking, are you talking about brick or --
18 MR. KLINE: Well, he has actually used the term
19 demising wall.
20 THE WITNESS: Facing the rear, of the rear of the
21 house. It's in the rear of the building we have the CMU,
22 that is existing. On the front of the building we have a
23 storefront.
24 MS. CITARAMANIS: Right. I'm just trying to
25 understand between the two units --

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1 THE WITNESS: Uh-huh.
2 MS. CITARAMANIS: -- that somebody else is going
3 to be renting, it's how thick, it's one wall up against
4 another wall or is it just one wall and that's the
5 soundproof material between the two?
6 THE WITNESS: The final dimension will be six
7 inches, around six inches.
8 MS. CITARAMANIS: Okay. But it's only one wall?
9 THE WITNESS: It's what wall.
10 MS. CITARAMANIS: Soundproofing material?
11 THE WITNESS: Yes.
12 MS. CITARAMANIS: Okay.
13 THE WITNESS: Just one wall.
14 MS. CITARAMANIS: And the one in the back and the
15 rear, the CMU?
16 THE WITNESS: Is existing and we are going to, in
17 addition, add filling to absorb also noise.
18 MS. CITARAMANIS: Okay. So you're going to put
19 something inside --
20 THE WITNESS: One and a half inch, exactly, on top
21 of the existing wall.
22 MS. CITARAMANIS: Okay. And the front is the
23 front? All right. All right. Thank you. I just --
24 MR. KLINE: Yes.
25 MS. CITARAMANIS: I'm just trying to understand

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1 how many walls I was --
2 BY MR. KLINE:
3 Q And where I kind of interrupted you was you were
4 saying that gives us a sound, an STC, or sound transmission
5 classification --
6 A Uh-huh.
7 Q -- of X. And I think the Hearing Examiner
8 probably wants an education of what a sound transmission --
9 MS. CITARAMANIS: Absolutely.
10 MR. KLINE: -- classification is, what that means
11 in terms of what's going on in the inside.
12 THE WITNESS: Yes. I'm going to read these, these
13 two papers which is color-coded.
14 MR. KLINE: And these are part of your exhibits
15 that are in the record, right?
16 THE WITNESS: Just, this one, this one is not, but
17 the other is. I think that B is going to more descriptive.
18 MS. CITARAMANIS: Well, why don't we do this? Why
19 don't you --
20 THE WITNESS: I don't -- yes, yes.
21 MS. CITARAMANIS: -- talk about his report and
22 that way --
23 THE WITNESS: So answering to --
24 MS. CITARAMANIS: -- I can work --
25 THE WITNESS: Yes. Answering to what is the STC,

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1 the STC number is a figure that is given to the
2 effectiveness of the partition wall that is tested. So in
3 other words is a quality number, it's, that number is a
4 figure that is given you which is a transmission loss that
5 the airborne sound is going to suffer when you have
6 something going on over here and which is the person that we
7 make, on the other side is going to hear or is going to
8 perceive. So, in other words, you have the airborne sound
9 which is the source going to the air and the receiver of
10 the, the acceptor. And that airborne sound will be, will be
11 interrupted with a barrier with that partition. That
12 partition wall is tested. This is a record of which is the
13 capacity to stop or maybe the continuation of the sound from
14 where the source is.
15 Now in that classification, in that
16 classification, when the laboratory is making the tests,
17 it's taking 16 different frequencies to do that test, to
18 perform that test, to certify that because the sound is, the
19 sound is made in different frequencies, you know, it's not
20 always the same frequencies. The pitch of the sound is
21 hearing in different frequencies. And they are testing 60
22 classifications. So in that paper when --
23 MS. CITARAMANIS: You're looking at, I'm, what you
24 just handed me --
25 THE WITNESS: Yes.

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1 MS. CITARAMANIS: -- two documents?
2 THE WITNESS: Correct.
3 MS. CITARAMANIS: One says key --
4 THE WITNESS: Yes.
5 MS. CITARAMANIS: -- acoustical terms and concepts
6 and the other says sound transmission class. I see on the
7 first one it says Exhibit H at the top?
8 THE WITNESS: Uh-huh.
9 MS. CITARAMANIS: So is the second page not been
10 marked?
11 THE WITNESS: No, that, that is not there.
12 MS. CITARAMANIS: That's new?
13 THE WITNESS: Yes.
14 MS. CITARAMANIS: Okay. So I'm going to mark it.
15 THE WITNESS: Yes, I would like to add that one,
16 yes.
17 MS. CITARAMANIS: Well, that is 28.
18 THE WITNESS: Yes.
19 (Exhibit No. 28 was marked for
20 identification.)
21 MS. CITARAMANIS: And the other one is already
22 marked.
23 THE WITNESS: Because in the key acoustical term,
24 when he's talking about sound transmission class, they are
25 assuming that you already know what STC is. In the other

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1 one, is make, is declaratory what the STC, STC is and making
2 addition you understand how the graphic works. So if
3 somebody has to analyze my report where it's giving you 16
4 numbers there in the reports and you are looking at the
5 report of the partition that I use, you want to see that?
6 See what, anyway, so you're looking at that partition where
7 the report, where the lab said is giving you an STC number
8 that came from, when you are looking at this --
9 MS. CITARAMANIS: Exhibit 28?
10 THE WITNESS: -- well, it's established when you
11 are in the 500, hears frequency. When that, when you have
12 that kind of intersection, made the qualification of the
13 partition. So that number is that assigned number that we
14 use to isolate one aspect. It's a good number in commercial
15 buildings, more even in this kind of the facilities. So STC
16 number is in, it was put in place since 1960 and it still is
17 working as a performing, very good, very good manner to
18 design a wall to isolate that kind of conditions. So --
19 MS. CITARAMANIS: So where does a vet fall under,
20 veterinary --
21 MR. KLINE: Yes, that's what I was getting to.
22 BY MR. KLINE:
23 Q So the materials that you're using will achieve an
24 STC of what number or does it vary depending on what
25 different materials you're using?

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1 A That is a good question. So we are looking, if we
2 are looking at the report directly --
3 Q And can you give the Hearing Examiner --
4 A Yes.
5 Q -- a page or something?
6 A Yes. The report where the exhibits are --
7 Q Where the what are?
8 MS. CITARAMANIS: Okay. Go on.
9 THE WITNESS: The exhibit.
10 MR. KLINE: Oh, okay.
11 THE WITNESS: Exhibit.
12 MR. KLINE: Okay.
13 THE WITNESS: The Exhibit E --
14 MS. CITARAMANIS: So, wait a minute. Is -- I
15 have, it looks like a February 25, 2013 report, I guess
16 that's your report, Exhibit 12? And --
17 MR. KLINE: About half of the way back.
18 MS. CITARAMANIS: It's Exhibit B?
19 THE WITNESS: Yeah, that is Exhibit B. That is --
20 MS. CITARAMANIS: That's attached to your report,
21 is that correct?
22 THE WITNESS: Yeah, the report is a couple of
23 pages before because you see that?
24 MS. CITARAMANIS: Yes, there it is. There it is.
25 That's what I'm trying to identify. That's your report?

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1 THE WITNESS: No.
2 MS. CITARAMANIS: No? Okay.
3 THE WITNESS: No, no, no, I'm talking about the
4 report from the lab about my partitions that I use over
5 there and it's a couple of pages after that.
6 MS. CITARAMANIS: But all of the documents you're
7 talking about are attached to Exhibit 12, is that correct?
8 THE WITNESS: Yes, yes, it's there. Sorry, sorry,
9 sorry, sorry, yes. Yes, I'm sorry. I was thinking about --
10 MS. CITARAMANIS: And Exhibit 12 is your report?
11 THE WITNESS: Yes.
12 MS. CITARAMANIS: Okay. So now we're all on the
13 same exhibit and the record hopefully will be clear when I
14 go back to read it and reconstruct it.
15 THE WITNESS: Okay. Sorry. Sorry. I thought --
16 MS. CITARAMANIS: So we're now on 12, Exhibit B?
17 THE WITNESS: Yes.
18 MS. CITARAMANIS: Okay. Go ahead.
19 THE WITNESS: In Exhibit B, for example, is the
20 report, is the test that that partition has and if you will
21 turn you'll see you're looking at Exhibit E.
22 MS. CITARAMANIS: E?
23 THE WITNESS: E, because Exhibit E has two
24 reports, two reports.
25 MS. CITARAMANIS: E would be the test report?

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1 THE WITNESS: Uh-huh, the number R8LT07168.
2 MS. CITARAMANIS: Got it.
3 THE WITNESS: Okay. So basically what we were
4 talking about in the front page of that exhibit, we have a
5 test report by itself and you have the numbers there. It's
6 talking about the frequency and it's talking about the TL's,
7 which is the transmission loss, that is in decibels. That,
8 when you are looking at frequency 500, you can see that you
9 have a transmission loss of 61. What that means, that means
10 that when you have some kind of sound over here, what you
11 are going to lose in that wall is 61. That is what the test
12 said based on when the test was built.
13 Now if you have in there, in this side, you have
14 25 decibels ongoing or 30, now that I am speaking, I am
15 speaking in 65 decibels. So my conversation now is going,
16 flowing at 65. See, we have something there you are not
17 going to notice, won't be noticeable, the sound on the other
18 side. Immediately you are quiet, you are going to, we are
19 going to be hearing the equipment, the mechanical equipment
20 you hear is 20. In other words, nobody is going to notice
21 what's happening on the other side if something happened.
22 See, there is a church. You call, you're going to hear like
23 that, but in that kind of sound. That is what this wall is
24 doing to protect this one, which is critical. We don't have
25 any problem up front because we are going to walk out in

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1 normal, in commercial spaces or parking lot, you have
2 between 50 and 60 decibels normally. When you open the
3 door, you can hear 50 or 60. In the rear, the same
4 situation would be just, well, we can hear outside another
5 50 or 60.
6 BY MR. KLINE:
7 Q If I read this Exhibit B correctly, the way you've
8 got it set up, the materials that would be created in the
9 demising walls as compared to the exam room walls and the
10 STC is higher for the materials using the demising walls --
11 A Correct.
12 Q -- so it is attenuating the noise more
13 effectively --
14 A Correct.
15 Q -- than some of the other --
16 A Correct.
17 Q Okay.
18 A Correct.
19 Q All right.
20 A And when you are designing acoustical walls, 60 is
21 the number.
22 Q Right. And if you were designing, if you were
23 putting up the partition walls for a florist shop in this
24 space, you wouldn't be designing it to this level of
25 standards? These are much more extraordinary techniques to

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1 attenuate the noise?
2 A That is a good question because typical to your
3 putting a regular wall with regular drywall is just 32.
4 Q Thirty-two STC?
5 A Yeah, 32.
6 Q Okay.
7 A But this is a low number.
8 MS. CITARAMANIS: So lower is more sound, higher
9 is less sound?
10 THE WITNESS: Correct. Yes. It is working like
11 that.
12 MS. CITARAMANIS: I mean the 60, is that the
13 origination of the sound or that's the blocking of the
14 sound?
15 THE WITNESS: Sixty is the number that is the
16 reduction, is the absorption of the --
17 MS. CITARAMANIS: Absorption?
18 THE WITNESS: Of the sound and the relay on time
19 to pass through the other. It's two things.
20 MS. CITARAMANIS: Okay. And what is the, of a
21 veterinary hospital, I guess, a barking dog, how, how loud
22 is, how is that categorized in terms of the noise level it
23 creates?
24 THE WITNESS: That is a frequency between 300 and
25 600. We are in that spectrum, but depending on the dog,

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1 depending on how he bark and to transfer that in decibels
2 from the source, from the origin of the source, we can say
3 that would be in between the 70 and 80 decibels. But when
4 you are four feet from there, that number is different.
5 It's low; do you know what I mean? From here, see I am
6 speaking in the same way, but from there to you, the decibel
7 number will be lower. So what I am saying is --
8 MS. CITARAMANIS: I can hear it more, is that what
9 you're saying?
10 THE WITNESS: What I am saying is you're going to
11 hear less if I am further and you're speaking.
12 MS. CITARAMANIS: Right. The closer you are --
13 THE WITNESS: So --
14 MS. CITARAMANIS: -- the more you can hear?
15 THE WITNESS: So, yes, correct. So now that
16 explanation is, is this. If I have a dog over here
17 barking --
18 MS. CITARAMANIS: When you say over here, just
19 identify --
20 THE WITNESS: Oh, sorry, in the treatment room,
21 suppose that we have a dog here on the table in the
22 treatment room and he's barking or something, the sound has
23 to cross over the surgery room wall before to reach our
24 isolation wall.
25 MS. CITARAMANIS: Right, because it's in the

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1 center and you have --
2 THE WITNESS: Correct.
3 MS. CITARAMANIS: -- the green wall in between.
4 That's the mechanical room. The recovery room are you
5 talking about? Oh, no, I see treatment. Sorry.
6 THE WITNESS: Yes. That is the treatment, it's
7 the 118. It's the center of the, of the, where the tables
8 are.
9 MS. CITARAMANIS: Okay. So there are -- but there
10 are no green between --
11 THE WITNESS: No.
12 MS. CITARAMANIS: -- the treatment room and the
13 radiology --
14 THE WITNESS: No, because the standard, the
15 standard partition is giving you around 32 STC. That means
16 that is going to lower in the range of five to six or 10
17 decibels. Remember this, decibels works, it's not lenient.
18 What that means, 10 decibels, sorry, 20 decibels is not
19 double than 10. The decibels is low arithmetical measure.
20 That means that my 65 there, what I am speaking now, if I am
21 lower, I am talking like that, could be 50. The sound is
22 working different. It's in the low arithmetical range. So,
23 again, another thing I want to say is you have some kind of
24 event happen over in here, whatever --
25 BY MR. KLINE:

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1 Q And when you say over here, you mean in the
2 adjacent bay?
3 A Yes, sorry, yes, sorry, in the other suite, in the
4 other suite is going to affect what you are going to
5 perceive from the other room.
6 Q All right. So what you're telling is you're
7 recommending we use the most effective materials to
8 attenuate sound on the perimeter walls?
9 A This is a good question. My recommendation has
10 two sides. One is cost-effective and the other is
11 aesthetic.
12 Q Okay.
13 A I can suggest to the owner to put a CMP wall, but
14 it will be, the wall is going to cost more than the
15 facility. So I have to put both filling in together.
16 Q Would your lease even let you do that? I mean
17 would you be able to put in a permanent --
18 A It's just, it's just something --
19 Q All right. So you're just trying to make a point?
20 A Just to make a point. I can make a wall big like
21 two feet, but it's going to in detriment my design and what
22 the doctor is expecting for. So what I am saying is I am
23 using the most cost-effective partition to protect and cover
24 what zoning is requesting for.
25 Q Okay.

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1 A Just a --
2 Q I understand. So what is the green, I guess, is
3 not as effective in terms of the noise diminution, but it
4 does, it must have some effect because isn't it attenuating
5 some of the noise before it gets to the perimeter walls?
6 A Yes, that is -- yes. Well, as I mentioned
7 earlier --
8 Q You probably didn't answer that.
9 A No, no, I mentioned everything.
10 MS. CITARAMANIS: I want to hear it in your words.
11 THE WITNESS: Yes. What I mentioned earlier is
12 could be between three and eight decibels, the diminution.
13 MR. KLINE: Okay.
14 THE WITNESS: When you're crossing over a 32 STC
15 because the people are confused, the STC number is a decibel
16 number. It's not that. Yes.
17 BY MR. KLINE:
18 Q I'm getting a headache, unfortunately, but it's
19 educational. Bottom line --
20
21 MS. CITARAMANIS: And necessary.
22 MR. KLINE: Yes. Yes.
23 BY MR. KLINE:
24 Q Bottom line, if we employed the construction
25 techniques and materials you've recommended in here and

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1 analyzed for us, then the operation as Dr. Birken envisions
2 it and described it today, one, it would be soundproofed as
3 the ordinance requires, correct?
4 A Correct, yes.
5 Q Okay.
6 A And it exceed what the zoning is asking for, it
7 exceeds means that it's better.
8 Q Yes. Okay. And would it result in their not
9 being, the operation would have no objectionable or
10 obnoxious, or be a nuisance to the adjacent bays or anybody
11 walking by the front or the back of the building?
12 A No.
13 Q The noise would be tolerable?
14 A The noise would be perceptible.
15 Q Okay.
16 A Like we are making somebody walk over there, us or
17 somebody's type, you know, what she's doing there.
18 Q Okay.
19 A But it's not going to bother anybody.
20 Q Got you. Good.
21 MR. KLINE: I have no further questions on that
22 subject.
23 MS. CITARAMANIS: Okay. Just so that, I'm looking
24 at the statute G2.32(a)(2), of course, it says it must be
25 soundproof and the question is what does that mean?

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1 MR. KLINE: Right.
2 MS. CITARAMANIS: And I see (b), of course,
3 applies to the residential, so that's not necessarily
4 commercial. So are you saying, Mr. Kline, that soundproof,
5 there's no standard attached to that in a commercial
6 district or what are you saying because, obviously, just a
7 second -- in residential there is a standard when looking at
8 No. 3 for buildings which animals will be present, maximum
9 expected interior sound orbits must be reduced to 40 DBA
10 outside measured from -- you're saying that wouldn't apply
11 here?
12 MR. KLINE: Well, interesting, let me speak
13 candidly because when we picked up the staff report, Ms.
14 Carter kind of turned the case over and I read the staff
15 report, I was surprised that I didn't find something that
16 ended up with fixed numbers like decibels that you could say
17 here's what you would tolerate in a detached building in a
18 residential zone and interestingly enough, there wasn't such
19 a number in this setting.
20 MS. CITARAMANIS: Okay.
21 MR. KLINE: And the staff report basically
22 analyzed that it is if there is no standard, no numerical
23 standard in a commercial setting, just that it be
24 soundproofed. So that's why the STC is not the measurement
25 device that I'm used to dealing with in terms of making a

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1 presentation. So that's why we had to go through a somewhat
2 extensive explanation of it. But the answer to your
3 question is, yes, soundproofing is somewhat of a, I guess, a
4 subjective or an objective, you know, subjective
5 standpoint --
6 MS. CITARAMANIS: Subjective it --
7 MR. KLINE: -- because there is not a number that
8 says we have to achieve and so that's why I was -- I thought
9 ultimately you would say, all right, when you're all
10 finished, if there isn't a number, is at least it going to
11 be tolerable and people can live with it and I loved his
12 answer that it would be perceptible, but not objectionable.
13 THE WITNESS: The IBC, International Building
14 Code, put a number of 50 STC. The other reason when you are
15 a designing a commercial facility, it needs to be reviewed
16 for the County, they have to cover the aspect. Now when you
17 are using the regular standard construction element when you
18 are doing a commercial building, that cover that 50 STC.
19 BY MR. KLINE:
20 Q Okay. So is that why you're saying --
21 A Implied. Implied.
22 Q Is that why you are saying you would exceed that
23 standard?
24 A Exactly, because I have put in 60.
25 Q Okay. I understand.

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1 MS. CITARAMANIS: Okay. So you're saying IBC is
2 50 --
3 THE WITNESS: STC.
4 MS. CITARAMANIS: STC?
5 THE WITNESS: Uh-huh.
6 MS. CITARAMANIS: STC and 60 exceeds that criteria
7 for a commercial building?
8 THE WITNESS: Yes.
9 MS. CITARAMANIS: And just with regards to going
10 down to V6, Montgomery County Noise Ordinance, is that
11 applicable, Mr. Kline?
12 MR. KLINE: Well --
13 MS. CITARAMANIS: Would that be a guideline?
14 MR. KLINE: Well, the Noise Ordinance is always
15 applicable --
16 MS. CITARAMANIS: Uh-huh.
17 MR. KLINE: -- no matter what the Zoning Ordinance
18 says because it would be separate. So --
19 MS. CITARAMANIS: Do you know off the top of your
20 head what that is and --
21 MR. KLINE: In a commercial setting at off hours,
22 I'm going to tell you it's probably 45 decibels at the, you
23 know, like from 11 o'clock at night until 7:00 in the
24 morning at the property line. So we would go all the way to
25 the retaining wall and do a measurement.

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1 MS. CITARAMANIS: Uh-huh.
2 MR. KLINE: And actually, you know, that -- I take
3 that back. That's not right because that's what it would be
4 at a property line of an adjacent property.
5 MS. CITARAMANIS: Okay.
6 MR. KLINE: So I don't remember off the top of my
7 head if there even is one for a commercial zone. But that
8 goes back to the other testimony you had about the retaining
9 wall basically being 16 feet high.
10 MS. CITARAMANIS: Okay.
11 MR. KLINE: So the noise coming out basically
12 horizontally is going to hit that wall and it's either going
13 to bounce back, but it's not going to be able to get up to
14 get over it and if it did, it would only end up in the
15 parking lot of the McDonalds restaurant anyway.
16 MS. CITARAMANIS: Okay. I'm pulling up staff's
17 just to --
18 MR. KLINE: Yes.
19 MS. CITARAMANIS: -- refresh all areas and I'm
20 just reading what staff wrote under this section to, the
21 walls separating the veterinary hospital from the adjoining
22 businesses on either side will be built with metal stud
23 framing with a double layer of acoustical gypsum drywall to
24 help mitigate sound levels. Other interior partitions will
25 be a single layer of acoustical drywall and acoustically

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1 rated doors are also specified. Proposed partitions will
2 serve to mitigate, it doesn't say soundproof, just saying --
3 MR. KLINE: Okay.
4 MS. CITARAMANIS: -- the noise typically
5 associated with the proposed use sufficiently to ensure that
6 the use will operate in compliance with the provision of the
7 noted section.
8 MR. KLINE: And my question to Mr. Sur was to try
9 and quantify soundproofing was if you were making, doing a
10 normal partition for a typical retail tenant, what would you
11 do and is what you're doing in excess or extraordinary
12 compared to what you would normally do? And the answer was
13 yes. So I'm saying that they are making an effort to
14 soundproof it more than it would normally be the case.
15 Since there's no number we have to achieve, we have to at
16 least demonstrate we're doing more than would be typical in
17 this situation.
18 MS. CITARAMANIS: Now, yes, okay, because I mean
19 it's just interesting looking right at staff's report --
20 MR. KLINE: Well, you mentioned six also --
21 MS. CITARAMANIS: So --
22 MR. KLINE: -- and actually six is the noise
23 standard applies. I'm on page 10 now looking at her --
24 MS. CITARAMANIS: Page 10, No. 6. Okay. Well, I
25 mean I guess I found it a little confusing too because that

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1 information, I would think, would be -- because this, No. 6
2 falls under residential. It falls under Item B, which would
3 not be applicable --
4 MR. KLINE: I'm sorry, you're right.
5 MS. CITARAMANIS: -- correct?
6 MR. KLINE: Yes, you're right.
7 MS. CITARAMANIS: But the staff still filled it
8 in, so that kind of --
9 MR. KLINE: Yes.
10 MS. CITARAMANIS: -- threw me a little bit. It's
11 like shouldn't that be under --
12 MR. KLINE: Yes.
13 MS. CITARAMANIS: -- the first one under two?
14 But, anyway, obviously they mean for that to apply, at least
15 that's how I'm interpreting it and I actually might go back
16 to staff and ask for a more clearer explanation.
17 MR. KLINE: And can I, obviously you do, you feel
18 it's necessary. Let me just tell you the problem is is that
19 the last person at Park and Planning Commission who had much
20 acoustical background was a gentleman named Steve Federline
21 who retired about two years ago, and it's a different cult
22 for anybody there to actually be able to give you a good, an
23 expert answer, let's put it that way. I'm sure that they've
24 got people that have the general --
25 MS. CITARAMANIS: Yes.

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1 MR. KLINE: -- knowledge, but --
2 MS. CITARAMANIS: Yes.
3 MR. KLINE: -- you're not going to be, you're not
4 going to be able to find an explanation as detailed or
5 precise as this.
6 MS. CITARAMANIS: All I want to do is make sure
7 that whatever the standard is --
8 MR. KLINE: Okay.
9 MS. CITARAMANIS: -- that it's meeting it or
10 exceeding it --
11 MR. KLINE: Yes.
12 MS. CITARAMANIS: -- because that's obviously one
13 of my roles is to make sure that, and then to make --
14 MR. KLINE: Yes.
15 MS. CITARAMANIS: -- a recommendation to the
16 Board.
17 MR. KLINE: You heard Mr. Sur. He essentially had
18 to construct the standard because the ordinance didn't have
19 it and he went to the building code, said 50 would be what
20 you would expect and he knew that he would be able to
21 achieve more than that, err go, he is soundproofing the
22 building whereas before it just said soundproofing and what
23 does that mean?
24 MS. CITARAMANIS: Only the lawyers ask those
25 questions, right?

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1 MR. KLINE: Yes. But, yes --
2 MS. CITARAMANIS: Okay.
3 MR. KLINE: I'm sure Ms. O'Connor will be glad to
4 elaborate if you need it.
5 MS. CITARAMANIS: Yes, and I just think it's, I
6 mean he definitely is giving a very detailed explanation.
7 MR. KLINE: No, you said he couldn't answer.
8 MS. CITARAMANIS: We'll go off the record for a
9 second.
10 (Whereupon, at 11:14 a.m., a brief recess was
11 taken.)
12 BY MS. CITARAMANIS:
13 Q I know for me, just clarification and I probably
14 already asked this, but maybe I didn't ask it in the right
15 way, with regards to the noise that's interior, the dogs,
16 the surgery, I understand the treatment room, you know, any
17 noise from there has to go through another wall, any noise
18 from the, wherever the green walls are, that even stops at
19 more before it hits the shared wall. The actual noise that
20 is generated by a veterinary hospital, this type of use, is
21 there a number assigned to that? I mean and the only reason
22 I ask that is because I'm looking at the Exhibit 28 that you
23 gave me --
24 A Uh-huh.
25 Q -- and I just, when I see here in the far, left-

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1 hand corner, it says 25/30 and it just talks about normal
2 speech can be understood quite clearly. Is 25 the number
3 that that is given to normal speech as opposed to 50 which
4 is loud speech, not audible?
5 A No, no.
6 Q Well, what is that measurement? Maybe that's a
7 better question.
8 A Normal, normal, 25 is this you can hear now.
9 Q But that's obviously not in a veterinary hospital
10 because you have animals.
11 A Correct, but in normal hospital, in an animal
12 hospital, normally you can have between 65 and 95, no more
13 than this. It can be 90 if you have all the dogs barking,
14 all the phones ringing.
15 MR. KLINE: Are you using an STC number of a
16 decibel number?
17 THE WITNESS: No, a decibel number.
18 MR. KLINE: A decibel number? Okay.
19 THE WITNESS: Decibel numbers. The STC is the
20 absorption --
21 MR. KLINE: Right. I understand.
22 THE WITNESS: -- applied just to the wall. It is
23 how you are testing the material is the STC number.
24 BY MS. CITARAMANIS:
25 Q Okay. So if it starts out just in decibels,

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1 you're saying that once it hits the wall, it --
2 A Uh-huh.
3 Q -- becomes what on the other side?
4 A On the other side you have a number which is the
5 TL, the transmission loss. That loss is in decibels. The
6 partition is giving you, my partition is giving you for the
7 frequency, normal, standard frequency is giving 61 loss.
8 Q Okay. So you take 61 from the 65 to 90, what,
9 five? Is that what you're saying? Does it translate?
10 A Well, it's not, it's not, it's the translation,
11 the thing, what's happening on the other side. I am telling
12 what the report is telling you, which is the loss that the
13 partition is going to provide. But what you are going to
14 have on the other side in any given circumstances could be
15 nothing or could be something, depending on certain factors.
16 Q Okay. So, but in, and maybe this just comes down
17 to the definition of soundproof, I mean when I, my --
18 A Uh-huh.
19 Q -- normal perception of what soundproof meaning,
20 you can't hear it, there is no sound coming through and what
21 I'm hearing you say that there will be in it, but it will
22 be, there will be a loss of, because of the wall, but it's
23 not a total loss.
24 A It's not a total loss.
25 Q It's not a total loss? Okay.

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1 A Yes.
2 BY MR. KLINE:
3 Q Let me just, is it practical to expect in a
4 veterinary clinic that you can totally attenuate the noise
5 within the building?
6 A No and it's not recommendable because OSHA has a
7 special particular notes there regarding to isolate 100
8 percent of facility because it will be prejudicial for the
9 employee and for the owner too. You don't want to in animal
10 hospital isolate 100 percent. All the noise remain inside
11 of you and any other one, not just veterinary facilities.
12 In any commercial building, OSHA is very clear on that.
13 Q Going back to your comment about balancing
14 different factors, if you were to build a concrete block
15 wall, is the demising walls or the separation between the
16 other bays, even that itself would not totally attenuate
17 noise in the adjacent bay, correct?
18 A Correct.
19 Q All right.
20 A Because when you analyze the sound, you have to
21 analyze the overall and what's going on. It's not just
22 where the sounds come from. For example, and I repeat
23 again, everything happened in a facility. When you have a
24 source over here, you have a concrete wall over there, but
25 that other building has a store front. So easily the noise

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1 can come from the store front and he's not going to hear, I
2 say he or she or whatever it is in the other room, is not
3 going to hear what's going on because the noise coming from
4 outside will be higher than the noise that we have from the
5 bay.
6 Q Well --
7 A What I am saying basically is that, and I'm
8 pointing out again you are providing a design and this is
9 the same thing like the sprinkler system that we have over
10 here or the partition wall fire rated. The fire rated
11 partition walls is one hour or two hours. What that means?
12 You have two hours through the fire going to the other side.
13 Is it tested? It is. This wall, soundproof wall, is a
14 tested partition? Yes. What inspect? You inspect that you
15 have a frequency of 500, you are going to lose 61. But the
16 numbers you are mentioning there in the other side, you are
17 mentioning, you are taking the NC2 test. It could be
18 different? Yes, because there's another factor that are
19 acting in the facility.
20 Q The Hearing Examiner, I think, probably would use
21 what's maybe the common understanding of the term soundproof
22 and I think she said that to you that I can't hear anything.
23 From a professional point-of-view does soundproofing have a
24 meaning in your architectural professional or dealing with
25 acoustics?

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1 A Yes.
2 Q Does it mean --
3 A What's it mean?
4 Q Does it mean zero?
5 A Less than meanings. Yes, no, there's no zero.
6 Never a zero. Never a zero. The soundproofing never is
7 zero.
8 Q Okay. It's a --
9 A You even --
10 Q -- reduction down to a human level or something?
11 A Because, because even the UR, once again, you want
12 to avoid the 100 percent noise from the other side, but you
13 have your own noise. So which is a spirit to isolate 100
14 percent. I was working with Value Station where you needed
15 100 percent outside, but the walls are thicker, the design
16 is different, but you had the interior side in your respect
17 here when you are in the Value Station, the guys, he is
18 speaking on the, you can hear in your wall when the guys is
19 putting water there and so on. So you never had 100
20 percent.
21 Q Okay.
22 MS. CITARAMANIS: And this is actually, maybe for
23 you, but maybe with Mr. Kline, just from a legal standpoint
24 of interpretation, I, if you, the commercial, it says, must
25 be soundproof and it doesn't really list a standard, but

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1 then when you go to B and it gives a standard, my question
2 is that why do you think there's a difference that they
3 included? Is it because residential is going to be one
4 building and it's, you're just looking to see what noise is
5 going to be perceptible to the next property as opposed to
6 in a commercial which is separated by partition walls and,
7 therefore, a higher level of noise and that's why the word
8 soundproofing is -- I'm just throwing that out there for you
9 to counter or --

10 MR. KLINE: Here's what I -- I think, I think your
11 theory is correct. I think it probably does deal with the
12 ambient noise levels --

13 MS. CITARAMANIS: Okay.

14 MR. KLINE: -- to have as a base situation in each
15 one. But what I'll do is probably maybe pull a couple of
16 your last cases where they had inline facilities and just
17 see --

18 MS. CITARAMANIS: That would be great, very
19 helpful.

20 MR. KLINE: -- in fairness to Ms. O'Connor, she's
21 a planner and has not written staff reports like this for
22 special exceptions. So she's better on doing, you know --

23 MS. CITARAMANIS: Right.

24 MR. KLINE: -- which would be a good use for -- so
25 I'll go find a couple other cases and see how it's been

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1 dealt with in other cases.

2 MS. CITARAMANIS: And that would be great if you
3 would provide me with --

4 MR. KLINE: Yes.

5 MS. CITARAMANIS: -- a summary addressing that
6 because I mean I have to address it.

7 MR. KLINE: I understand.

8 MS. CITARAMANIS: And, you know, I hear what
9 you're saying with regards to soundproof in your line of
10 business. It doesn't ever go to zero, but I have to go by
11 what's in here and make sure that, meeting that --

12 MR. KLINE: I understand.

13 MS. CITARAMANIS: -- that --

14 MR. KLINE: Sure.

15 MS. CITARAMANIS: -- especially in this context,
16 you know --

17 MR. KLINE: Yes.

18 MS. CITARAMANIS: -- with animals and, you know --

19 MR. KLINE: Sure.

20 MS. CITARAMANIS: -- they can be loud and so --

21 MR. KLINE: I was going to say I don't have any
22 more questions of Mr. Sur unless you do, but I know Mr. Ober
23 who is probably been standing there going I'm going to have
24 to build this, I understand this, I'll get up there. So
25 I'll probably like to recall him for a moment.

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1 MS. CITARAMANIS: But do you want him to identify
2 his report for the record so we can enter it in so I make
3 sure?

4 MR. KLINE: Well, actually it's in the record
5 already. It's --

6 MS. CITARAMANIS: Well, it's been marked into the
7 record. It hasn't been accepted into the record. Nothing
8 has been accepted. I will accept everything at the end.

9 MR. KLINE: I've got you.

10 MS. CITARAMANIS: If you still need, we still need
11 to go through a little bit of making sure that it is what it
12 is. I mean you've got pictures in there to --

13 MR. KLINE: Sure. Well, the --

14 MS. CITARAMANIS: -- authenticate just, you know.

15 MR. KLINE: Yes.

16 BY MR. KLINE:

17 Q You've got basically a cover two or three pages
18 explaining what the materials are and then all of the
19 attachments to that are basically reports and studies that
20 you got from what source to demonstrate your point.

21 A The laboratory, Stream Valley Acoustical
22 Laboratory, is what, the company that performed the test
23 over this, over this partition, of the partition that I am
24 using for and that is the test result. That is what I spoke
25 already.

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1 Q Okay.

2 A And that is getting the numbers of the frequencies
3 that the test, the condition where the specimen is, the
4 condition that the graph is giving for the partition that
5 you're using over here.

6 Q And which graph are you referring to because, just
7 exhibit what?

8 A Where the transmission loss is and --

9 Q So you're talking about Exhibit E?

10 A Yes, Exhibit E.

11 Q Okay.

12 A Yes, Exhibit E.

13 MS. CITARAMANIS: Exhibit E to Exhibit 12.

14 THE WITNESS: Thank you.

15 MR. KLINE: Yes.

16 MS. CITARAMANIS: Even though I know what's going
17 on now, when I go back to read it I'm going to be like,
18 okay, where are we?

19 THE WITNESS: Yes, so that evaluation is presented
20 for the National Gypsum Company which is a company that is
21 providing that material behind soundproof drywall. So they
22 made a report --

23 MR. KLINE: Okay.

24 THE WITNESS: -- with the Riverbank Acoustical
25 Laboratories and this is the result. And the result is

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1 giving you the STC 60, which is desirable in any, in any
2 wall that you try to create the soundproofing protection.
3 MR. KLINE: Very good. Did I give you the
4 adequate back-up for the report that you were looking for?
5 MS. CITARAMANIS: Just that's your report and you
6 wrote it and all the attachments support the report.
7 THE WITNESS: Uh-huh.
8 MS. CITARAMANIS: That's true?
9 MR. KLINE: She's asking you to verify that.
10 THE WITNESS: Yes.
11 MS. CITARAMANIS: Yes, okay.
12 THE WITNESS: Yes.
13 MS. CITARAMANIS: Fine. Certainly. And you,
14 Exhibit -- what exhibit is that?
15 MR. KLINE: Actually you mentioned a resume. I'm
16 not sure I asked that it be made an exhibit to the record.
17 MS. CITARAMANIS: Oh. Well, it's -- let's see, is
18 it in here?
19 MR. KLINE: It --
20 MS. CITARAMANIS: It actually is marked as Exhibit
21 13.
22 MR. KLINE: Okay.
23 MS. CITARAMANIS: Do you want that in there or no?
24 MR. KLINE: No. No, if it's in there already,
25 then it's --

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1 MS. CITARAMANIS: Yes, it's already marked as 13
2 and he sufficiently went --
3 MR. KLINE: Yes.
4 MS. CITARAMANIS: -- through that.
5 MR. KLINE: Uh-huh. Okay.
6 MS. CITARAMANIS: So I don't need this one. You
7 can, you gave me the extra one.
8 MR. KLINE: Okay.
9 MS. CITARAMANIS: And we already have this one.
10 MR. KLINE: Okay.
11 MS. CITARAMANIS: So he did add --
12 MR. KLINE: Yes.
13 MS. CITARAMANIS: -- one with a sound transmission
14 class and which we marked as Exhibit 28.
15 MR. KLINE: Exhibit 28, yes, ma'am.
16 MS. CITARAMANIS: And I think it -- which -- you
17 did the documents, the floor plan, yes, you did the floor
18 plan, everything that has Princeton on it you did the floor
19 plan?
20 MR. OBER: Yes.
21 MS. CITARAMANIS: Okay. Okay.
22 MR. KLINE: So, yes, Exhibit 27 that we have on
23 the Board --
24 MS. CITARAMANIS: Yes.
25 MR. KLINE: -- that was prepared by Mr. Sur.

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1 MS. CITARAMANIS: And that's the revised one or
2 the most current one that I would be relying on.
3 MR. KLINE: Yes, that is correct.
4 MS. CITARAMANIS: 27.
5 MR. KLINE: It was provided to you to deal with
6 the acoustic issue, but it does reflect the revision to the
7 floor plan that's in an earlier exhibit.
8 MS. CITARAMANIS: Okay. Oh, I know, there was --
9 I don't know that I have anything else for you. You're very
10 thorough. Quite an education. They didn't train us for
11 this in law school, did they?
12 MR. KLINE: How true.
13 MS. CITARAMANIS: They didn't.
14 THE WITNESS: Again, sorry, I would like to add
15 something --
16 MS. CITARAMANIS: Okay. Do you --
17 THE WITNESS: -- that I think is important. It's
18 just --
19 MS. CITARAMANIS: You better make sure he wants
20 you to add something.
21 THE WITNESS: A few words, no, just a few words.
22 MR. KLINE: You enjoy talking. Go ahead.
23 MS. CITARAMANIS: That's right.
24 THE WITNESS: Just for clarification --
25 MS. CITARAMANIS: Okay. I like that.

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1 THE WITNESS: -- is when the County is working
2 with building permits and they require fire partition --
3 MS. CITARAMANIS: Okay.
4 THE WITNESS: -- they said and specified if you
5 are using a UL, which is underwriting laboratories --
6 MS. CITARAMANIS: Okay.
7 THE WITNESS: -- partition, they appear here and
8 you see in your left hand --
9 MS. CITARAMANIS: What exhibit is that again?
10 THE WITNESS: It's in the, where the --
11 MR. KLINE: It's the exhibit number, give the
12 exhibit.
13 THE WITNESS: Exhibit --
14 MS. CITARAMANIS: Okay.
15 MR. KLINE: It's about the fourth page in --
16 THE WITNESS: Yes.
17 MR. KLINE: -- his report.
18 MS. CITARAMANIS: Yes.
19 THE WITNESS: You can see right there it's UL.
20 MS. CITARAMANIS: At the top I see UL, correct.
21 THE WITNESS: Yes. That is a fire rating
22 partition.
23 MS. CITARAMANIS: Okay.
24 THE WITNESS: And when the County said that in
25 your retain and in your partition you are showing a new

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1 world. They accepted that like a ballad and tested
2 partition.
3 MS. CITARAMANIS: For fire?
4 THE WITNESS: Yes, for fire.
5 MS. CITARAMANIS: Okay.
6 THE WITNESS: The same happened for sound. If you
7 are using the River Grand Laboratories and they are saying
8 that your partition has an STC of 60, the guy that is
9 reviewing know what he's talking about. The guy in the
10 County making the revisions know what's happened. That's
11 the reason that it's very important to use a partition that
12 is tested. That is the only thing I want to add.
13 MS. CITARAMANIS: Okay.
14 MR. KLINE: I had no further questions of Mr. Sur,
15 but I would like to probably ask Mr. Ober just to come back
16 and maybe try and help us clear up a little of the fog that
17 developed in my own mind.
18 MS. CITARAMANIS: Also it's the -- who took the
19 pictures, the photos I see in Exhibit 9?
20 MR. KLINE: Yes.
21 MS. CITARAMANIS: There's --
22 MR. KLINE: Yes, Mr. Ober, come on up and --
23 MS. CITARAMANIS: If he can --
24 MR. KLINE: Sure.
25 (Discussion off the record.)

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1 BY MR. KLINE:
2 Q All right. Let's do, yes, Mr. Ober, you've
3 already been sworn. In answer to the Hearing Examiner's
4 question about the pictures that are part of the
5 application, can you describe their province?
6 A Yes, I can.
7 Q Would you please describe where they came from?
8 A Well, which picture are you specifically --
9 MS. CITARAMANIS: You have, here I have them right
10 here --
11 THE WITNESS: -- there's 13 of them.
12 MS. CITARAMANIS: -- if you want to just identify
13 who took them and what they are and their accurate
14 description of, they're an accurate description of the
15 property and --
16 BY MR. KLINE:
17 Q Did you take those pictures?
18 A Yes, sir.
19 MS. CITARAMANIS: Okay.
20 BY MR. KLINE:
21 Q Okay. What date did you take them if you have
22 any --
23 A Now you're going to ask me the hard questions.
24 Q Yes, right. Give us just a general approximation.
25 A Approximately four months ago.

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1 Q Okay. And are they an accurate reflection of the
2 conditions that exist on the property today?
3 A Even at this very moment.
4 Q Okay.
5 MS. CITARAMANIS: Okay. What's the first picture?
6 THE WITNESS: This picture basically reassembles
7 Exhibit, I'm sorry, Exhibit 5B and it shows particular
8 spaces here on the, my right.
9 BY MR. KLINE:
10 Q And this is a photograph titled exterior
11 photographs of unit?
12 A That is correct.
13 Q Yes, okay.
14 A So the front side of --
15 MS. CITARAMANIS: Okay.
16 THE WITNESS: -- the space.
17 MS. CITARAMANIS: And to the right of that I just,
18 it shows the fence?
19 THE WITNESS: That is correct.
20 MS. CITARAMANIS: Okay.
21 THE WITNESS: The same fence here on Exhibit 5B is
22 right here in this little alley.
23 MS. CITARAMANIS: Okay.
24 THE WITNESS: The second picture labeled view of
25 Damascus Shopping Center, it's the, the parking space is

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1 directly in front of the space. You can't see them from
2 this particular picture, but right to the left of these bays
3 there is the handicap section --
4 MS. CITARAMANIS: Okay.
5 THE WITNESS: -- an ADA-approved --
6 MS. CITARAMANIS: Okay.
7 THE WITNESS: -- sidewalk. The third picture, a
8 view of exterior back of unit, and as you can see all the
9 way to the right this is the retaining wall here that I was
10 speaking of earlier. Here is the five feet grassy area and
11 then here is the six foot sidewalk. Now I have to
12 apologize. The picture kind of makes this grassy area look
13 larger than the sidewalk, but this space right here shown in
14 the picture 3 is actually four, the units here at the end of
15 the row, not ours. The picture was taken primarily to show
16 you the fence and the gate. So as this space comes
17 approximately in the center of the development here, it kind
18 of widens out a little bit. So if we were, in fact, leasing
19 this space taken, or the picture in picture 3, it would be a
20 little bit wider than what we have behind our space.
21 BY MR. KLINE:
22 Q Okay. All right. But it's still a reasonable
23 representation of the conditions behind your unit?
24 A Absolutely.
25 MS. CITARAMANIS: Would you be able to provide an

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1 actual picture --
2 MR. KLINE: Of the current situation?
3 THE WITNESS: Directly behind it?
4 MS. CITARAMANIS: Directly behind -- I mean that's
5 very helpful, but if you could provide an actual picture of,
6 picture or pictures, how many, whatever you want to, but
7 that just show that area. Okay.
8 THE WITNESS: If I could, I could, just want to
9 clarify a few things that were mentioned earlier. To
10 specifically address what these run areas are --
11 MS. CITARAMANIS: Where are you?
12 MR. KLINE: And you're --
13 THE WITNESS: In Ward Room 109.
14 BY MR. KLINE:
15 Q And so you're pointing at the --
16 MS. CITARAMANIS: We're on --
17 BY MR. KLINE:
18 Q Well, I guess I'll call it the upper left-hand
19 corner of the board. When it's turned on, it's --
20 MS. CITARAMANIS: This is --
21 THE WITNESS: Labeled as ward room --
22 MS. CITARAMANIS: -- 27?
23 THE WITNESS: Exhibit 27.
24 MS. CITARAMANIS: Okay. All right. So where are
25 you, ward room?

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1 THE WITNESS: Ward Room --
2 MS. CITARAMANIS: Okay.
3 THE WITNESS: -- Room 109.
4 MS. CITARAMANIS: Okay.
5 THE WITNESS: Earlier it was mentioned that, you
6 know, what the run areas are --
7 MS. CITARAMANIS: Okay.
8 THE WITNESS: -- and Mr. Sur was very accurate in
9 the construction of the unit itself and being the same as
10 steel and fence-like material. But it's not our primary
11 source of holding an animal. These runs are specifically
12 for larger animals like your German Shepherds, your
13 Labradors, things of that nature, and but again they're for
14 animals that are not necessarily going through treatment in
15 any way, form or fashion. They're animals that have already
16 been taken care of waiting for their owners to come back and
17 pick them up. So they're more, I would say, relaxed, docile
18 animals. They're in a controlled environment because these
19 areas are soundproof from this area.
20 Secondly, we also have an ICU recovery room that
21 is, has partitions on all sides. We designed this room
22 specifically for one reason and that was for the care, for
23 the protection of our own employees and because it will
24 lower the decibel ratings significantly because they're
25 housed in this unit, not to mention Daniel's soundproofing

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1 that he has in other places.
2 And, thirdly, talking about the -- I think we can
3 all agree that there's a reason why there was a specific
4 rating established in '06 of the ordinance was because it
5 was for residential environment. That's why they actually
6 came up with a number because I think it's more important in
7 my opinion and more important to protect the residential
8 environment than a commercial environment, specifically
9 because a commercial environment, we only have so many
10 commercial zones and so many different businesses end up in
11 commercial zones. So it's kind of hard to determine what is
12 actually appropriate for every type of business, again, in
13 my opinion.
14 So in, when this says soundproof, to me that's an
15 attempt. And the only attempt that we could possibly make
16 is to go back to the International Building Code which
17 Daniel went to and the 50 STC rating that he came up with is
18 for a standard commercial building envelope. It's not for
19 necessarily a veterinarian clinic, but it is for a
20 commercial building envelope similar to this nature.
21 And as we can see time and time again,
22 veterinarians employ these practices in strip malls which is
23 what this is. And to divide that space, it's use, to divide
24 that space, the only way we can divide it is through the use
25 of demising walls which is typical, a two by six or if

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1 you're using nominal lumber, it's two by six wood or --
2 MR. SUR: Metal.
3 THE WITNESS: -- metal framing, sorry. Thank you,
4 Daniel. We have to achieve two things with this demising
5 wall. One, provide the attempt of soundproofing, but we
6 also have to provide that fire rating. The good thing for
7 us is that fire rating, by achieving that, we're really
8 probably already soundproofed enough just by achieving the
9 fire rating. Daniel just went a step further and pulled out
10 a partition that actually gives us a 60, a transmittal
11 offset of 60 which through the use of how we build that wall
12 with the framing, staggering our numbers and using
13 insulation and using certain adhesives, we're able to, you
14 know, get more transmission lost in your regular demising
15 wall or regular drywall wall of about 32.
16 But there is, there's no way I could do anything
17 else like a CMU wall or anything of that nature in here
18 because, one, we're sharing this wall with the future tenant
19 here. Same thing with here. And it would cost the future
20 tenant even more money to develop his space should there be
21 anything else there other than drywall, if that makes sense.
22 MS. CITARAMANIS: So what you're -- just --
23 there's going to be one wall between them? It's not going
24 to be you all develop your wall and then they build their
25 wall? So it's going to be one wall and it has to be drywall

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1 on their side?

2 THE WITNESS: That is correct.

3 MS. CITARAMANIS: But it's going to be soundproof

4 on your side or is it the thickness that is -- I mean --

5 THE WITNESS: The thickness of the drywall is one

6 part of the solution of soundproofing. So it doesn't matter

7 if it was drywall or furniture, I can give you an STC-rated

8 high, STC-rated wall here. But if you didn't have any

9 furniture here, the sounds would be a lot louder than normal

10 because everything around you absorbs noise. So that's one

11 thing it's not taken in account in the specific layout or

12 even the laboratory testing. They don't test in an

13 environment that would be normal to a veterinarian clinic.

14 They test their assembly and only their assembly.

15 So with the furniture, with the fixtures, with the

16 walls and with the soundproofing that we're employing in the

17 side of the walls and doubling up the thickness of the

18 drywall of those walls, we're getting a better sound-

19 proofed, a better attempt to totally knock out sound all

20 together.

21 MS. CITARAMANIS: Doubling up the drywall on your

22 side?

23 THE WITNESS: Both sides.

24 MS. CITARAMANIS: On both sides?

25 THE WITNESS: That is correct. It's actually in

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1 our lease which we can, when we send that over to you, we --

2 initially when we signed the lease only one demising wall

3 was ours and they were going to build the other demising

4 wall. We figured that would be an issue, so now we're

5 building both walls. That way we know that they're designed

6 and built correctly and precisely.

7 MS. CITARAMANIS: You said we.

8 THE WITNESS: We as --

9 MS. CITARAMANIS: We as in the landlord or --

10 THE WITNESS: When I say we, I meant myself, my

11 wife and my construction team.

12 MS. CITARAMANIS: Okay.

13 BY MR. KLINE:

14 Q I think maybe her question really; initially the

15 landlord was agreeing to build one of the walls?

16 A That's correct. I'm sorry, yes.

17 MS. CITARAMANIS: Okay. Thank you.

18 THE WITNESS: But we felt like that wouldn't be

19 appropriate because, one, they would have to go pull another

20 building permit just to build one wall and, two, they may

21 not, they may not want to spend the money that we have to

22 spend just to soundproof it. You know, normal construction

23 of a wall to most people is bringing in and throw up one

24 sheet of one-half inch drywall which is not what we're

25 doing. We're actually throwing up a total of four sheets of

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1 five-eighths gypsum board that is not only sound-break

2 board, but it's also a fire rated board. And that partition

3 doesn't just stop at our ceiling height, which is typical,

4 you know, your eight, nine or 10 feet. We are actually

5 going all the way up to the debt metal of the roof which is

6 18 feet in height. So you don't just have the protection to

7 your drop ceiling. You'll have your protection all the way

8 to the actual roof itself.

9 But specifically going back to what Daniel is

10 saying, at the end of the day this is still a commercial

11 environment. We can't control all the noise. There's no

12 way anybody can ever control all the noise. And from his

13 statement he's basically saying that from OSHA and from his

14 opinion I don't think you would really want to. You need to

15 have some kind of noise to, you know, it's life, it's moving

16 things. You know, you want some kind of noise to keep you

17 sane.

18 All we can say that is we've made an attempt to

19 lessen any kind of noise that is seen abundant. And the

20 source of that noise is primarily in this area here. It

21 would not necessarily be in the ward room as stated earlier.

22 In our opinion, the noise would be in front of the ICU

23 recovery room when the actual dogs are coming in from their

24 trauma and/or receiving their treatment.

25 MS. CITARAMANIS: And all the dogs come in through

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1 the front of the building?

2 THE WITNESS: That is correct.

3 MS. CITARAMANIS: Okay.

4 MR. KLINE: I believe that completes the

5 petitioner's case.

6 MS. CITARAMANIS: I did maybe have one more

7 question for you.

8 MR. KLINE: Sure.

9 MS. CITARAMANIS: With regard to the traffic,

10 traffic statement --

11 MR. KLINE: Sure.

12 MS. CITARAMANIS: -- the first time I've ever seen

13 one of those. Usually staff pulls in --

14 MR. KLINE: Sure.

15 MS. CITARAMANIS: -- the Transportation

16 Department. So maybe you can enlighten me as to --

17 MR. KLINE: Yes. Actually, you know, I actually

18 had a question for Dr. Birken about that, but if you don't

19 mind I'll just kind of do it real quickly.

20 MR. KLINE: It is the protocol and the policy of

21 Park and Planning Commission that if your trip generation

22 would be less than 30 trips that triggers the filing of the

23 local area --

24 MS. CITARAMANIS: Right.

25 MR. KLINE: -- transportation view, they will

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1 accept a statement from the applicant. So what we normally
2 do is go up, figure out what the trip generation rates will
3 be, compare them with basically her hours of operation as to
4 what's been done and demonstrated to the satisfaction of the
5 transportation planning staff that we would have less than
6 30 peak hour trips through the a.m. and p.m. peak hours.
7 And in that situation, in fact, the LATR Guidelines do
8 provide for a submission of the traffic statement in lieu of
9 a traffic report.
10 MS. CITARAMANIS: Okay. Then that makes sense.
11 But in terms of, I mean it's nothing signed and you
12 mentioned that provided transportation staff agrees with you
13 that the trip generation is under 30.
14 MR. KLINE: Right.
15 MS. CITARAMANIS: I don't see anything in here
16 that says that other than to staff to say that there are no
17 transportation issues. Is there something that goes --
18 MR. KLINE: I'm looking for my staff report. What
19 I probably would need to do is, what my suggestion is if you
20 are going to ask Ms. O'Connor for any additional
21 information, you could ask her to confirm --
22 MS. CITARAMANIS: Yes. But you don't have
23 anything in your documents other than the traffic --
24 MR. KLINE: We prepared the traffic statements,
25 submitted it to the staff and have, if there was no

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1 confirmation from --
2 MS. CITARAMANIS: I didn't see anything generally.
3 Transportation staff is, their memo is added to the report,
4 with the staff report.
5 MR. KLINE: Can I have a second please --
6 MS. CITARAMANIS: Yes.
7 MR. KLINE: -- and just go back and double check?
8 Because you are right, normally there would be an
9 independent comment from transportation planning staff and
10 there would be an attachment to the report.
11 MS. CITARAMANIS: Well, just verifying that, I
12 mean with the information that you're providing, I mean the
13 information isn't signed, it isn't, I mean it was just, it's
14 just a statement.
15 MR. KLINE: Well, I -- what I can do is I can
16 confirm for you the assumptions and the statements --
17 MS. CITARAMANIS: Okay.
18 MR. KLINE: -- in the report by having Dr. Birken
19 just confirm that the trip generation characteristics
20 described in that statement are accurate. What I can do is
21 tell you what Park and Planning hadn't thought about when
22 they got it, other than to say the absence of comment in the
23 report indicated to me that they accepted it.
24 MS. CITARAMANIS: All right. Okay. Well, I
25 certainly will add that to my questions to staff --

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1 MR. KLINE: Sure.
2 MS. CITARAMANIS: -- to follow-up on.
3 BY MR. KLINE:
4 Q Dr. Birken, if I can just ask you real quick to
5 confirm, you understand the dialogue that's going on with
6 the Hearing Examiner?
7 A Uh-huh.
8 Q I presume Ms. Carter prepared the draft of the
9 traffic statement?
10 A Uh-huh.
11 Q And that was based on the information you provided
12 about when your employees come and when your drop-offs of
13 customers come?
14 A Yes.
15 Q And what that statement accurately reflects the
16 levels of operation during the a.m. and p.m. peak hours --
17 A Uh-huh.
18 Q -- so that someone can conclude whether you do it
19 or not, generate more than 30 trips during those time
20 periods?
21 A Uh-huh.
22 MS. CITARAMANIS: Okay. So did you do it or, I
23 mean I'm hearing Mr. Kline basically give the information.
24 What did you do for that?
25 MR. KLINE: Yes, sure. Let me just show her what

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1 we're talking about.
2 MS. CITARAMANIS: For the traffic information
3 document that you submitted. Where did that information
4 come from?
5 MR. KLINE: All right. This is a traffic
6 statement that was prepared by my office.
7 THE WITNESS: Uh-huh.
8 BY MR. KLINE:
9 Q And it contains information, operational
10 information from which we could project the trips during
11 certain periods of the day. Ms. Carter presumably got this
12 information and you were the source of the information?
13 A Uh-huh.
14 Q Could you confirm that for the Hearing Examiner?
15 A Yes, I was the source of the information. She had
16 asked me how many.
17 MS. CITARAMANIS: Okay. And you're referring to
18 Exhibit 11?
19 MR. KLINE: Traffic statement, yes, ma'am, that's
20 correct. Yes.
21 MS. CITARAMANIS: The traffic statement on the
22 docket shows --
23 MR. KLINE: I'm sorry.
24 MS. CITARAMANIS: -- Exhibit 11?
25 MR. KLINE: Yes. Correct.

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1 MS. CITARAMANIS: So you provided that information
2 to technical staff?
3 THE WITNESS: Uh-huh.
4 MS. CITARAMANIS: Okay. All right. And your
5 office prepared it? It's not something --
6 MR. KLINE: We typed it up.
7 MS. CITARAMANIS: You typed it up? Okay. All
8 right. Do you have anything else?
9 MR. KLINE: I don't. I will want to go back to
10 also, we'll take a look and see if there's a sub-file we
11 would have had in the communication with transportation
12 planning staff and if I see a gate that will look fine, I
13 will let you know, but otherwise I'd ask if you could
14 inquire of Ms. O'Connor if there was anything that she has
15 in her file such as an internal transmission saying it looks
16 good to us, meaning the transportation planning division.
17 MS. CITARAMANIS: Okay. I mean is this something
18 that you've experienced in past cases, special exceptions
19 for this type of use?
20 MR. KLINE: Quite frequently, yes.
21 MS. CITARAMANIS: Okay.
22 MR. KLINE: The candid answer to your question is
23 the traffic report would have cost probably 7,500 to \$10,000
24 and this is -- you try and avoid that whenever possible. So
25 as long as you feel you've got good enough, concrete enough

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1 information to satisfy staff below the threshold of
2 triggering an LATR, you do take advantage of that when you
3 can.
4 MS. CITARAMANIS: Okay. And that's fine, but I'll
5 get that from --
6 MR. KLINE: Ms. O'Connor. She'll be --
7 MS. CITARAMANIS: Ms. O'Connor.
8 MR. KLINE: -- able to provide you that
9 confirmation.
10 MS. CITARAMANIS: Okay. So I'm assuming at this
11 point you'd like to have all of the exhibits?
12 MR. KLINE: Exhibits 1 through 28 accepted into
13 the record of the case.
14 MS. CITARAMANIS: And they are accepted into the
15 record. Obviously, we don't have any objection.
16 (Exhibit Nos. 1 through 28
17 were received in the record.)
18 MS. CITARAMANIS: And what I have asked for you to
19 provide --
20 MR. KLINE: Uh-huh.
21 MS. CITARAMANIS: -- is a copy of the lease.
22 MR. KLINE: Yes, ma'am.
23 MS. CITARAMANIS: Of course, you'll mark out
24 whatever is not appropriate --
25 MR. KLINE: Uh-huh.

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1 MS. CITARAMANIS: -- but I did hear a lot of
2 information from Mr. Ober that will be helpful in
3 understanding some of the dynamics of the walls. Also,
4 you're going to provide me with picture, an additional
5 picture of the actual rear --
6 MR. KLINE: Immediately behind the unit, yes,
7 ma'am.
8 MS. CITARAMANIS: -- where, yes, even though you
9 did provide one that's down at the end of the building --
10 MR. KLINE: Yes.
11 MS. CITARAMANIS: -- but I'd like the one from
12 behind.
13 MR. KLINE: Right.
14 MS. CITARAMANIS: And you were going to provide me
15 information on soundproofing.
16 MR. KLINE: The treatment of this topic and
17 subject --
18 MS. CITARAMANIS: Exactly.
19 MR. KLINE: -- in a couple comparable cases.
20 MS. CITARAMANIS: Right. And the argument that
21 what has been presented will meet that definition.
22 MR. KLINE: And unless you want me to call Mr.
23 Grossman as a witness and ask him if he could, you know --
24 MS. CITARAMANIS: I can always ask him afterwards
25 but, you know, it's just --

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1 MR. KLINE: No, I --
2 MS. CITARAMANIS: -- to me it's tying up a loose
3 end because at this point --
4 MR. KLINE: It's --
5 MS. CITARAMANIS: -- I mean there's always another
6 argument and I know Mr. Ober made an argument that is
7 contrary to what I, my interpretation of how you --
8 MR. KLINE: I understand. It could, it could
9 enjoy some clarification.
10 MS. CITARAMANIS: It could. Okay. So let's see
11 if we can do it so that I can --
12 MR. KLINE: Uh-huh.
13 MS. CITARAMANIS: -- write my report.
14 MR. KLINE: So I guess the question would be how
15 long you would like to leave the record open to take care of
16 that?
17 MS. CITARAMANIS: Well --
18 MR. KLINE: The first two things you mentioned we
19 can obviously get done pretty quickly.
20 MS. CITARAMANIS: The picture and the lease.
21 MR. KLINE: The third one, the research probably
22 would take me into early middle of next week, so if you
23 could leave it open for, the record open for a week, I think
24 that would be adequate for us to be able to submit all the
25 material.

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1 MS. CITARAMANIS: What's today, the -- so you
2 could have -- well, actually I want to, hopefully staff
3 would be able to address the traffic issue relatively
4 quickly.
5 MR. KLINE: Yes, I forgot about that.
6 MS. CITARAMANIS: Yes.
7 MR. KLINE: Yes.
8 MS. CITARAMANIS: So maybe we want to leave it
9 open for two weeks?
10 MR. KLINE: Okay.
11 MS. CITARAMANIS: So that would take us, we're on
12 the 26th, to the 9th, August 9th?
13 MR. KLINE: Okay.
14 MS. CITARAMANIS: Is that, do you think that's
15 enough time?
16 MR. KLINE: Yes.
17 MS. CITARAMANIS: Staff, provided she's not on
18 vacation. And certainly if she is, we'll just extend it if
19 we need to, but --
20 MR. KLINE: If you find that to be the case, let
21 me know and I'll help you try and find the person who could
22 step in.
23 MS. CITARAMANIS: Okay. I mean I'm just going to
24 ask her about the traffic information --
25 MR. KLINE: Okay.

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1 MS. CITARAMANIS: -- and any confirmation from,
2 need confirmation from transportation staff. I'm not
3 talking about actually doing a study, just confirmation that
4 the process -- that is the process, okay?
5 MR. KLINE: Ms. CitaraManis, refresh my memory,
6 there were two things you were going to ask of Ms. O'Connor.
7 One was the traffic issue, but what was the other one?
8 MS. CITARAMANIS: That's, that is a good question.
9 I'm looking at my notes now.
10 MR. KLINE: Maybe I'm wrong. I was thinking --
11 MS. CITARAMANIS: No, I think you're absolutely
12 right and, unfortunately, it's --
13 MR. OBER: It's clarifying --
14 MS. CITARAMANIS: Pardon me?
15 MR. OBER: It was clarifying the, them not saying
16 anything regarding the noise.
17 MS. CITARAMANIS: Yes. Clarification --
18 MR. KLINE: Okay.
19 MS. CITARAMANIS: -- on the sound.
20 MR. KLINE: Okay. Very good. Okay.
21 MS. CITARAMANIS: Usually I have a long, I have a
22 list here, but I didn't put this in. So I will ask
23 technical staff with regards to the traffic and
24 interpretation of the, clarification on her staff report
25 where she put some of the information under residential

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1 versus commercial and the intent that it was supposed to go
2 in commercial and if, in fact, she did have a standard that
3 was applicable that is escaping us. Okay. So the record
4 will close as of now to allow for that information to be
5 gathered and submitted by August, the close of business
6 August 9th, which is a Friday. It certainly can be extended
7 if we find that staff can't provide that information or you
8 need additional time, otherwise it will close and then that
9 should give the court reporter plenty of time to get the
10 transcript out.
11 My decision will be 30 days, within 30 days after
12 my decision, my report and recommendation, which will go to
13 the Board of Appeals and they will make the final decision
14 on your request. If we don't have anything else, then I
15 believe we are adjourned. It's about five minutes to 12:00.
16 Thank you everybody for your --
17 MR. KLINE: Thank you very much.
18 MS. CITARAMANIS: -- testimony and being here
19 today. It was a pleasure meeting you.
20 (Whereupon, at 11:56 a.m., a brief recess was
21 taken.)
22 MS. CITARAMANIS: Back on the record for a moment
23 to enter into the record -- you want to describe, Mr. Kline?
24 MR. KLINE: Sure. While we were cleaning up here,
25 you reminded me that I had somewhat altered the exhibits in

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1 the record by adding the stars onto them to give location of
2 the space that was the subject of the special exception. So
3 Exhibit 14B, the zoning vicinity map --
4 MS. CITARAMANIS: Yes.
5 MR. KLINE: -- I would ask that it be given a new
6 exhibit number.
7 MS. CITARAMANIS: It would be 29 is the next --
8 (Exhibit No. 29 was marked for
9 identification.)
10 MR. KLINE: And I'm marking that in the upper
11 right-hand corner of the exhibit. And Exhibit No. 4, which
12 was the overall site plan, ask that it be given a new
13 number.
14 MS. CITARAMANIS: And that would be Exhibit 30.
15 (Exhibit No. 30 was marked for
16 identification.)
17 MS. CITARAMANIS: And, again, basically both of
18 these documents are the same as the exhibits you just
19 identified except that it has stars to represent the
20 location of the property. I think they're self-explanatory.
21 MR. KLINE: Yes, that is accurate. And in the
22 case of No. 30, it also has a little legend explaining what
23 --
24 MS. CITARAMANIS: Right.
25 MR. KLINE: -- the approximate location of Suite

1 103.

2 MS. CITARAMANIS: Okay. And, all right. So with
3 that clarification, I will admit Exhibits 29 and 30 into the
4 record as well.

5 (Exhibit Nos. 29 and 30 were
6 admitted into the record.)

7 MR. KLINE: Thank you.

8 MS. CITARAMANIS: Okay. Thank you. Thank you.
9 We have adjourned again.

10 (Whereupon, at 12:01 p.m., the hearing was
11 concluded.)

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C E R T I F I C A T E

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

Petition of Claws & Paws
Special Exception No. S-2871
OZAH No. 13-20

By:

Tracy M. Hahn, Transcriber

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