



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 3
01/16/03

MEMORANDUM

DATE: January 10, 2003
TO: Montgomery County Board of Appeals
VIA: John Carter, Chief, Community-Based Planning Division **JAC**
FROM: Kathleen A. Reilly, AICP, Community-Based Planning Division

REVIEW TYPE: Special Exception Modification
APPLYING FOR: Veterinary Hospital
APPLICANT: Town and Country Animal Clinic
CASE NUMBER: S-715-A
REVIEW BASIS: Chapter 59
ZONE: RE-200
LOCATION: 2715 Olney-Sandy Spring Road
MASTER PLAN: Olney, 1980

FILING DATE: October 17, 2002
PLANNING BOARD: January 16, 2003
PUBLIC HEARING: February 14, 2003

STAFF RECOMMENDATION: APPROVAL WITH CONDITIONS:

1. The applicant is bound by all submitted statements and plans.
2. Limit the expansion of the Town and County Animal Hospital building to no more than 1,729 square feet.
3. Limit the hours of operation to Monday through Friday 8:00 a.m. to 7:00 p.m. and Saturday from 8:00 a.m. to 1:00 p.m.
4. Limit the practice to small animals that are seen on an appointment basis.
5. Applicant must maintain a log of appointments for inspection by County authorities.
6. No animal boarding is permitted, however, animals may be kept overnight for medical care.
7. Approval of final stormwater management plan by DPS prior to issuance of permits.
8. Approval of Tree Save Plan by M-NCPCC, Environmental Planning prior to issuance of sediment and erosion control permits. Tree Save Plan shall show tree preservation measures, Category II Forest Conservation

- easement on the rear and side yards, and best management practices for site approved by Department of Permitting Services.
9. The applicant shall implement the following best management practices to meet "nonconformance requirements", unless found infeasible by the implementing agency (shown in *italics*): a Category II Forest Conservation Easement placed on an area 100' wide in the rear yard and 50' wide along the eastern property line. (*M-NCPPC*); porous paving used for any new parking spaces created. (*DPS*), bio-retention facilities, located outside existing forest, to fulfill water quality requirements for stormwater management. (*DPS*)
 10. All previous conditions of the special exception remain in full force and effect.

PROPOSAL DESCRIPTION

The applicant, Town and Country Animal Clinic, is requesting a modification to an existing special exception for a veterinary hospital. The modification seeks to construct an addition to the rear of the existing veterinary hospital. This addition will contain approximately 1,729 square feet and will contain one additional treatment/examination room, a separate space for the radiology laboratory, a new enclosed operating facility; relocation of the laboratory and dispensing area to a separate room, expansion of the animal holding areas and a hydrotherapy room for rehabilitation. A total of 22 parking spaces are proposed for this request. Access to the site is from Olney -Sandy Spring Road, (MD 108) a state maintained public right-of-way.

Neighborhood Description –The properties immediately north, east and west of the subject site are zoned R-200 and are developed with single-family residential units. South and southwest of the site across MD 108, the properties are zoned RE-2/TDR and developed with single-family attached and detached dwelling units. The northwest corner of the intersection of Prince Philip Drive and MD 108 is zoned R-60 and is developed with the thrift shop for Montgomery General Hospital. Montgomery General Hospital, zoned RE-2 is located approximately 600 feet north of the subject site along Prince Philip Drive at its intersection with Brooke Grove Road. Saint Peter's Catholic Church and school zoned R-90 is located approximately 860 feet west of the subject site on MD 108.

Other special exceptions in the area approved by the Board of Appeals include: BAS 1920 and BAS 1921 for adult day care facility and group home for elderly residents approved on 4/3/092; CBA-2521 to construct a hospital (Montgomery General Hospital) approved on 1/16/69; CBA-2521-B construct a cancer center building approved on 5/26/88; subsequent approvals for hospital included construction of administrative building, approved on 7/24/91, construction of parking facility approved 3/4/92; construction of outpatient ambulatory care center approved on 10/6/93 and relocation of a sidewalk approved on 4/4/96; BAS 511 for a service organization, (hospital thrift shop) approved on 11/24/76; BAS-343 construct a temporary building on hospital grounds approved on 3/22/78; and BAS 640 add incinerator to hospital approved 5/582 and

Site Description - The site is located on the north side of MD 108 approximately 350 feet east of its intersection with Prince Philip Drive. The subject property contains approximately 1.73 acres of R-200 zoned land and is recorded as Lot 13, Block B in the Timberland Estates subdivision. The site is developed with a one story single-family detached dwelling unit that serves as the veterinary clinic. Access to the site is from a circular driveway via MD 108. This driveway has two access points. Because MD 108 is a divided roadway with grassy median strip, the easternmost access point serves as the site's ingress and the westernmost point serves as the site's egress.

An asphalt area in front of the clinic and off the circular driveway presently serves as a parking area. An asphalt drive aisle runs along the western side of the clinic and terminates into another asphalt parking area directly behind the clinic. Along this drive aisle, there is interparcel access with adjacent property to the west. The property contains many deciduous trees. A special exception for the existing use was approved by the Board of Appeals on 4/9/90. Copies of this opinion and subsequent approvals are contained in Appendix 1.

Elements of the Proposal - The applicant offers the following information in support of this modification:

The applicant, requests a modification to its existing special exception to construct an addition of approximately 1, 729 square feet to the rear of the existing structure. The new addition will consist of one additional patient examining and treatment room a new closed room operating facility to replace the existing operating facility, laboratory and dispensing area, a hydrotherapy room, and expanded and soundproofed holding area for animals.

Hours of operation are Monday through Friday 8:00 a.m. to 7:00 p.m. and Saturdays from 8:00 a.m. to 1:00 p.m. There are 2 full time veterinarians and 2 part time veterinarians associated with this use. One 1 full time veterinarian works, Monday, Tuesday, Thursday and Friday, from 9:00 .am. - 6:45 p.m. and every other Saturday morning, the other full time veterinarian works Monday, Tuesday, Wednesday and Thursday from 9:00 .am. - 6:45 p.m. and every other Saturday morning. When one full time veterinarian is off for the day; the other full time veterinarian is assisted by one part time general practice veterinarian working from 9:00 a.m. to 1:00 p.m. and a second general practice veterinarian working from either 2:00 p.m. to 6:45 pm, or from 5:00 p.m. to 6:45 p.m. Veterinary specialists may work at the clinic on an average of one to three times per month. A total of 13 part time and full time are associated with this use. There is no increase in staff or hours of operation requested under this modification.

Patients are seen for medical issues during the late afternoon and evening hours with appointments scheduled for daytime treatment and follow-up. There are no walk-in appointments; all services are conducted on an appointment basis. Appointments occur between the hours of 9:00 a.m. and 1:00 p.m. and again from 4:00 p.m. to 6:45 p.m. In the morning, one doctor will see no more than 4 patients an hour, or a total of 8 patients

if two doctors are working. On days when the full veterinarian is assisted by a part time veterinarian no more than 15 patients would be seen in a two-hour period.

There is no boarding of animals on the site. Occasionally an animal recovering from treatment during the day may require longer observation or is too sick or slow to recover to leave immediately. In these instance the animal will be kept overnight and sedated. This practice does not serve large animals and this is not requested under the subject application. Deliveries to the site include national overnight delivery once or twice a day. Animal food deliveries are twice a week and medical laboratories deliver twice a day.

Twenty-two parking spaces are proposed for this site. The parking area will be redesigned to accommodate 8 parking spaces in the front, 5 parking spaces along the side of the property and 9 parking spaces in the rear of site.

ANALYSIS

Master Plan - The site is covered by the 1980 Olney Master Plan. The Plan does not provide specific text for this site. However, a veterinary hospital is allowed by special exception in the R-200 Zone.

Transportation - The Transportation Planning staff has reviewed this modification request and recommends the following conditions as part of the adequate public facilities (APF) review and test for the subject site.

Limit the expansion of the Town and County Animal Hospital building to no more than 1,729 square feet.

Limit the hours of operation to Monday through Friday 8:00 a.m. to 7:00 p.m., and Saturday 8:00 a.m. to 1:00 p.m.

Limit the practice to small animals, which are seen on an appointment basis.

No animal boarding is permitted, however, animals may be kept overnight for medical care.

The site is located on the north side of Olney-Sandy Spring Road (MD 108) east of Prince Philip Drive. Site access is provided via an existing circular driveway of varying widths providing two existing points of access to Olney-Sandy Spring Road (MD 108). Pedestrian access is provided by asphalt multi-purpose trails that run along both sides of Olney-Sandy Spring Road (MD 108).

The Olney Master Plan classifies Olney Sandy Spring Road as a major highway (M-60) from Georgia Avenue (MD 97) to Doctor Bird Road (MD 182) with a recommended 120-foot right-of-way. Both the Olney Master Plan and the Master Plan of Bikeways recommend a Class I eight to ten foot wide bicycle pedestrian path along Olney Sandy Spring Road. These paths were provided in conjunction with roadway improvements

made by the State Highway Administration (SHA). The subject property previously dedicated a 150-foot right-of-way to SHA for roadway improvements. Additional right-of-way dedication is not required.

The proposed modification is expected to generate fewer than 50 peak hour trips during both the peak hour of the morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods based on a traffic statement submitted by the applicant's traffic consultant. Neither the Local Area Transportation Review (LATR) Guidelines nor *Trip Generation*, 6th Edition, published by the Institute of Transportation Engineers provides trip generation rates for veterinary hospitals. The highest number of peak hour trips is estimated by the consultant to be 18 trips made during the evening peak period. This estimate is based on a review of the plan of operation and a review of the appointment book. This number falls well below the LATR threshold of 50 trips that would require a traffic study. These trips can be accommodated on the existing roadway network. Finally, the proposed veterinary hospital is located in the Olney Policy Area, which has a remaining capacity of 2,033 jobs as of November 30, 2002.

Environmental - The Environmental Planning staff has reviewed the subject modification and recommends approval with the following conditions:

Approval of Tree Save Plan by the M-NCPPC, Environmental Planning prior to issuance of sediment and erosion control permits. Tree Save Plan shall show tree preservation measures, Category II Forest Conservation easement on the rear and side yards, and best management practices for site approved by Department of Permitting Services.

The applicant shall implement the following best management practices to meet "nonconformance requirements", unless found infeasible by the implementing agency (shown in *italics*): a Category II Forest Conservation Easement placed on an area 100' wide in the rear yard and 50' wide along the eastern property line. (*M-NCPPC*); porous paving used for any new parking spaces created. (*DPS*); bio-retention facilities, located outside existing forest, used to fulfill water quality requirements for stormwater management. (*DPS*)

This modification has an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). An exemption for submitting a Forest Conservation Plan has been issued. A Tree Save Plan is required to indicate preservation methods for several specimen trees on site. The Tree Save Plan shall also indicate Category II Forest Conservation easements on the side and rear yards.

The applicant has submitted a conceptual stormwater management plan, which is under review by the Department of Permitting Services (DPS). A final stormwater management plan will need to be approved by DPS and must be consistent with the final Tree Save Plan approved by the M-NCPPC, Environmental Planning.

This property is located in the Upper James Creek subwatershed of the Hawlings River watershed. This subwatershed has poor stream and habitat conditions. It is

designated Watershed Restoration Area by Countywide Stream Protection Strategy (CSPS). CSPS indicates that high land use densities within this subwatershed have resulted in degradation to the stream system.

The Environmental Guidelines include the Hawlings River watershed, along with all Montgomery County watersheds draining into the Patuxent River, in the Patuxent River Primary Management Area (PMA). The PMA is a water quality protection and restoration area where land use activities are managed to protect and enhance water quality in the rivers and streams. The entire subject property falls into the PMA Transition Area (within 660' from a tributary to the Patuxent River) where a ten percent imperviousness cap is imposed on newly developing properties.

The requested modification expands the amount of imperviousness by 5.5% bringing the total level to 25.5%. Average imperviousness in Upper Rock Creek and Olney master planning areas is 26% in R-200 zones on community water and sewer. The proposed imperviousness on this site is 0.5% less imperviousness than average.

Since the existing use predates PMA requirements, it can be recognized as an existing non-conforming use. Existing non-conforming uses are subject to "nonconformance requirements, such as best management practices, to help offset negative impacts of higher imperviousness levels. Staff has discussed a variety of best management practices with the applicant. The applicant has agreed to the following recommended best management practices for this site: retaining 120' of forested backyard and a forested 50' side yard in a Category II Forest Conservation Easement; using porous paving materials for areas that exceed required parking; and use of a bio-retention facility to meet quality stormwater management requirements.

Community Comments – To date, staff has not received any comments from the community on the proposed modification.

Landscaping, Lighting and Parking Facility - The applicant has submitted a landscape and lighting plan. Staff finds the landscaping plan to be acceptable. The submitted lighting plan shows lighting levels along the rear and side lot lines not exceeding 0.1 foot candles. The proposed lighting will not create glare or intrude into adjacent residentially zoned areas. Staff also finds the lighting plan to be acceptable. Finally, the applicant has requested a waiver of parking facility setback requirements for the proposed areas in the side and rear yards. Staff has determined that the applicant does not need this waiver. According to Sect. 59-E-2.83 of the Zoning Ordinance the proposed parking facility will not be a cumulative enlargement greater than 50% of the existing parking facility and thus in compliance with the Ordinance.

Compliance with General and Specific Special Exception Provisions

Staff has reviewed the application for compliance with all applicable special exception provisions and finds the following:

Sec. 59-G-2.32. Hospital, veterinary.

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

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

Not applicable.

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

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

Not applicable.

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

No exterior areas for exercising, walking or keeping animals exist or are proposed under this modification.

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

The submitted noise study prepared by the applicant's consultant stated any sound levels generated in the recovery area and holding areas of the use are reduced during the day through the use of sedatives. Sound measurements were taken 10 feet from the exterior wall of the existing structure housing animals. These measurements were dominated by ambient noise which emanates from vehicle traffic on MD 108. No animal noise was noted coming from the existing structure. According to the noise consultant, this criterion can be met because of the heavy construction materials and lack of significant penetrations. DPS has reviewed the consultant's findings and concurred with their analysis.

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

The submitted site plan shows part of the existing structure located 48 feet from the property line. This portion of the structure is devoted to non-patron and non-patient activities. The use is deemed conforming and is not subject to the 50-foot setback requirement per a letter from DPS, Permitting Services. No additions are planned for this structure and no other invasion of the 50 feet setback is proposed and the use was lawfully existing prior to the effective date of this ordinance. A copy of the DPS letter is contained in Appendix 2.

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

Not applicable as no animals are proposed to be outdoors between these hours under this request.

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

According to the submitted noise study, sound levels measured on the site and near the property line were dominated by ambient noise from traffic on nearby roadways. Levels measured with ambient were within the code with no vehicle pass by. Therefore, any noise from animals would be less than this requirement. The study also stated that easily identified sounds of animals could not be heard, therefore animal sounds were at least 10 dBA below the ambient levels. In addition, the report stated that noise from the use did not and will not exceed 60dBA between the hours of 8 a.m. to 6 pm and 50 dBA between the hours of 6 pm and 8am. The predicted maximum receiving property line sound levels will not exceed the characteristic ambient sound levels by more than 3dBA at any time. Based on this analysis, this requirement can be met.

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

No off-site dog walking or exercising areas are proposed under this request.

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

- (i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.

The applicant has submitted such a study. The proposed addition will be constructed of materials similar to the existing construction. The study also states that since animals are not kept overnight and sedated when they are kept overnight for medical purposes, the sound levels as a result of animal noises measured after the proposed addition is constructed will be no more than those measured on the day the study was undertaken in September, 2002. The proposed expansion will meet this standard. This study was also reviewed by DPS who concurred with the findings.

- (ii) detailed floor plans that show all the interior areas and their use designations,

The applicant has submitted such a plan.

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

There are no exterior areas proposed under this modification that will be used to exercise walk or keep animals.

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

Presently, the use has 5 parking spaces. Under this modification, the applicant is proposing to redesign the parking to accommodate 22 vehicles. With a maximum of 9 staff, two doctors, and 8 appointments per hour, a total of 19 parking spaces would be needed. The submitted proposal can meet this requirement.

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

Under this modification, no animals will be boarded, exercised or walked. The submitted site plan shows animal runs at the rear of the proposed addition. Large dogs will be kept in these runs during the day while recovering from a procedure performed that day. According to the applicant, these runs are necessary, as large dogs cannot be comfortably kept in a holding cage.

- (11) The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling; abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by County authorities.

The office hours will remain the same under this request, Monday through Friday, 8:00 a.m. to 7:00 p.m. and Saturdays 8:00 a.m. to 1:00 p.m. All animals seen are on an appointment basis. These are both recommended as conditions of approval. Additionally, staff recommends that a written log be maintained by the applicant for inspection by County authorities.

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

The practice also sells special diet foods for its patients not available in pet stores. According to the statement of operations, these foods are specially compounded by their manufacture to treat various medical conditions and are sold only when prescribed by the veterinarians. Sales from these foods are less than 20% of gross income of the clinic.

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

Per the submitted statement of operations, a licensed contractor picks up waste one day per week during the mid-morning. This practice will continue under this request.

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

According to the submitted statement of operations, animals may be kept overnight for medical purposes only. This action would occur sporadically and the animals will be sedated when kept overnight.

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

The subject use is on public water and sewer.

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

This request seeks to modify the approved special exception.

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The non-inherent adverse characteristics associated with this veterinary hospital include the size, scale of addition, parking and the amount of traffic generated. Based on a review of the submitted plans, the staff finds that the physical and operational characteristics of the proposed modification are compatible with the existing and proposed adjacent development. The non-inherent effects are not sufficient for a denial of this special exception modification.

59-G-1.21. General conditions.

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

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

The proposed modification is allowed in the R-200 zone.

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

The proposed modification complies with the standards and requirements for a veterinary hospital under Section 59-G-2.32 of the Zoning Ordinance.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The subject property is covered by the 1980 Olney Plan. The Master Plan supports the existing R-200 zone for the property and the subject modification is allowed by special exception in that zone.

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

Staff believes that the proposed new construction of similar materials and additional landscaping are compatible with the existing and surrounding uses. As such, the proposed use will continue to be in harmony with the general character of the neighborhood when considering these criteria.

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

The proposed use will not have a detrimental effect for any of these reasons.

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

The applicant proposes soundproofed animal holding areas with new construction acoustical performance sufficient to meet the applicable noise standards. The submitted noise study notes that sound levels measured for the existing use do not exceed standards required for the use. The submitted lighting plan shows that no direct light will intrude onto adjacent properties. Thus, the proposed modification will not cause adverse effects with respect to any of these criteria.

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

The proposed modification will not increase the number, intensity, and scope of the approved special exceptions in the area.

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

The proposed special exception modification will not cause any of these effects.

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

The subject site will continue to be served by adequate public facilities.

Conclusion - Staff recommends approval of the submitted special exception modification with the conditions stated on page 1 of this report.

VICINITY MAP FOR
S-715-A



Map compiled on January 06, 2003 at 3:58 PM | Site located on base sheet no - 224NW03

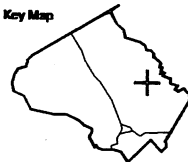
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Key Map



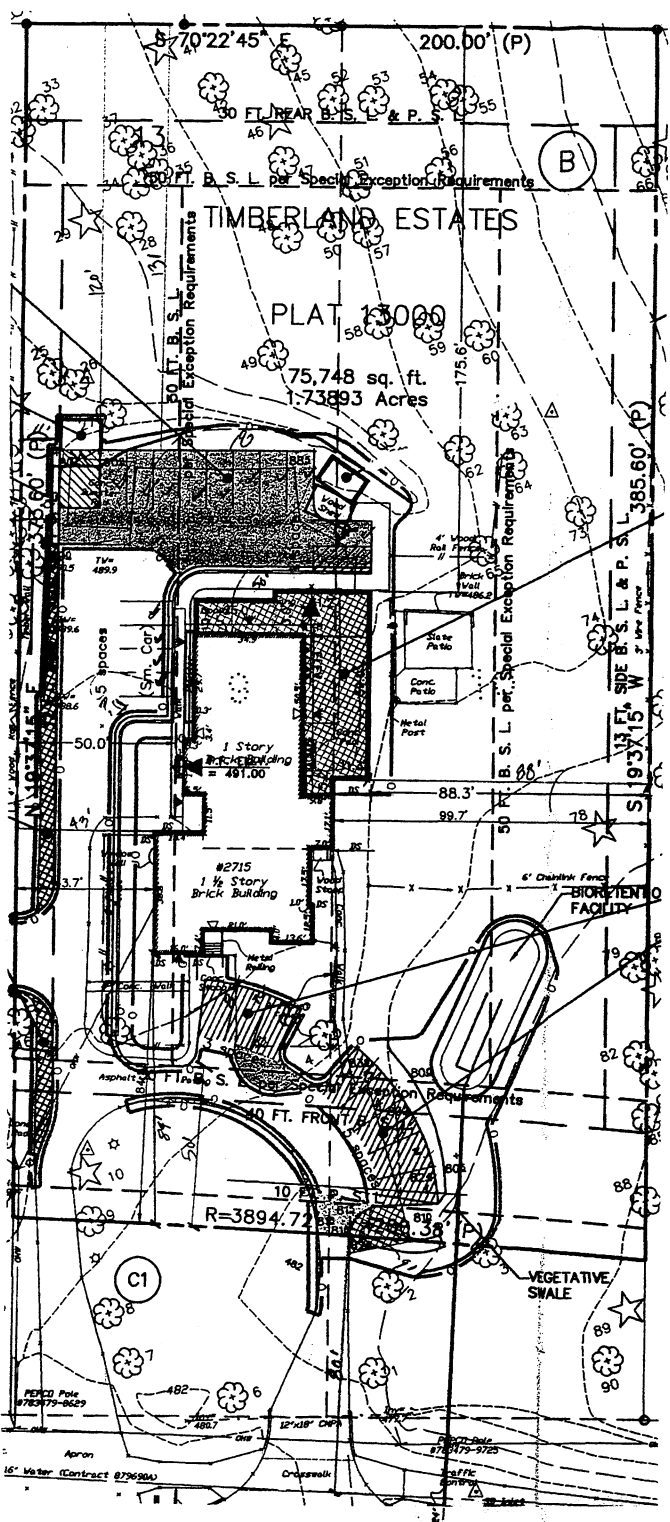
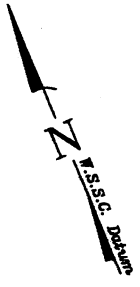
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Research & Technology Center



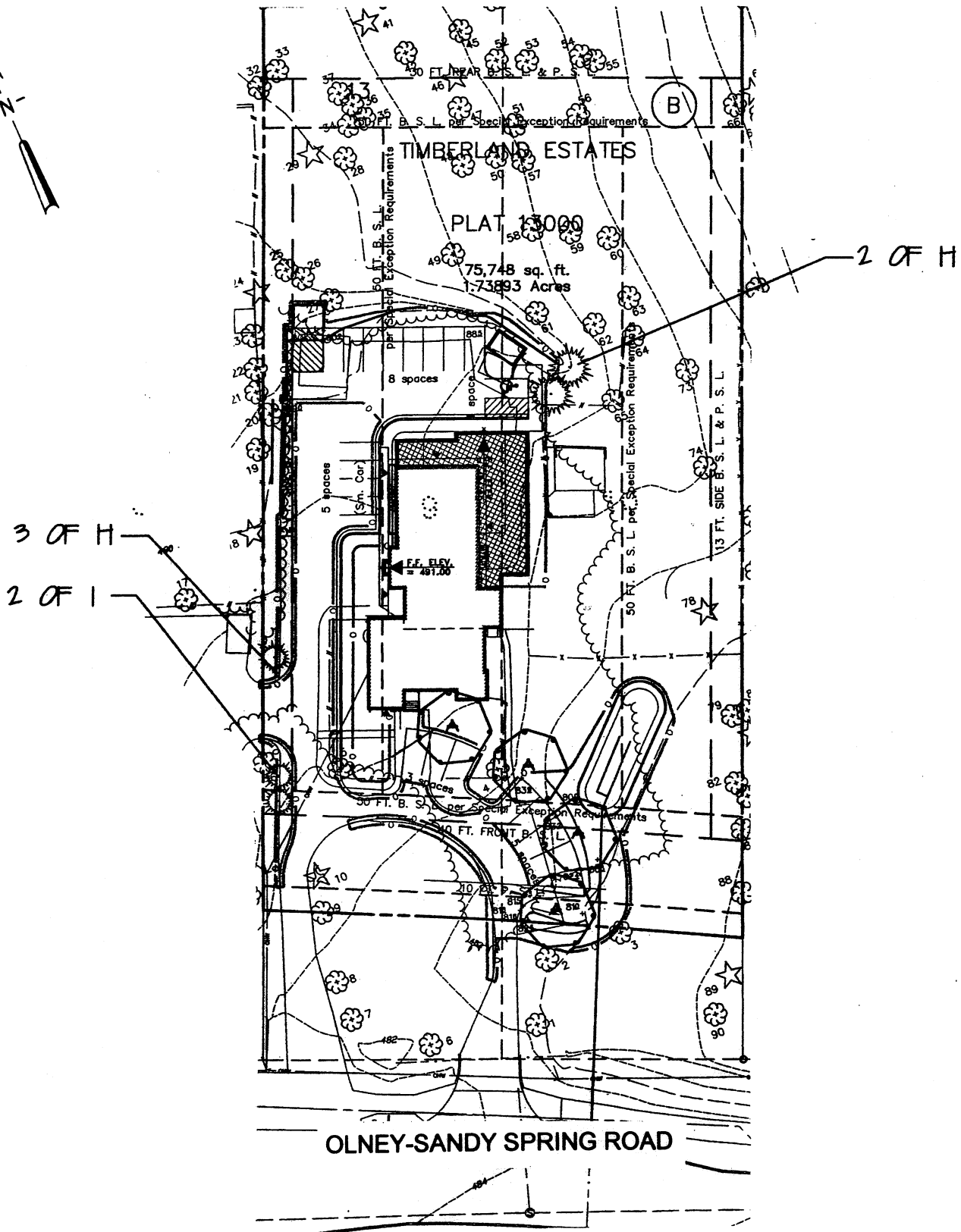
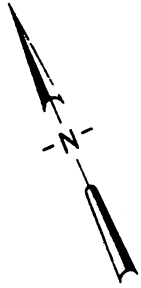
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PROPOSED ADDITION

OLNEY - SANDY SPRING ROAD
MD. ROUTE 108

SITE PLAN



LANDSCAPE PLANT LIST

Key	Qty.	Potential Name	Common Name	Cal.	Hgt.	Spd.	Misc.
SHADE TREES							
A	4	Acer rubrum 'Red Sunset'	Red Sunset Maple	2 1/2-5'		D+D	2' 00"
SCREEN TREES							
H	9	Ilex xetenuetta 'Fosterii'	Foster's Holly		5-6'	D+D	1' 00"
I	2	Ilex 'Nellie R. Stevens'	Nellie R. Stevens Holly		4-5'	D+D	1' 00"

LANDSCAPE PLAN

COUNTY BOARD OF APPEALS
For
MONTGOMERY COUNTY

Case No. S-715

PETITION OF DR. HAROLD H. AND JOANN S. HOLBROOK
(Hearings held December 20, 1979
and January 17, 1980)

OPINION OF THE BOARD

This proceeding arises on the petition filed for a special exception pursuant to Section 59-G-2.32 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended) to permit construction and operation of a veterinary hospital. The subject property includes Lots 9 and 10, Block B, Timberland Estates Subdivision, at 2715 Olney-Sandy Spring Road, Olney, Maryland, in an RE-2 Zone.

Decision of the Board: Special exception granted,
as conditioned herein.

Petitioners' Proposal

Dr. Holbrook and Witnesses in support of his petition appeared and agreed to be bound by testimony, evidence and exhibits as follows: Dr. Holbrook has practiced veterinary medicine in Montgomery County since 1953; when his clinic located on Route 355 was displaced by Metro construction, he took over an existing veterinary practice in Olney, with offices located at 3101 Olney-Sandy Spring Road, some 1,500 feet from the subject site. The doctor owns three contiguous lots (Lots 8, 9 and 10) fronting on Olney-Sandy Spring Road (Maryland Route 108). His own family lives in the house on Lot 8; a tenant occupies the house on Lot 9, and Lot 10 is undeveloped except for his family's swimming pool. Dr. Holbrook will soon have to vacate his present offices because the property has been sold for development and his lease will be terminated. He proposes to conduct his veterinary practice at the subject site and to construct a 1,700-square-foot addition attached directly to the rear of the house on Lot 9.

The Holbrook lots are part of a small subdivision known as Timberland Estates, which is developed with single-family residences immediately east, north and west of the Holbrook properties. One home has been built on the lots east of the subject site; beyond that property there is undeveloped land and farmland. To the north, across Brooke Grove Road, is the Montgomery General Hospital and associated medical clinic facilities. The house on Lots 6 and 7 (immediately west of

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Dr. Holbrook's residence, at the intersection of Route 108 and Prince Philip Drive) is known as "covenant House" and is run by the Baptist Church as a home for children. A special exception dental office is located in the next property to the north, fronting on Prince Philip Drive. This arterial road, some 400 feet west of the subject site, is shown on the proposed Olney Area Master Plan (draft plan now in preparation) as the eastern boundary of the Olney Town Center. Property opposite the site on the south side of Route 108 is undeveloped.

Dr. Holbrook testified that the proposed use would be a continuation of the practice he has maintained in Olney; two-thirds of the practice involves off-site treatment of large animals on farms and outlying properties. Only one-third of the animals are presently treated in the clinic office on Route 108. Approximately half of these are cats; the remainder primarily dogs, with occasional birds or other small pets needing treatment. The doctor anticipates that this pattern would continue, and that one of the two doctors in the practice would normally be on the road all day, while one would work part-time in the office. Not more than five persons would be employed in the practice, including himself and his wife (who acts as bookkeeper-secretary), one other veterinarian and two staff assistants. Normally only one doctor and assistant would work on the site; the second vet and a staff assistant would treat large animals from a medically equipped pickup truck which would be parked on the subject premises at night.

The clinic would function from 8:00 a.m. to 8:00 p.m., with office hours by appointment only from 11:00 a.m. to 1:00 p.m. and 5:00 p.m. to 7:00 p.m., Monday through Friday; and on Saturday, 11:00 a.m. to 1:00 p.m. Based on his recent experience in practice in Olney, Dr. Holbrook estimated that he would treat an average of four animals per hour during office hours. Emergencies involving small animals which arose during nights, weekends and holidays would normally be referred to an emergency hospital in Rockville, although the law requires that the doctor must accept night calls involving large animals, which would be treated off-site. Dr. Holbrook testified that he does not expect to and indeed prefers not to service emergencies during the night, since the referral hospital in Rockville is better staffed and equipped to deal with such situations. Night emergencies would not be expected frequently, considering his experience in the Rockville practice: in a much larger office, with four vets and 13 staff persons on the premises, emergency calls came perhaps three nights per week.

The proposed facility would include a reception room, two examination rooms, a lab, pharmacy, treatment and surgical preparation area, radiological area, surgical area, one ward

for general medical and surgical cases containing approximately 26 cages, and a small isolation unit with four cages. (These figures, offered in testimony at the public hearing, supersede data in the initial statement, which suggested a total of 36 cages.) There would be an indoor area in which animals could be exercised while the cages were being cleaned, but no outdoor runs. The doctor indicated that the largest animal accommodated at this facility would be a Great Dane or Saint Bernard dog. The building would be soundproofed and escape-proof, with no windows except for those in the reception room and the passageway connecting the animal hospital to the existing house. These windows would face the doctor's own home immediately west of the clinic building. The one-story addition would be some 1,700 square feet (approximately the same size as the existing house), and surfaced with brick to match the existing home and to be consistent with the finish of other homes in the area. It would be connected to the existing home by a small passageway (see Exhibits Nos. 5(a) through (c)). The doctor proposes to move the identification sign from his present office to the subject site, to be installed at the front of the property near Route 108. The sign is wooden, not internally illuminated, and rustic in appearance (photograph, Exhibit No. 15).

Based on his experience in practice in Olney, Dr. Holbrook anticipated that the proposed practice would involve a maximum of 30 to 35 vehicle trips to and from the site daily, including his own veterinary trucks. Since he and his wife would walk to the office, parking spaces would be needed for only one staff employee plus the two veterinary trucks, and two or three clients' cars on the site at any one time. Usually there would be four or five vehicles at most. The tenant in the house on Lot 9 intends to stay in the house, and has only one car.

The doctor introduced a series of photographs to demonstrate that the proposed structure would be screened from view from Route 108 by the existing house, and would be shielded from view from surrounding residential properties by existing or proposed trees or shrubs. He noted that the one-story addition would be lower in height than the existing house; thus, when seen from homes to the north, the addition would not be readily distinguishable against the backdrop of the existing 1½-story house. The parking area would be screened by shrubs.

Dr. Holbrook introduced a petition indicating several persons in support of the special exception proposal (Exhibit No. 16). In response to questions, he stated that there is a veterinary office in the old Olney shopping center approximately one-half mile from the subject site. Vets in Sandy Spring (approximately five miles away) and Cloverly (more than five miles away) treat only small animals.

Kenneth E. den Outer, an expert civil engineer and land planner, testified for the petitioner. He introduced a revised site plan (Exhibit No. 22) showing proposed landscaping and six additional parking spaces located behind the proposed clinic building, to meet recommendations of the Maryland-National Capital Park and Planning Commission (MNCPPC) staff. He noted that Timberland Estates had been recorded in 1948 as one-acre lots; the adopted Olney Area Master Plan (1966) proposes the area in half-acre zoning, while the new Master Plan currently in preparation recommends two-acre zoning (most of the one-acre lots are already developed with well-maintained single-family homes).

Mr. den Outer stated that the size, scale and bulk of the new addition (1,700 square feet, one-story) is approximately equal to that of the existing house (1,600 square feet, 1½-story Cape Cod home), and is small in relation to the two lots on which the special exception use would be developed (each lot 100 feet by 435 feet, or a total of 87,120 square feet). The existing house plus addition would be approximately 3,400 square feet, the size of a "substantial" residence, while the two-story homes located to the rear of the subject site average more than 2,400 square feet. The new addition would be set back 189 feet from the rear property line of Lot 9; the rear parking area, if required by the Board, would be 132 feet from the rear property line (a setback of only 50 feet is required). The addition would be 51 feet from the west property line (Dr. Holbrook would reside in the home adjacent to the west) and 110 feet from the east property line, a total of 161 feet in side yard setbacks, whereas the Zoning Ordinance requires only 35 feet total side yard setbacks.

The existing bluestone U-shaped drive from Route 108 would be extended along the west side of the existing house and clinic addition, with seven parking spaces provided immediately adjacent to the clinic; the driveway would then curve around the rear of the addition to provide a turn-around area and, if the Board should require, six additional parking spaces (see Exhibit No. 22). Every effort would be made to save major trees on the site. Mr. den Outer noted that there are several large deciduous trees, 80 feet or higher, in the rear yards of these properties. While the parking area would be somewhat hidden by a small berm to be constructed at the edge of the parking area, additional screening would be provided by evergreens, three feet high at time of planting, along the perimeter of the parking area. The witness noted that the parking area had been designed so that cars using headlights would direct their lights toward the clinic building itself. The properties to the rear of this site are at a slightly lower elevation so that, thanks to topographical features and

landscape screening, the parking area would be well-screened from view from these residences. He further observed that the closest home (other than Dr. Holbrook's) would be several hundred feet from the clinic building, and that the one-story building would not be visually obtrusive when viewed against the background of the existing $1\frac{1}{2}$ -story house. The witness concluded that the proposed addition would be in harmony with other buildings in the surrounding area, "residential in scale and footprint," and screened so that it would "blend in with existing surroundings." It would scarcely be visible from Route 108 since the addition would be directly behind the existing house.

Mr. den Outer testified that the property is presently served by public water and sewer, and that construction and use as proposed would not cause any problems of surface water runoff onto adjacent properties.

In the opinion of the witness, existing public roads are adequate to handle traffic anticipated in connection with the use. With only one client approximately every 15 minutes, there should be no problem of added traffic; the traffic light at the intersection of Route 108 and Prince Philip Drive helps to slow down vehicles driving west along Route 108 from the 40 miles-per-hour speed limit posted near the site. Maryland Route 108 is the major east-west artery in this portion of the county; location of this facility on a site near the intersection with the major north-south artery (Georgia Avenue, Route 97, approximately 2,100 feet from the subject site) offers a convenience to clients coming from up-county areas. The witness stated that Dr. Holbrook anticipated that two-thirds of his clients would come from the area generally west of the subject site. Mr. den Outer observed that the doctor's office hours (11:00 a.m. to 1:00 p.m. and 5:00 p.m. to 7:00 p.m.) would not coincide with peak traffic hours on Route 108, measured at 7:30 to 8:00 a.m. He further noted that Prince Philip Drive is paved 24 feet wide as an arterial roadway, part of an eventual ring-road encircling Olney Center. It leads to the Montgomery General Hospital. The traffic signal at Route 108 and Prince Philip Drive is actuated by traffic volume; Level of Service at the intersection has been measured as "C" Level, meeting County traffic standards. Referring to the MNCPPC staff recommendation that the Board consider allowing only one rather than two access driveways to Route 108, Mr. den Outer observed that use of the existing U-shaped driveway had not caused any problems to date. He anticipates that the tenant in the house would use the eastern portion of the driveway, while persons approaching the animal hospital would use the western entrance drive. Mr. den Outer stated that the Zoning Ordinance requires five parking spaces

for the proposed use; the petitioner's original plan proposed seven off-street parking spaces, but an additional six spaces can be provided if required by the Board.

Mr. den Outer noted recent land use changes which have taken place along Route 108 east of the Olney Town Center. These include construction of an office building fronting on Route 108, housing real estate and dental offices (O-M Zoning); and establishment of a non-resident dental practice in a home fronting on Prince Philip Drive (special exception Case No. S-27, granted in 1972). Montgomery General Hospital and medical office buildings on the hospital grounds have been developed under a series of special exceptions granted by the Board in recent years. In the expert witness' opinion, this development has not adversely affected the surrounding area, although the use and associated traffic volumes are substantially more intensive than that associated with the proposed veterinary hospital. Mr. den Outer noted that existing special exception uses in the area have not disrupted or led to rezonings contrary to the adopted Master Plan. He observed that the area is not becoming an area of concentration for medical/dental uses (one medical center converted to real estate offices when the hospital opened the medical office buildings on the hospital grounds). There is only one non-resident dental office, and no other vet in the immediate area. The witness further noted that a veterinary clinic cannot be readily accommodated in a commercial shopping center where existing buildings have not been constructed with the required soundproofing. The land planner concluded that the proposed use is consistent with recommendations of both the adopted Olney Area Master Plan and the plan currently in preparation (but not yet having binding effect).

Mr. den Outer testified that the proposed building meets all requirements in the RE-2 Zone, and would be compatible with other structures in the surrounding area. In his opinion, the use as proposed meets all general requirements for the grant of a special exception (Section 59-G-1.21) and the particular requirements for a veterinary hospital (Section 59-G-2.32).

Frank Duane, project architect, testified that the addition would be 50 feet by 34 feet, with a 16-foot by 14-foot connecting link to the existing home. The one-story building would be residential in appearance, with brick facing and asphalt shingled pitched roof, approximately 19 feet to the top of the ridge line. Windows and door would face only to the west (toward the doctor's residence), and the structure (including windows and double glazed skylights) would be built to a soundproof standard equivalent to that required for a modern hotel-motel building, so that no sound from inside the building

would be audible off-site. Exterior lighting would be installed under the soffit near the entrance on the west side of the hospital; these would be downlights and would not cast glare onto adjacent properties. They would probably not be seen from homes to the north and northwest on account of distance, existing trees and topography. A small light could be used to illuminate the identification sign. In the opinion of the architect, the addition would be in harmony (size, scale, bulk and materials) with the existing house and with other homes in the surrounding area, and the use would not be detrimental to the use, enjoyment or value of nearby properties.

Letters from Olney area residents in support of the proposed special exception use are entered in the record as Exhibit No. 27.

Opposition

Several opposition letters were received in the record, and most of the subdivision property owners testified in opposition. Their concerns may be summarized as follows:

(1) The proposed "commercial" use would not be in harmony with the surrounding area, which they characterized as a "peaceful" residential area of moderate-sized homes, some with screened porches, on large lots with tall trees.

(2) The use would not be consistent with the adopted area Master Plan or with proposals in the revised Master Plan now being prepared. This plan, they assert, recommends "no commercial" east of Prince Philip Drive.

(3) Approval of the special exception use would establish a "precedent" leading to further applications for "commercial" uses.

(4) The noise of barking dogs or of cars on the site, and the long hours of operation would cause disturbance and interfere with the use and enjoyment of nearby properties, particularly use of yards and porches. Witnesses were skeptical of the efficacy of the proposed soundproofing of the building; they also expressed concern at the prospect of noise from dogs moving between owners' cars and the building. Mr. McKenzie, owner of the property immediately north of the subject site testified that a medical disability confines him to his home property, that he is especially sensitive to noise and could not tolerate any additional noise. He acknowledged, however, that his hobby is working on cars, which he collects and repairs in his yard; he is not disturbed by the noise of his own hammering

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on the metal vehicles. Several witnesses stated that they are not disturbed by the noise of traffic (including ambulances) to and from Montgomery General Hospital.

(5) Almost all witnesses objected to the fact that the clinic addition might be visible from their homesites, and voiced fear that this would lower their property values. Mrs. Ruth German, owner of the property at the corner of Prince Philip Drive and Tall Timbers Road, believes that the view of the site will reduce the value of her property; she acknowledged that her own house is probably 600 feet away from the location of the proposed structure, but introduced photographs taken from the home of Mr. McKenzie showing the view of the subject site from his house (Exhibits Nos. 30(a) through (c)). Some owners stated that they might not see the subject site from their homes, but would be able to see it from their yards. One indicated that he would see the northeast portion of the building, and characterized it as an unattractive windowless wall which was not compatible with homes in the area and could not be adequately screened with shrubs. Another witness was particularly concerned at the possibility of seeing headlights from cars on the property.

(6) It was alleged that the veterinary hospital is not needed in the area, or would be more appropriately located in the Olney Shopping Center. (The attorney for the opposition subsequently wrote to the Board acknowledging that a finding of need for the facility is not required by the Zoning Ordinance.)

(7) Several witnesses stated that establishment of the use would lower the values of surrounding properties. They offered no expert testimony or data to support their assertions, although Mrs. German recited that a real estate agent had advised her to this effect. Mr. Robert Elliott (who has resided on Lot 1, Block B, to the northeast of the subject site, since November, 1978) testified that he would not have bought his home if the proposed special exception use had been established at the subject site.

(8) Opponents alleged that the use would create a traffic hazard both for vehicles traveling on Route 108 and for ambulances approaching Montgomery General Hospital. They believe that the driveways to the subject site are not readily visible from Route 108 either day or night. Mrs. German testified that there had been many accidents on the two-tenths mile section of Route 108 between Spartan Lane and Old Baltimore Road. She described Route 108 east of the subject as a hill and curve with "no visibility," and testified that drivers travel at least 40 miles per hour, and usually over that speed limit along Route 108 in front of the subject site. She introduced a picture

(Exhibit No. 29) which she took on January 16, 1980, facing east along Route 108 from its intersection at Prince Philip Drive, and testified that this picture, taken through her car window at 2:40 p.m., showed the traffic westbound on Route 108 toward the intersection. According to her own testimony, however, it was possible to see approximately 1,000 to 1,100 feet east from the intersection. (Mrs. Gladys Tumbleson, who has resided in a home immediately east of the subject site for approximately 50 years, testified that the portion of Route 108 in front of her property is straight, but she stated that because of traffic it is "risky all day long.") The attorney for the opposition argued that traffic data offered by the petitioners was incomplete and outdated, inasmuch as it did not appear to take into account traffic generated by a new shopping center opened in Olney in the autumn of 1979.

Maryland-National Capital Park and
Planning Commission Recommendation

The MNCPPC technical staff report indicates differences of opinion within the staff regarding the proposed use; final recommendation of conditional approval is spelled out in Exhibit No. 10(b).

The Community Plans-North Division notes that animal hospitals are permitted by special exception in all residential zones up to R-60, but states that the scale and intensity of the proposed facility is not compatible with the character of this particular subdivision. They feel that employment of five persons on the site and vehicle activity associated with the use would be disturbing, and that the facility would require more than the seven off-street parking spaces originally proposed. They note the necessity to resubdivide Lots 9 and 10 into a single parcel, and recommend consideration of limiting access to Route 108 to a single driveway rather than the existing U-shaped driveway. Considering the proximity of the subject site to Montgomery General Hospital and Route 108, and noting previous requests for special exception uses, Community Plans-North staff cautions that "similar requests can be expected in the future as the town center expands and demand for medical services increases. Unless these types of uses are limited, Timberland Estates could be transformed from a stable residential neighborhood into a mixture of offices and institutional uses." They further note that the draft Olney Master Plan now in preparation recommends "that the residential character of Route 108 east of Prince Philip Drive be maintained."

The staff of the Development Review Division agrees with certain findings of the Community Plans-North Division, but

concludes that the proposed use, subject to certain conditions, "could be approved without detrimentally affecting either the Master Plan or the neighborhood." They write that "the proposed structure is to be located directly behind the existing residence. It is attractively designed, one story in height, and will not be overly visible from adjoining properties or Maryland State Route 108."

In conclusion, the technical staff recommends approval of the petition, subject to conditions requiring resubdivision of Lots 9 and 10 into a single property; installation of additional screening along the western property line; consideration of limiting access to a single drive rather than the existing U-shaped drive; and a field inspection to be conducted by the Board of Appeals.

The Montgomery County Planning Board voted 4 to 1 to recommend disapproval of the subject petition. The majority felt that the proposed use is too intense for the area and therefore not compatible with its immediate surroundings. Some members indicated that they would prefer that such a use be located in the town center. At least one of the members opposing grant of the petition indicated that he did not believe the use would create a traffic problem (see Exhibit No. 10(a)).

Findings of the Board

Members of the Board have carefully reviewed all testimony, exhibits and evidence binding upon the petitioner, as well as the testimony and letters in opposition to the proposed use, and the report and recommendations of the technical staff of the MNCPPC and members of the Planning Board. The Board also visited the site and observed the property from the sites of surrounding residences. After considering all the evidence, the Board finds that the proposed use, as conditioned herein, meets both the general standards for the grant of a special exception, and the particular requirements of Section 59-G-2.32 in the following manner:

The proposed use meets all acreage and setback requirements for the RE-2 Zone as well as those noted in Section 59-G-2.32. No animals will be boarded at the subject site, and the building will be soundproofed according to technical building standards. The use thus meets the particular requirements of Section 59-G-2.32.

With respect to the general conditions for the grant of a special exception, the Board finds that the use is a permissible special exception in the RE-2 Zone. The Board further finds that the proposed use as conditioned herein, is consistent

with the adopted area Master Plan for the Olney Area; that the use will be in harmony with the general character of the neighborhood, and will not adversely affect the use, enjoyment or value of adjacent or nearby properties for the following reasons:

The building in which the veterinary hospital is to be housed will be small in size, scale and bulk, residential in design and appearance and constructed of materials which will be in harmony with the existing home on the site and with houses in the surrounding area. It will be well-shielded from view both from Route 108 and from nearby residential properties, by virtue of its location in relation to the existing house, the considerable distances between the structure and other residences, the differing elevations and intervening trees, and the additional landscape screening to be installed by the petitioner. The Board found at the time of its site inspection (conducted during winter when there were no leaves on the trees to screen the subject area) that the view of the site in question could not be deemed objectionable when seen from surrounding residential properties; the one-story addition would not be obtrusive and from some angles would scarcely be visible when viewed against the backdrop of the existing 1½-story home, while the new addition would be visible only from oblique angles to drivers traversing Route 108. Windows and doors face only toward the doctor's personal residence, and on-site activity would be concentrated in the area closest to the doctor's own properties. The Board further finds that the parking area would be largely shielded from view from nearby properties by a berm and shrubs to be installed. Exterior lighting under the soffit of the house and lights of cars in the parking area will therefore not cast light or glare onto adjacent properties.

The Board further finds that the intensity and character of the proposed veterinary practice, including associated traffic and parking, will be in harmony with the surrounding area and will not be detrimental to the use, peaceful enjoyment or economic value or development of surrounding properties or the general neighborhood; nor will the use proposed cause objectionable noise, vibrations, fumes, odors, dust, glare or physical activity. In reaching this conclusion, the Board notes that the doctor's proposal is based upon his recent personal experience in practice in the immediate area; therefore the presumed impact can be judged on the basis of actual experience and is not merely a matter of speculation. The proposed clinic would offer on-site treatment for small animals only; approximately one-third of the animals brought to the site would be cats. Considering that these animals would have to travel (or be carried) a very short distance from owners' cars to the hospital structure,

that animals would be kept overnight only when required for medical reasons, and that the building would be soundproofed to a degree described by the architect as "equivalent to contemporary hotel-motel standards," the Board finds that noise created by such use would not be of a character which would be disturbing in a rural-residential area. Moreover, the doctor has stated that he does not anticipate nighttime emergency visits to the site. On-site activity would be concentrated on the west side of the lot, in the area adjacent to the doctor's personal residence. The doctor intends to control tenancy of the existing home on Lot 9; since his own family would continue to live in the nearest adjacent home on Lot 8, while his family swimming pool would be located on the special exception site east of the new building, the Board finds that the doctor's own properties act as suitable buffers between the new building and other surrounding residential properties.

The Board further finds that the proposed practice, with office hours scheduled by appointment during only four hours of the day on weekdays and only two hours on Saturday, would not generate vehicle traffic or on-site activity of a magnitude that would create disturbance to nearby property owners or cause hazards to vehicle traffic in the area. The property fronts on a state highway which is the major east-west artery in the area; the evidence indicates that Route 108 and the traffic-controlled intersection with Prince Philip Drive are adequate to accommodate the small additional traffic volume anticipated in connection with the special exception use, particularly since the doctor's office hours would not coincide with the morning peak traffic period on Route 108. Some nearby residents expressed concern that operation of the veterinary hospital would cause traffic hazards along Route 108, and claimed that sight distances at the driveways are inadequate to assure safe ingress to and egress from the property. The Board took particular care to observe these conditions in its site visit. The Board finds that sight distances at the driveways along Route 108 are adequate to assure safe access for the clinic. The Board further notes that the photograph introduced in evidence by an opposition witness to illustrate traffic congestion and inadequate sight distance (Exhibit No. 29) does not, by that witness' own admission, demonstrate such contentions.

The Board finds that the petitioner's initial proposal for seven off-street parking spaces satisfies Zoning Ordinance requirements for off-street parking. Therefore, the Board approves the site plan (Exhibit No. 22) showing seven parking spaces immediately adjacent to the hospital structure, with a driveway extension, turnaround area and space for parking the

vet's trucks at the rear of the site; but we will not require construction of six additional parking spaces north of the driveway. In approving this plan, the Board acknowledges concerns raised by the technical staff of the MNCPPC. In light of testimony at the public hearing, however, to the effect that only one vet and staff assistant would normally be on the site (while the second vet and assistant would drive the vans to treat large animals off-site); and that appointments would normally be scheduled to accommodate four patients per hour, the Board finds that seven parking spaces are adequate to serve the proposed use. The MNCPPC technical staff also questioned whether only one access driveway should be permitted. The Board observes that the U-shaped driveway appears to have functioned successfully in the past, and we find no reason to deny use of the eastern driveway, which would also serve the tenant of the house on the site. As conditioned herein, the special exception holder is to direct clinic traffic to use the westernmost driveway.

While some area residents expressed concern that their property values would be adversely affected by operation of the veterinary hospital in a residential zone, the Board notes that no probative evidence was introduced in support of this contention. The Board further notes that an animal hospital is permitted by special exception in any residential zone, including the more densely-developed R-60 Zone, so long as specified setback requirements are observed. While we are sympathetic to nearby residents' expressed fears, the Board finds that there is no probative evidence indicating that the proposed use would adversely affect the values of nearby or adjacent properties, or that the residential character of the Olney area east of Prince Philip Drive will be adversely affected by the use.

The Board further finds that, according to expert testimony and evidence, the property will be served by adequate public services and facilities, including police and fire protection, sewer and water, public roads, and stormwater drainage. Construction and use as proposed will not cause surface water runoff onto adjacent properties.

The Board further finds that the use as conditioned herein will not adversely affect the health, safety, security, morals or general welfare of residents, visitors, or workers in the area. Therefore, the proposed special exception use shall be and is hereby granted, subject to the following conditions:

1. Lots 9 and 10 shall be resubdivided to form a single lot.

2. Construction shall be according to plans entered in the record as Exhibits Nos. 5(b) and (c). Sound-proofing shall meet technical standards proffered by the project architect.
3. The site shall be developed according to the revised site plan (Exhibit No. 22) except that the six parking spaces directly to the north of the driveway to the rear of the building shall not be constructed.
4. Landscape screening (berm and evergreens) shall be subject to review and approval by the MNCPPC technical staff. Two copies of the approved plans shall be submitted to the Board of Appeals.
5. An identification sign conforming to Zoning Ordinance dimensional requirements may be installed near the front property line along Route 108. The sign may be illuminated.
6. The doctor shall direct clients to use the westernmost driveway on the property.
7. Hospital operating hours may extend from 8:00 a.m. to 8:00 p.m. Patient office hours shall be scheduled by appointment only, and shall be limited to the following periods: Monday through Friday, 11:00 a.m. to 1:00 p.m. and 5:00 p.m. to 7:00 p.m.; Saturday, 11:00 a.m. to 1:00 p.m.
8. Small animals only shall be treated at the subject site, except for unforeseen emergencies requiring immediate medical attention to larger animals. No animals shall be accepted for overnight boarding. Only animals requiring overnight accommodation for medical reasons may be housed overnight.
9. The special exception holder shall obtain a use and occupancy permit prior to opening the hospital at the subject site.
10. The special exception is for veterinary practice by Dr. Holbrook and one associate veterinarian. Any transfer of the veterinary practice shall be subject to approval by the Board of Appeals.

The Board adopted the following Resolution:

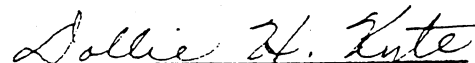
"BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted

as the Resolution required by law as its decision on the above-entitled petition."

The foregoing Resolution was proposed by Mrs. Marjorie H. Sonnenfeldt, Chairman, and concurred in by Mrs. Doris Lipschitz, Mr. Joseph E. O'Brien, Jr., and Mr. Wallace I. Babcock. Mrs. Shirley S. Lynne was necessarily absent for the hearing on January 17, 1980, and has not participated in the foregoing Resolution. Mrs. Sonnenfeldt and Mrs. Lipschitz have read and signed the transcript for that portion of the testimony they did not hear.

Mr. Wallace I. Babcock replaced Mr. Sheldon P. Schuman as a member of the Board of Appeals on January 16, 1980 (sworn into office). Mr. Babcock has read and signed the transcript of the hearing held December 20, 1979, and has studied the exhibits in the file in order to participate in the foregoing decision.

I do hereby certify that the foregoing Minutes were officially entered in the Minute Book of the County Board of Appeals this 9th day of April, 1980.


Clerk to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-months' period within which the right granted by the Board must be exercised.

Any decision by the County Board of Appeals may, within thirty days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
FOR
MONTGOMERY COUNTY

STELLA B. WERNER COUNCIL OFFICE BUILDING
100 MARYLAND AVENUE
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Case No. S-715

PETITION OF DR. HAROLD H. and JOANN S. HOLBROOK

RESOLUTION TO AMEND SPECIAL EXCEPTION
(Resolution adopted March 19, 1987)

The Board has received a letter from E. Newton Steely, Jr., attorney for the petitioners, dated March 4, 1987, which states, in part:

"By your decision dated January 17, 1980, in the above-referenced case, my clients were granted a special exception to operate a Veterinary Hospital at the premises described in that case. Since that time a Veterinary Hospital has been constructed on the premises in conformity with the conditions and limitations expressed by the Board in its opinion and a Veterinary Hospital has been maintained and operated from the premises.

"One of the limitations placed by the Board on the Hospital operation is that the special exception is limited to Mr. Holbrook and one associate veterinarian ... Dr. Holbrook now finds the need of a third veterinarian and would like to have the special exception modified so that three veterinarians, rather than the two allowed by the Board's decision, may operate from the premises. The additional veterinarian will engage primarily in the large animal practice. ... the large animal practice generally involves calling on the client at the animal's home site and performing the veterinary services from a specially equipped veterinary truck. Further, the additional veterinarian will not increase the number of veterinarians on site at any given time and Dr. Holbrook will continue to conform with the hours and number of veterinarians on premises ...

"... there is enclosed an updated list of adjacent property owners.
...

"The neighborhood has changed somewhat in that the residence to the immediate east of the special exception property is no longer operated as an individual residence but is now the home of the Sandy Spring Museum. ..."

Based on the foregoing information, the Board is of the opinion that Mr. Steely's request represents a minor modification to the special exception and can be granted without substantially changing the nature, character or intensity of the use of the property, nor changing the effect on traffic or on the immediate neighborhood. Therefore, in accordance with the provisions of Section 59-G-1.3(c) (1) of the Zoning Ordinance,

Case No. S-715

BE IT RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that Case No. S-715, Petition of Dr. Harold H. and Joann S. Holbrook, shall be and hereby is re-opened to receive Mr. Steely's letter as Exhibit NO. 42; portion of Tax Map, Exhibit No. 42(a): and updated list of adjoining/confronting property owners as Exhibit No. 42(b); and

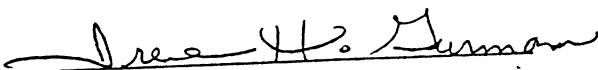
BE IT FURTHER RESOLVED by the County Board of Appeals for Montgomery County, Maryland, that the Saturday hours of operation shall be from 9:00 a.m. to 11:00 a.m. instead of 11:00 a.m. to 1:00 p.m., as requested in Mr. Steely's letter (Exhibit No. 42).

All other terms and conditions of the special exception, except as modified, shall remain in full force and effect.

The subject property includes Lots 8 - 10, Block B, Timberland Estates Subdivision, located at 2715 Olney-Sandy Spring Road, Olney, Maryland, in an RE-2 Zone.

The foregoing Resolution was proposed by Judith B. Heimann, Chairman, and concurred in by Howard Jenkins, Jr., Max H. Novinsky and K. Lindsay Raufaste. Helen R. Strang was necessarily absent and did not participate in the foregoing Resolution.

Entered in the Minute Book of the County Board of Appeals for Montgomery County, Maryland, this 27th day of June, 1988.



Irene H. Gurman
Clerk to the Board

NOTE:

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision. ...

COUNTY BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone
Area Code 301
217-6600

Case No. S-715

PETITION OF DR. HAROLD H. AND JOANN S. HOLBROOK

RESOLUTION TO SUBSTITUTE SPECIAL EXCEPTION HOLDER

(Resolution adopted October 18, 1989)

The Board is in receipt of correspondence dated October 6, 1989, from Joel Chasnoff, which states, in part:

"I represent Dr. Wendy J. Walker and Dr. Sara-Ann T. Moran, both of whom are veterinarians practicing in Montgomery County, Maryland. Dr. Walker and Dr. Moran have entered into a contract with Dr. Harold H. Holbrook and Joann S. Holbrook, his wife, and their solely owned corporation, Town and Country Animal Clinic, Inc., for the purchase of the clinic and the real estate upon which the clinic is located.

"... this clinic operates under the authority of a special exception granted to Dr. and Mrs. Holbrook in Case No. S-715 by your Board.

"Dr. Walker has been associated with the clinic since before the Special Exception was granted and Dr. Moran will come into the practice in place of Dr. Holbrook upon his retirement. My clients intend to continue to operate a veterinary clinic from the premises in a manner similar to the present veterinary operation, except that Dr. Moran will be substituted for Dr. Holbrook as a principal veterinarian for the clinic who ... intends to retire from veterinary practice upon settlement under the proposed sale.

"The remainder of the clinic operation will continue in a manner much like the past operations except that there will be some personnel changes ... Other than as noted, my clients do not intend to change the character or nature of the practice and the hours of operation will remain the same.

"Please accept this letter as a concurrence by my clients in the letter of E. Newton Stealy, Jr., Esquire, attorney for the sellers, to the Board dated October 5, 1989, ... my clients agree that they will abide by all of the other terms and conditions of the special exception. ..."

Mr. E. Newton Stealy Jr.'s letter received October 10, 1989, states, in part:

"This office continues to represent Dr. and Mrs. Harold Holbrook and their solely owner corporation, Town and Country Animal Clinic, Inc.

"In case number S-715 before the Board of Appeals, Dr. and Mrs. Holbrook were granted a Special exception to operate an Animal Clinic ... Pursuant to this special exception, Dr. and Mrs. Holbrook have operated an animal clinic from the premises since approval. This special exception was modified on March 19, 1987 permitting a third veterinarian and on May 17, 1988 by changing the hours of operation.

"Dr. and Mrs. Holbrook now find themselves at an age and in a position where they would like to retire. ... they have entered into a contract for the sale of the clinic and the real estate to Dr. Wendy J. Walker and Dr. Sara-Ann T. Moran. Dr. Walker has been a principal veterinarian associated with Dr. Holbrook since before the special exception was granted and continues in that capacity to date. Dr. Moran is affiliated with the clinic in anticipation of the sale and will replace Dr. Holbrook as a veterinarian upon Dr. Holbrook's retirement immediately after settlement under the contract.

"... Joel Chasnoff, Esquire, ... attorney for the prospective transferees, Dr. Moran and Dr. Walker, is writing you under separate cover expressing the consent of his clients to the transfer. ..."

Based on the foregoing information, the Board finds that the change of owners of the special exception with operation continued in the same manner, will not be cause for a change in the nature, character or intensity of the use as at present and will not change the effect on traffic, or adversely affect the immediate area. Therefore, pursuant to Section 59-G-1.3(c)(1) of the Zoning Ordinance,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-715, Petition of Dr. Harold H. and Joann S. Holbrook shall be and hereby is re-opened to receive the following exhibits: Mr. Chasnoff's letter dated October 6, 1989, as Exhibit No. 44(a); Mr. Stealy's letter dated October 10, 1989, Exhibit No. 44(b); Copy of Agreement of Sale, Exhibit No. 44(c); and

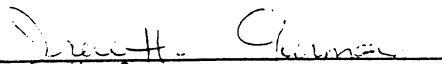
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to substitute Dr. Wendy J. Walker and Dr. Sara-Ann T. Moran as the special exception holders in the above-referenced case shall be and hereby is granted, and

BE IT FURTHER RESOLVED that all terms and conditions of the original special exception granted the 9th day of April, 1980, and any modifications thereto, shall remain in full force and effect.

The subject property includes Lots 9 and 10, Block B, Timberland Estates Subdivision, located at 2715 Plney-Sandy Spring Road, Olney, Maryland, in the RE-2 Zone.

The foregoing Resolution was proposed by Judith B. Heimann, Chairman, and concurred in by Max H. Novinsky, Helen R. Strang, K. Lindsay Raufaste and Howard Jenkins, Jr.

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 21st day of November, 1989.



Irene H. Gurman
Clerk to the Board

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
240-777-6600

Case No. S-715

PETITION OF DR. WENDY J. WALKER AND DR. SARA-ANN T. MORAN

RESOLUTION TO MODIFY SPECIAL EXCEPTION
(Resolution adopted February 15, 2000)

(Effective date of Resolution, April 27, 2000)

The Board received a letter dated January 17, 2000, from John R. Barr, attorney for the special exception holder. The letter states in part:

"The Town & Country Animal Clinic ('Town and Country') requests ... consent ... permitting it to maintain a freestanding sign erected in the right of way of Olney-Sandy Spring Road (Maryland State Route 108)."

"...The Board of Appeals approved Dr. Holbrook's request [for a veterinary clinic] in Special Exception S-715. Among the items permitted by the Board was an illuminated identification sign."

"...In 1994, the approved sign placed on the property which had been in existence since the early 1980's was remove (sic) for highway construction purposes. This sign, as Drs. Walker and Moran have learned from their clients, is absolutely essential, because the clinic is set nearly one hundred (100) feet behind the present property line and one hundred and seventy (170) feet back from the road, making it difficult for any motorist to find the clinic. Especially motorists traveling along a four lane divided highway."

"They met with a representative from the SHA, who approved a new location for the illuminated sign. ... That location being in approximately the same location as the old illuminated sign."

"Regrettably, the location (approved by the SHA) for new illuminated sign is in the SHA owned right of way for Route 108. The same property that was dedicated to the SHA by Dr. Holbrook. Town & Country applied to the SHA District Engineer, Charlie K. Watkins, for a permit for its new sign. By letter to Drs. Walker and Moran, District Engineer Watkins granted permission to permit the sign in the right of way subject to Town and Country:

- (1) agreeing to hold the SHA harmless for any reason because of the location of the sign
- (2) obtaining a sign permit from Montgomery County."

"Unfortunately at the time the law of Montgomery County did not allow the issuance of such a permit."

"The recent sign legislation adopted by the Montgomery County Council permitted the Sign Review Board to authorize, pursuant to Section 59-F-10.2(a)(2)(E), a sign placed in the right of way upon the recommendation of the appropriate transportation jurisdiction and the requirements of Section 59-F-7.1(f)(2)."

"Section 59-F-7.1(f)(2) provides for commercial signs to be erected in the right of way of a highway '... for ... a commercial ... use, provided the Sign Review Board, and the appropriate transportation jurisdiction issue a permit after review [of] the structural adequacy, physical location, sight distance, pedestrian access and other safety characteristics.'"

"... the State Highway Administration, the owner of the right of way has granted its permission."

"Town & Country submits the sign is structurally sound"

"Pedestrian access remains uninterrupted by the sign.."

"Following a full hearing on this matter the Sign Review Board granted the request of Town & Country and authorized their illuminated sign pursuant to Section 59-F-10.2(a)(2)(E), and the requirements of Section 59-F-7.1(f)(2) with the singular condition that the sign base be lowered to no more then (sic) six (6) inches above the ground."

"Accordingly for the reasons set forth herein, Town & Country requests the Board of Appeals consent to its sign in the right of way on Olney-Sandy Spring Road as approved by the Sign Review Board and as provided for in Special Exception S-715."

The subject property is Lots 9 and 10, Block B, Timberland Estates Subdivision, located at 2715 Olney-Sandy Spring Road, Olney, Maryland, in the RE-2 zone.

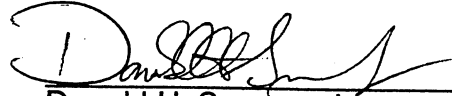
The Board considered the requested modification at its worksession on February 15, 2000. After careful consideration of the correspondence and a review of the record in the above-referenced case, the Board finds that the request to approve the replacement of the previously approved sign can be granted without the necessity of a public hearing, because the request will have no effect on traffic and on the immediate neighborhood.

THEREFORE, in accordance with the provisions of Section 59-G-1.3(c) of the Zoning Ordinance, BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-715, Petition of Dr. Wendy J. Walker and Dr. Sara-Ann T. Moran, shall be and hereby is reopened to receive Mr. Barr's letter; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Board grants the modification to the special exception for the requested sign, and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that, except as modified herein, all terms and conditions of the original special exception for a veterinary clinic and any modifications thereto, shall remain in full force and effect.

On a motion by Mindy Pittell Hurwitz, seconded by Donna L. Barron, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Louise M. Mayer was necessarily absent and did not participate in the foregoing Resolution.



Donald H. Spence, Jr.
Chairman of the Board

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland,
this 27th day of April, 2000.



Tedi S. Osias
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.



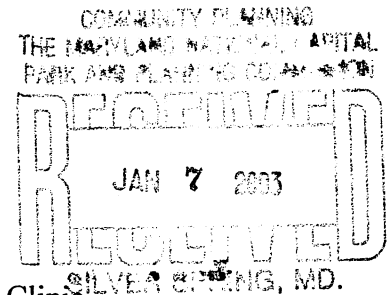
DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

December 11, 2002

Ms. Kathleen Reilly, Zoning Analyst
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



RE: Town & Country Animal Clinic
2715 Olney-Sandy Spring Road

Dear Ms. Reilly:

Town & Country Animal Clinic located at 2715 Olney-Sandy Spring Road in Olney was granted a Special Exception (S-715) in 1980. They now seek a modification to make a 1,700+ square foot addition.

While Town & Country complies with nearly every regulation, new and old, in the Zoning Ordinance relating to veterinary clinics, one regulation has been the cause of concern by the MNCPPC in its Staff review of the modification request and I have been asked to provide the Department of Permitting Services interpretation of the regulation as it pertains in this case.

There exists on Town & Country's property an old house previously used as a residence, but now devoted strictly to non-patron and non-patient activities.

Section 59-G-2.32(b)(4) provides that

"All building and accessory structures must be setback from any property line a distance of 50 feet."

The former residential structure was built in the late 1940's or early 1950's, and is located 48 feet from the western property line. It has been part of the clinic complex since the granting of Special Exception S-715 in 1980 and is shown on the special exception site plan filed with the Board of Appeals. No additions are planned to this structure and no other invasion of the 50 foot setback is proposed in the pending modification.

While the residence could be considered as non-conforming, Section 59-G2.32(c) specifically provides:



Ms. Reilly
December 11, 2002
Page 2

"Any veterinary hospital lawfully existing prior to the effective date of this ordinance is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions of this ordinance."

Given the instruction of the ordinance as to prior existing and otherwise lawful facilities being conforming uses, which when read in accordance with all the rules of statutory interpretation, and given the fact the no other invasion of the 50 setback area is proposed, I am convinced that in this particular situation the old residential structure was and remains a conforming use and is not subject to the 50 foot setback.

If you have any questions or require any additional information, please do not hesitate to contact me at 240-777-6255.

Sincerely,



Susan Scala-Demby
Permitting Services Manager

Cc: J. Barr, Esq.