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June 7, 2022

Colleen Reardon, Board Secretary  
Borough of Rockaway  
1 East Main Street  
Rockaway, New Jersey 07866

RE: Terravet Rockaway LL  
328 Route 46, Rockaway  
Block 84, Lot 21

Dear Mrs. Reardon:

Attached hereto, please find an application for a Use Variance, along with Preliminary and Final Site Plan Approval and related bulk variances. Also enclosed are the following documents:

1. Site Plan prepared by Houser Engineering, dated March 18, 2022, consisting of seven (7) sheets
2. Architectural Plans prepared by PZA, dated May 23, 2022 consisting of two (2) sheets
3. Narrative with List of Variances and Waivers
4. Certified 200 foot list
5. Certification of Taxes
6. Deed to the Property
7. Copy of Cover Letter to the Rockaway River Watershed Cabinet
8. Copy of Fee Calculation and related checks

Kindly review the enclosed for completeness determination and a hearing at the next available meeting of the Rockaway Borough Land Use Board.

{340664.DOC.1}

Please do not hesitate to contact our office should you need any additional information or have any questions at this time. Thank you for your attention to this matter.

Very truly yours,

Alyse Landano Hubbard, Esq.

CC: Terravet Rockaway, LLC  
Tyler VanderValk, PE  
Michael Silberman, AIA  
John Mills, Esq.  
Samantha Anello, PE, Mott McDonald

**Terravet Rockaway LL**  
**328 Route 46, Rockaway**  
**Block 84, Lot 21**

***Variances:***

Section 172-81 – Principal Permitted Uses in the High Tech/Light Industrial District – a portion of the property is located in the HT/LI Zone which does not permit animal hospitals

Section 172-5 – Bulk Variance Requirements – General Business Zone

- Maximum Improved Coverage – 29,735 sf/60% permitted, 33,600 sf/67.8% proposed

Section 172-5 – Bulk Variance Requirements – High Tech/Light Industrial Zone

- Front Yard Setback to Woodland Avenue – 18.75’ required\*, 12.3’ proposed
- Side Yard Setback – 20’ required, 19.6’ proposed
- Rear Yard Setback – 40’ required, 10’ proposed

*\*Section 172.13 – Corner lots shall meet the front yard setback requirements for the front yard on the front of the lot and 75% of the front yard requirements for the front yard facing the intersecting side street. For the purpose of administering this section, the side of the lot having the lesser street frontage shall be construed as the front of the lot. Woodland Avenue Frontage:  $75\% \times 25' = 18.75$*

***Design Waivers:***

Section 171-17.B – Animal Hospital – 1 stall per 200 s.f. of Gross Floor Area = 57 stall required, 51 actual stalls provided, adjusted per the Electric Vehicle Charging Station Statute = 56 stalls provided

Section 171-18 – Loading zone shall be located in the side or rear yard, loading zone is proposed in front yard

***Checklist Waivers***

***Preliminary Site Plan Checklist:***

Item 17 – Applicant requests a partial waiver for off site stormwater management sewer, off site sanitary sewer lines and off site water mains within 200 feet.

Item 18 – Applicant requests a partial waiver for off site physical features

Item 19 – Applicant requests a partial waiver for off site contours within 100 feet of the property

Item 22 – Applicant requests a waiver from submitting a Letter of Interpretation, there are no anticipated wetlands on the property

Item 28 – Applicant requests a partial waiver for off site utilities

Item 35 – Applicant requests a partial waiver from providing profiles for sewer, stormwater and water mains

Item 42 – Applicant requests a waive from submitting an Environmental impact statement, as there will be limited impact as a result of the existing improvements on site. Drainage and Traffic reports have been provided

Final Site Plan Checklist:

Item 5 – Stormwater Operations and Maintenance Manual will be submitted once the final design has been approved.

### ***Narrative and Legal Argument***

The subject property is owned by the Applicant and leased to the Rockaway Animal Hospital. The enclosed use variance application is related to a split zoned property that is partially located in the General Business Zone with frontage on Route 46 and partially in the High Tech/Light Industrial Zoning District in the rear of the property. The Applicant is applying for a use variance pursuant to NJSA 40:55D-70D to permit the demolition of the existing structures on the property and construction of a new, modern animal hospital, which is not a permitted use in the HT/LI Zone. The Municipal Land Use Law provides that the Zoning Board of Adjustment may, 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.” This relief should be granted for special reasons as set forth in the “positive criteria.” The special reasons must promote the general purposes of the municipal zoning. *Burbridge v. Mine Hill Tp*, 117 N.J. 376, 386-7 (1990). There are uses that may be deemed beneficial and promote the public good in the sense that they are desirable to the applicant and possibly the immediate neighborhood.

In connection with the positive criteria, there is a site suitability test which requires a showing that the site is particularly suitable for the use. Plat plans or surveys are typically submitted in connection with a D variance to support the site suitability requirement. The focus of the site suitability test would be 1) why the location of the site within the municipality is suited for the use despite the zoning and/or 2) what unique characteristics of the site itself make it particularly appropriate for the proposed use rather than permitted uses. The site does not have to be “uniquely” or “solely” suited for a use. *Price v Himeji, LLC*, 214 NJ 263, 290-293. The Court in Price opined:

Although the availability of alternative locations is relevant to the analysis, demonstrating that a property is particularly suitable for a use does not require proof that there is no other potential location for the use nor does it demand evidence that the project “must” be built in a particular location. Rather, it is an inquiry into whether the property is particularly suited for the proposed purpose, in the sense that it is especially well-suited for the use, in spite of the fact that the use is not permitted in the zone.

*Id.*, at 592.

The Applicant must also meet the negative criteria, namely, no relief may ever be granted unless it can be done 1) without substantial detriment to the public good and 2) without

substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board must evaluate the impact the proposed use variance may have upon the adjacent property and determine whether or not it will cause such damage to the character of the neighborhood as to constitute a substantial detriment to public good. The Court has opined those reasonable restrictions are preferable to a complete rejection of use variance for services that are needed in the region. If the negative criteria are too strictly imposed, the result could be the denial of many deserving beneficial uses that should have the right to operate when the physical impact of their operations can be alleviated with reasonable restrictions.

Practically speaking, when determining if a use variance should be granted, the Board should evaluate the proposal in four ways. First, the board must identify the public interest at stake. Second, the board must identify any detrimental effect that may ensue for granting the variance. Third, the board may reduce the negative impact by imposing reasonable conditions. And finally, balance the positive and negative criteria and determine if there will be a detriment to the public good.

The subject property has been the location of the Rockaway Animal Hospital for many years, a use that is permitted in the General Business District. The use is established in the zone and rooted in the community. The existing structures are in need of repair and not fully functional for the current tenant. The proposed improvements will modernize the facility and operations, as well as provide outdoor area for the patients, a parking lot with ADA and EVSE stalls, as well as off street loading and stormwater management on site.

In the 2018 Master Plan, a zoning recommendation includes the elimination of split-zone lots, as they often require use variance relief from the Land Use Board. This lot in particular is noted as a split zoned lot of concern.

N.J.S.A. 40:55D-70C(1) indicates that a variance may be granted under its “hardship” provisions, with the hardship being related to the exceptional narrowness, shallowness, shape of the property, unusual topographic conditions or by reason of the location of the existing structures on the property. Under the C(2) subsection, variance relief may be granted where it is determined that the proposed relief advances one or more of the purposes of zoning (which purposes are set forth in N.J.S.A. 40:55D-2) and where it is further determined that the benefits of granting the variance outweigh any detriments which might result from it.

The subject property is an irregularly shaped, corner lot, with frontage on Route 46 and Woodland Avenue. The bulk variances are primarily setback variances resulting from the shape and configuration of the lot. Applicant is also seeking a waiver from the required parking stalls and the loading area within the front yard, which are also tied to the size and shape of the lot.

Applicant’s professionals will provide testimony to establish the necessary criteria needed for the relief sought.