

Holland & Knight

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VIA IZIS

District of Columbia Zoning Commission
441 4th Street, NW - Suite 210S
Washington, DC 20001

Re: Application for Text Amendment to Subtitle U, § 513.1(l)

Dear Members of the Commission:

Pursuant to Subtitle Z, Section 305, on behalf of MR 1700 Columbia Retail LLC (the “Applicant”), we respectfully submit this application for text amendments to the Special Exception provisions of Subtitle U, Sections 508, 511 and 513 as follows:

Special Exception Use / MU-Use Group C -- Subtitle U, § 508.1(k)

FROM

(k) Veterinary office or hospital subject to the following conditions:

- (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(1), except domesticated dogs;
- (2) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;
- (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
- (4) The veterinary hospital shall not abut an existing residential use or a residential zone;
- (5) External yards or other external facilities for the keeping of animals shall not be permitted; and
- (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and

TO

- (k) Veterinary office or hospital subject to the following conditions:
- (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(j)(1); ~~except domesticated dogs;~~
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - (4) The veterinary hospital shall not abut an existing residential use or a residential zone; or in the case of a mixed use building, the veterinary hospital use shall be subject to the following:
 - (i) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;
 - (ii) The windows and doors of the space devoted to the veterinary hospital use shall be kept closed, and all doors facing a residential use shall be solid core;
 - (iii) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;
 - (iv) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;
 - (v) Floor finish material, and, areas intended to be wet, wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;
 - (5) External yards or other external facilities for the keeping of animals shall not be permitted; and
 - (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and

Special Exception Use / MU-Use Group D -- Subtitle U, § 511.1(m)

FROM

- (m) Veterinary office or hospital subject to the following conditions:
- (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(1), except domesticated dogs;
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary hospital may be devoted to the boarding of animals;
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - (4) The veterinary hospital shall not abut an existing residential use or a residential zone;
 - (5) External yards or other external facilities for the keeping of animals shall not be permitted;
 - (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
 - (7) The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

TO

- (m) Veterinary office or hospital subject to the following conditions:
- (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(j)(1); ~~except domesticated dogs~~;
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary hospital may be devoted to the boarding of animals;
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - (4) The veterinary hospital shall not abut an existing residential use or a residential zone; or in the case of a mixed use building, the veterinary hospital use shall be subject to the following:

- (i) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;
 - (ii) The windows and doors of the space devoted to the veterinary hospital use shall be kept closed, and all doors facing a residential use shall be solid core;
 - (iii) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;
 - (iv) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;
 - (v) Floor finish material, and, areas intended to be wet, wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;
- (5) External yards or other external facilities for the keeping of animals shall not be permitted;
 - (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
 - (7) The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby properties.

Special Exception Use / MU-Use Group E -- Subtitle U, § 513.1(l)

FROM

- (l) Veterinary office or hospital, subject to the following conditions:
 - (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(1), except domesticated dogs;
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary hospital may be devoted to the boarding of animals subject to the spacing requirements of Subtitle U § 513.2(a);
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;

- (4) The veterinary hospital shall not abut an existing residential use or a residential zone;
- (5) External yards or other external facilities for the keeping of animals shall not be permitted;
- (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
- (7) The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby properties;

TO

- (1) Veterinary office or hospital, subject to the following conditions:
 - (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808(h)(j)(1), ~~except domesticated dogs~~;
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary hospital may be devoted to the boarding of animals subject to the spacing requirements of Subtitle U § 513.2(a);
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - (4) The veterinary hospital shall not abut an existing residential use or a residential zone; or in the case of a mixed use building, the veterinary hospital use shall be subject to the following:
 - (i) Buildings shall be designed and constructed to mitigate noise to limit negative impacts on residential units located in the same building as the use. Additional noise mitigation shall be required for existing buildings not originally built for the boarding of animals, including the use of acoustical tiles, caulking to seal penetrations made in floor slabs for pipes, and spray-on noise insulation;
 - (ii) The windows and doors of the space devoted to the veterinary hospital use shall be kept closed, and all doors facing a residential use shall be solid core;
 - (iii) Animal waste shall be placed in closed waste disposal containers and shall be collected by a waste disposal company at least weekly;
 - (iv) Odors shall be controlled by means of an air filtration system or an equivalently effective odor control system;

- (v) Floor finish material, and, areas intended to be wet, wall finish materials measured a minimum of forty-eight inches (48 in.) from the floor, shall be impervious and washable;
- (5) External yards or other external facilities for the keeping of animals shall not be permitted;
- (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
- (7) The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby properties;

Purpose of Proposed Amendments

The above-referenced provisions of the Zoning Regulations permit a veterinary hospital as a special exception so long as the veterinary hospital does not abut an existing residential use or residential zone. This criteria cannot be met in a mixed use building where there is residential above and/or a portion of the apartment house (lobby or amenity) at the ground floor of the building that abuts the veterinary hospital space, unless the Board grants a variance from the Zoning Regulations. The purpose of the proposed amendment is to allow veterinary uses in mixed use buildings where the veterinary hospital operator mitigates potential impacts related to noise, odor and waste.

Currently, the Zoning Regulations do not contemplate veterinary hospitals in typical mixed use buildings with retail/commercial at the ground floor and residential above. However, veterinary hospitals are deemed appropriate in the MU zones, which specifically provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. Subtitle G, § 100.1. Also, the MU zones are specifically intended to provide a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scales throughout the city; and provide for a variety of building types, including shop-front building that may include a vertical mixture of residential and non-residential uses. Subtitle G, § 100.3.

The basis for the proposed text amendment is the same as the basis for the 2014 amendments to the animal boarding regulations (ZC Order No. 14-10). The mitigations proposed for a veterinary hospital use located in a mixed use building are the same as those listed for animal boarding uses under Subtitle U, § 513.1(m).

During the public hearing on the animal boarding regulations, a representative from UDR, a national real estate investment trust company, testified to the growing demand for pet-related services and amenities in urban locations. (See transcript pages 25-30, attached as Exhibit A.) In support of his testimony, he referenced the Urban Land Institute article attached as Exhibit B. The

article discusses the steady increase in pet ownership in the United States and the real estate industry's response – pet amenities, including veterinary clinics in multifamily developments.

Consistency with Comprehensive Plan

The proposed text amendment is consistent with the guidance and direction of the components of the Comprehensive Plan set forth below.

Generalized Policy Map – Commercial / Mixed Use Areas

Main Street Mixed Use Corridors. These are traditional commercial business corridors with a concentration of older storefronts along the street. The service area for Main Streets can vary from one neighborhood (e.g., 14th Street Heights or Barracks Row) to multiple neighborhoods (e.g., Dupont Circle, H Street, or Adams Morgan). Their common feature is that they have a pedestrian-oriented environment with traditional storefronts. Many have upper story residential or office uses. Conservation and enhancement of these corridors is desired to foster economic and housing opportunities and serve neighborhood needs. Any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.

Neighborhood Commercial Centers. Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and child care. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations.

Future Land Use Map and Categories – Mixed Use Categories

The Future Land Use Map indicates areas where the mixing of two or more land uses is encouraged. The particular combination of uses desired in a given area is depicted in striped patterns, with stripe colors corresponding to the categories defined on the previous pages. The Mixed Use category generally applies in the following three circumstances:

- a. Established, pedestrian-oriented commercial areas which also include substantial amounts of housing, typically on the upper stories of buildings with ground floor retail or office uses;
- b. Commercial corridors or districts which may not contain substantial amounts of housing today, but where more housing is desired in the future. The pattern envisioned for such areas is typically one of pedestrian-oriented streets, with ground floor retail or office uses and upper story housing; and
- c. Large sites (generally greater than 10 acres in size), where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.

Emergency Rulemaking

We respectfully request that the proposed text amendment be adopted on an emergency basis for the following reasons:

- Without an emergency rulemaking it would be approximately a year, at the earliest, before an applicant could obtain special exception approval for a veterinary hospital to occupy the commercial space in a mixed use building. This time frame is unreasonable given the terms of most lease agreements and, therefore, is contrary to the current market demands for animal care uses and the economic growth and development patterns in the city.

Without an emergency rulemaking, it would take at least six months for the new regulations to be adopted. A property owner or prospective tenant would then file an application with the Board of Zoning Adjustment (“BZA”). The BZA review process usually takes approximately four months from the date of filing. Finally, the permitting and build out of the space could add, at least, six months to the process for the approval and opening of the proposed veterinary hospital use.

- The Zoning Regulations do not contemplate the location of veterinary hospitals in mixed use buildings. However, as a use permitted by special exception in the MU zones, veterinary hospitals are deemed appropriate uses in zoning districts that permit mixed use buildings. This inherent inconsistency should be corrected as quickly as possible.

Sincerely,

HOLLAND & KNIGHT LLP



Leila M. Jackson Batties, Esq.

Attachments (2)

- cc: Ms. Jennifer Steingasser, Office of Planning (via email)
Mr. Joel Lawson, Office of Planning (via email)
Mr. Stephen Mordfin, Office of Planning (via email)
Alan Bergstein, Esq., Office of the Attorney General (via email)