

ATTACHMENT 1

GENERAL AND SPECIFIC SPECIAL EXCEPTION PROVISIONS

SEC. 59-G-1.2 Conditions for Granting a Special Exception

A special exception must not be granted without 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 inherent adverse effects, are a sufficient basis to deny a special exception. ***See body of staff report concerning inherent and non-inherent effects.***

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. All three uses: pet shop, animal boarding place and veterinary hospital are permissible special exception uses in the 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. ***All three uses comply with the standards and requirements set forth for each of them in Division 59-G-2 as described in the Division 59-G-2 as detailed below.***

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special

exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency. ***The Bethesda CBD Sector plan includes no specific recommendations concerning the appropriateness of a special exception at this location. In addition, these three uses are consistent with the land use objectives as described in the body of this staff report.***

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

The Planning Board made a finding of compatibility in its review and approval of Site Plan #8-04024 for Bethesda View which included approving 1 125,383 SF of retail space.. (Attachment 7)

There are no proposed new structures associated with these three proposed special exception uses.

The intensity and character of activity are in harmony with the general character of the neighborhood which is a mixed use residential/commercial area.

Traffic and parking conditions are no different that those already approved for general retail at this location.

The number of similar uses is small. There are two pet shops (Bethesda Pet Shop and Bone Jour Boutique) in the Bethesda CBD and one specialty pet food store (Three Dog Bakery).

There are three veterinary hospitals in the CBD: Benson Animal Hospital, Holistic Veterinary Care, and Hampden Lane Veterinary Office. Only one offers boarding (50 pets).

(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 uses will not be detrimental. The uses are self-contained within the building. Patrons with pets can come and go via an underground garage.***

(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 uses will be in***

compliance when conditions are met. There will be sound insulation and air filters. A condition requires that new exterior air exhaust vents and fans be located on the roof along Wisconsin Avenue and away from the Bethesda View and Strathmore multi-family residences.. This is discussed in the staff report section on Non-inherent Effects, Noise, Odors and Pathogens..

(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. **There is no one-family residential area nearby. This special exception is consistent with the recommendations of the Bethesda CBD Sector Plan for mixed use in this location.**

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone. **These uses will not create any adverse effects. When conditions are met adverse effects will have been mitigated. They are discussed in the body of the staff report on "Inherent and Non-Inherent 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 uses will be served by adequate public services and facilities. This finding has been made as part of the approval of Preliminary Plan #1-04017.**

(i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy. . . **A preliminary plan of subdivision #1-04017. has been approved by the Planning Board, the opinion is in Attachment .**

(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine

that the proposal will not reduce the safety of vehicular or pedestrian traffic. The

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

© The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

(a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

(b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:

(1) The property is in a zone requiring site plan approval,
The property received site plan approval by the Planning Board of site plan # 8-04024.

or

(2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

59-G-1.23. General development standards.

(a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2. ***The proposal meets all the development standards of the applicable zone as found by the Planning Board in its review and approval of site plan # 8-04024. The proposal will also meet the standards specified in Section G-1.23 (General Development Standards) and Section G-2 when conditions are met.***

(b) **Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-E. **Parking requirements have been met as found in Site Plan Review #8-04024.**

© **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan. ***The special exceptions are exempt from the Forest Conservation Plan. See attachment X.***

Sec. 59-G-2.02. Animal boarding place.

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

(1) Exterior runs, exercise yards, or other such facilities for the keeping of animals are not permitted. *. Pet runs are located within the building.*

(2) *All interior areas for the keeping of animals must be soundproofed. Petsmart uses noise-attenuating insulation. It uses 6-inch batt insulation in the interior walls and 1.5 inch rigid insulation for the full height of exterior walls. Insulation is used not only on the interior walls of the animal boarding place and veterinary hospital, but also on those of the grooming area and pet shop. These are the same techniques that Petsmart uses elsewhere to insulate common walls shared with other businesses. Petsmart is also providing ceiling insulation.*

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

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

(1) *There must be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space.. See response to Sec. 59-G-2.02.(a) (1) above..*

- (2) All areas for the keeping of animals must be soundproofed. See response to **Sec. 59-G-2.02. A 2 above.**
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Sec. 59-G-2.41. Pet shops.

1. Pet shops may be allowed; provided,

that the actual store or premises in which the pet shop is located is at least 75 feet from any lot in any residential zone; ***The proposed pet shop is located more than 100 feet from the nearest lot in a residential zone, which is the fire station across Bradley Boulevard in the R-10 zone.***

that the proposed use shall not be incompatible with, or detrimental to, any existing uses on abutting lots in a C-1 or C-2 zone; ***There are no abutting lots in a C-1 or C-2 zone.***

that no animals may be kept for boarding; ***The proposal to provide an animal boarding place is a separate special exception submittal.***

that no animals may be kept for breeding; ***Petsmart does not breed animals in their stores and will not do so on this property.***

that only animals for retail sale shall be maintained or kept on the premises; ***Other than those animals that will be kept within the animal boarding place as applied under separate special exception, Petsmart will not keep or maintain animals on the premises unless they are for retail sale or as part of a Petsmart-sponsored adoption program.***

that all animal pens shall have glass enclosed fronts and each pen or cage shall be connected to an outside ventilating system or other appropriate air filtration system. This provision shall not apply to feathered birds which may be maintained in bird cages. ***The proposal will be in compliance with this requirement when conditions are met. Outside air filtration systems are not needed for the small animals that are for sale, such as hamsters, reptiles and fish. Their glass cases have ventilated plastic tops. Birds are contained in wire metal cages. Cats or dogs are not kept for retail sale but are present for adoption. Cats are kept overnight in the adoption area and a condition requires modifications to the design of the top of the "cat play habitat" enclosure and the location of ceiling vents providing air circulation within 10 feet of the adoption area to ensure proper air circulation.***

There shall be no space on the exterior of the building for the maintaining or for the usage of the animals, and all animals shall be maintained within the pet shop. ***A pet play area is located within the building. There are no spaces outside on this site for use of the animals.***