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June 12, 2023

**Via Email: [ZonningBoard@westorange.org](mailto:ZonningBoard@westorange.org)**

Ms. Diana Chandler-Zimmermann  
West Orange Zoning Board of Adjustment  
66 Main Street  
West Orange, NJ 07052

Re: **Petco Animal Supplies Stores, Inc.  
Application for Use Variance Approval  
495 Prospect Avenue / Block 155.21, Lot 40  
West Orange, Essex County, New Jersey  
Our File No.: PET176.00812**

Dear Diana:

On behalf of our client, Petco Animal Supplies Stores, Inc. (the "Applicant"), please accept this letter as our response to your June 6, 2023 email in connection to the above-referenced Application.

The Applicant respectfully requests a submission waiver from the requirement to provide a Planner's Report for the above-referenced Use Variance Application. An Application Addendum was submitted with the initial Application, which sets forth the legal justifications in support of the requested Use Variance. The Addendum provides a detailed analysis of the proposed land use and its compatibility with the surrounding area. A copy of the previously submitted Application Addendum is enclosed for your review and reference.

In addition, the Applicant is in the process of retaining the services of a New Jersey licensed professional planner, who will provide comprehensive planning testimony during the public hearing on the Use Variance Application.

We understand that a Planner's Report typically serves as a valuable tool for the Zoning Board's evaluation and decision-making process. However, we are confident that the planning testimony to be provided by the Applicant's professional planner and the information contained within our Application Addendum will adequately address the planning considerations relevant to this Use Variance Application.

Finally, please accept this correspondence as confirmation of the agreement to distribute the submitted Application Digitization funds into the Applicant's escrow account.

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Should you have any questions or require further information, please do not hesitate to contact me directly.

Very truly yours,

ARCHER & GREINER  
A Professional Corporation



By: \_\_\_\_\_  
Victoria L. Cascio

VLC/tpg  
Enclosure

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## **APPLICATION ADDENDUM**

**Petco Animal Supplies Stores, Inc.  
Application for Use Variance Approval  
495 Prospect Avenue / Block 155.21, Lot 40**

**West Orange Zoning Board of Adjustment**

### **I. Application Background**

This Application for Use Variance Approval provides for the expansion/renovation of the existing Petco Animal Supplies Store building to accommodate veterinary operations, on property located at 495 Prospect Avenue, and more particularly identified as Block 155.21, Lot 40 on the Official Tax Maps of the Township of West Orange (the "Property"). The Property is approximately 28.54 +/- acres in size and is located in the Planned-Commercial ("P-C") Zoning District. The Property is owned by CLPF – Essex Green, LLC.

More specifically, the Applicant is proposing renovations within the adjoining tenant space to accommodate the proposed 1,689 square foot veterinary operation space, which will include treatment rooms, exam rooms, an office space, a waiting area, an x-ray room, treatment area, and day-kennel area. No modifications are proposed to exterior of the existing building, with the exception of two exterior doors being modified/added.. The Applicant is requesting a "d" or Use Variance because veterinary medicine/animal hospitals are not specifically permitted uses within the P-C Zoning District.

### **II. Legal Standard & Reasons for Relief**

The Property is located within the Planned-Commercial ("P-C") Zoning District, governed by Subsection 25-7.1 of the West Orange Land Use Regulations. The P-C Zone permits a variety of retail, service office, and medical uses such as urgent care facilities and physical therapy.

Because the proposed veterinary practice is not specifically permitted within the P-C Zoning District, the Applicant is requesting Use Variance Approval in order to operate a veterinary clinic in the adjoining tenant space. Specifically, this Application presents a request for Use Variance approval pursuant to N.J.S.A. 40:55D-70(d)(1), also known as a "D(1)" Use Variance.

#### **A. D(1) Use Variance Legal Standard**

Pursuant to the New Jersey Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1, *et seq.*, a Zoning Board of Adjustment has the power to grant a "D(1)" Use Variance as follows:

In particular cases for special reasons, grant a variance to allow departure from regulations... to permit: (1) a use or principal structure in a district restricted against such use or principal structure.... N.J.S.A. 40:55D-70(d)(1).

In addition, the MLUL provides that:

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance. N.J.S.A. 40:55D-70(d).

Accordingly, to obtain Use Variance approval, an Applicant must first prove the “positive criteria” or “special reasons” for the requested relief. Once that burden has been met, an Applicant must then demonstrate that approval of the Use Variance also satisfies the “negative criteria.” N.J.S.A. 40:55D-70(d); Medici v. BPR Co., 107 N.J. 1 (1987).

The manner in which this Application satisfies the positive and negative criteria are outlined below, and will be further supplemented by the Applicant and its professionals during the hearing.

B. Justifications for Relief

a. *Positive Criteria / Special Reasons*

In order to satisfy the positive criteria (i.e., demonstrating “special reasons”), an Applicant seeking a “D(1)” Use Variance must show:

- (1) the proposed use is inherently beneficial, *or*
- (2) denial of the Use Variance will create an undue hardship, *or*
- (3) the proposed use would promote one or more purposes of zoning as defined in the MLUL at N.J.S.A. 40:55D-2, *and* the subject site is particularly suitable for the proposed use. See generally, Medici v. BPR Co., 107 N.J. 1 (1987).

The Applicant submits that the Property is particularly suitable for the proposed use, and that the Applicant’s proposal satisfies several purposes of zoning, as described below.

i. The Applicant’s Proposal Satisfies Several Purposes of Zoning

The Applicant’s proposed use satisfies several purposes of zoning, outlined below. Although our courts have highlighted purpose “a” as the purpose of zoning which “most clearly amplifies the meaning of special reasons,” see Medici v. BPR Co., 107 N.J. 1 (1987), advancing any of the other purposes outlined within the MLUL has been consistently construed as serving the general welfare. See generally, Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 279-80 (1967); Medici, 107 N.J. 1, 4; Burbridge v. Mine Hill Tp., 117 N.J. 376, 386 (1990); Saddle Brook Realty v. Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

Purpose (a): “To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.” N.J.S.A. 40:55D-2(a). Veterinary clinics play a vital role in promoting public health by providing medical care, vaccinations, and preventive treatments for animals. By ensuring the health and well-being of pets, veterinary clinics help prevent the spread of diseases and mitigate potential health risks to the community.

Purpose (c): “To provide adequate light, air and open space.” N.J.S.A. 40:55D-2(c). The proposed use requires only interior improvements to the Property, which appropriately and efficiently uses the existing and adjoining space without impacting surrounding properties, or requiring significant modifications which could also impact surrounding properties.

Purpose (g): “To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.” N.J.S.A. 40:55D-2(g). The proposed veterinary operations will provide a variety of in-demand services for pets, including medical care, preventive treatments, and wellness services. In this case, the proposed veterinary operations align with the purpose of the P-C zoning district by offering services that are directly related to the pet industry. The combination of a pet store and veterinary clinic can attract customers and enhance the viability of the P-C district.

i. The Site is Particularly Suitable for the Proposed Use

In addition to advancing several purposes of zoning noted above, the subject Property is also particularly suitable for the proposed use. The Property is located within an existing shopping center containing a variety of retail, service, and entertainment uses. As such, the Property is designed to support a high volume of consistent customer traffic. In addition, the Property is developed with more than enough parking spaces to support the low-intensity use of the veterinary clinic.

For the reasons provided above, and as may be further supplemented by testimony at the hearing for this Application, the Applicant respectfully submits that the positive criteria applicable to the requested Use Variance relief have been satisfied.

b. *Negative Criteria*

A Zoning Board of Adjustment may grant a Use Variance if an Applicant is able to demonstrate that the approval can be granted: (1) “without substantial detriment to the public good,” and (2) without “substantially impairing the intent and purpose of the zone plan and zoning ordinance.” See N.J.S.A. 40:55D-70(d); Medici v. BPR Co., 107 N.J. 1 (1987).

i. The Requested Relief Can be Granted Without Any Detriment to the Public Good

As noted above, the Applicant's proposed use can be incorporated into the existing Property with no discernable impact upon the Property or the surrounding area, and with only minor interior modifications. The operation of the veterinary clinic within the existing Petco store is not likely to cause significant adverse impacts. Pet stores are already associated with animal-related activities, and the addition of a veterinary clinic generally aligns with the existing nature of the business.

ii. The Requested Relief Will Not Impair the Intent and Purpose of the Borough's Zoning Plan

The nature of the proposed use is similar to other permitted uses within the P-C Zoning District, such as urgent care facilities. As such, the proposed use would be indiscernible from the uses in the surrounding area, and will therefore neither impair nor impact the intent and purpose of the Borough's zoning code or master plan.

For the reasons provided above, and as may be further supplemented by testimony at the hearing for this Application, the Applicant respectfully submits that the negative criteria applicable to the requested Use Variance relief have been satisfied.