

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. BOZA 2019-1**

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENT OF THE
TOWN OF NEW CASTLE, COLORADO, APPROVING A VARIANCE FOR
PROPERTY LOCATED AT 228 N. 7TH STREET IN THE R-1 ZONE
DISTRICT.**

WHEREAS, Victoria Palmer (“Applicant”) has submitted a variance application regarding the property located at 228 N. 7th Street, New Castle, Colorado, and legally described in as Lot 06, Gordon Subdivision, Town of New Castle, County of Garfield, State of Colorado (“Property”); and

WHEREAS, Applicant owns the Property; and

WHEREAS, the Property is zoned Residential (R-1); and

WHEREAS, the building located on the Property is currently vacant but was used most recently as a veterinary clinic; and

WHEREAS, Applicant’s conditional use permit allowing use of the property for a veterinary clinic has expired; and

WHEREAS, Applicant is requesting that the Property be used for office space for the conduct of a business or profession (“Variance”), which use is not a permitted or conditional use in the R-1 district; and

WHEREAS, pursuant to § 17.88.020 of the New Castle Municipal Code (“Code”), a variance is required to allow the requested use of the Property; and

WHEREAS, pursuant to Code § 17.12.030, the Board of Zoning Adjustment of the Town of New Castle (“Board”) held a duly-noticed public hearing on November 5, 2019, to consider the Variance; and

WHEREAS, pursuant to Code § 17.12.020, the Board hereby finds as follows regarding the Variance:

1. there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected Property, specifically, the pre-existing building on the property is suitable for commercial uses but not for residential uses as contemplated by the current zoning regulations;
2. because of such physical circumstances or conditions, the Property cannot reasonably be developed in conformity with the provisions of Title 17 of the Code;
3. such unnecessary hardship has not been created by the Applicant;

4. the Variance will neither alter the essential character of the neighborhood or district in which the Property is located nor substantially or permanently impair the appropriate use or development of adjacent property; and
5. the Variance is the minimum variance that will afford relief and is the least modification possible of Title 17's provisions that are in question.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ZONING ADJUSTMENT OF THE TOWN OF NEW CASTLE, COLORADO, AS FOLLOWS:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the Board of Zoning Adjustment of the Town of New Castle, Colorado.

2. Approval. The Board hereby approves the Variance and use of the Property for office space for the conduct of a business or profession pursuant to § 17.12.020 of the Code, subject to the following conditions:

A. All representations of the Applicant in written application materials and in verbal presentations submitted to the Town or made at public hearings before the Board or Town Council shall be considered part of the application and binding on the Applicant;

B. Applicant shall comply with all applicable building, residential, electrical and municipal code requirements including, without limitation, all sign code regulations, and Section 508 of the 2015 International Building Code regarding separation requirements in mixed-use occupancy buildings;

C. Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs;

D. No other use shall be allowed within the building on the Property other than uses comprised of offices for the conduct of a business or profession as described in Code Section 17.36.040(C)(10) and defined in Code Section 17.04.050.

E. No more than two separate professional businesses shall operate on the Property at any time.

F. Off-street parking shall be maintained at a rate of one space for every 300 square feet of occupied floor space per Code Section 17.76.020(F)(3). The parking area will include at least one van-accessible parking place per Section 1106 of the 2015 International Building Code.

G. One portable fire extinguisher shall be available for each business occupying the building on the Property.


H. All occupants shall be required to comply with all performance standards set forth in Code Section 17.72.090.

I. Violation of any of the above conditions shall be cause for revocation of the Variance.

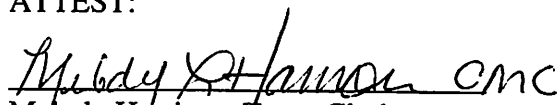
J. If the structure on the Property is converted to a conforming use in the R-1 district, the Variance approved herein will expire automatically.

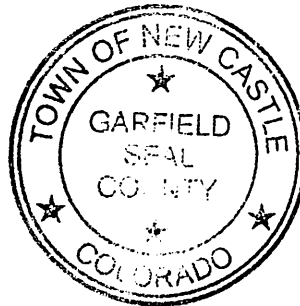
THIS RESOLUTION NO. BOA 2019-1 was adopted by the Board of Zoning Adjustment of the Town of New Castle by a vote of 7 to 0 on the 5th day of November, 2019.

BOARD OF ZONING ADJUSTMENT OF THE
TOWN OF NEW CASTLE

By: 
Art Riddile, Chair

ATTEST:

 CMC
Melody Harrison, Town Clerk





Town of New Castle
450 W. Main Street
PO Box 90
New Castle, CO 81647

Planning & Code Administration Department
Phone: (970) 984-2311
Fax: (970) 984-2716
www.newcastlecolorado.org

**Town of New Castle Board of Adjustment Meeting
Tuesday, November 5th, 2019
Palmer Variance Request
Staff Report**

Name of Applicant	Victoria Palmer
Mailing Address	94 Cedar Way, New Castle, Colorado, 81647
Property Address	228 N. 7 th Street
Phone	970-379-7312
Name of Property Owner	Same
Existing Zoning	CUP – Commercial Zoning
Surrounding Zoning	R-1
Surrounding Land Uses	Single Family and Multifamily
Existing use of property	Veterinary Clinic
Proposed use of property	Office for the conduct of a business or profession
Lot size.	0.29 acres

a permitted use in C-1

1) Background for Variance:

The veterinary clinic first operated under the original owner in 1982 after the structure was converted from a garage to commercial space. The property was relegated to a nonconforming use upon subsequent zoning updates in 1983, but allowed to continue pursuant to municipal code (MC) 17.88. In 1994, the Applicant assumed ownership and sustained the veterinary business. That year the Applicant was also granted a conditional use permit (CUP) to certify the clinic's future occupancy. However, since the code for R-1 does not list a veterinary clinic as a conditional use, the legitimacy of this CUP was uncertain.

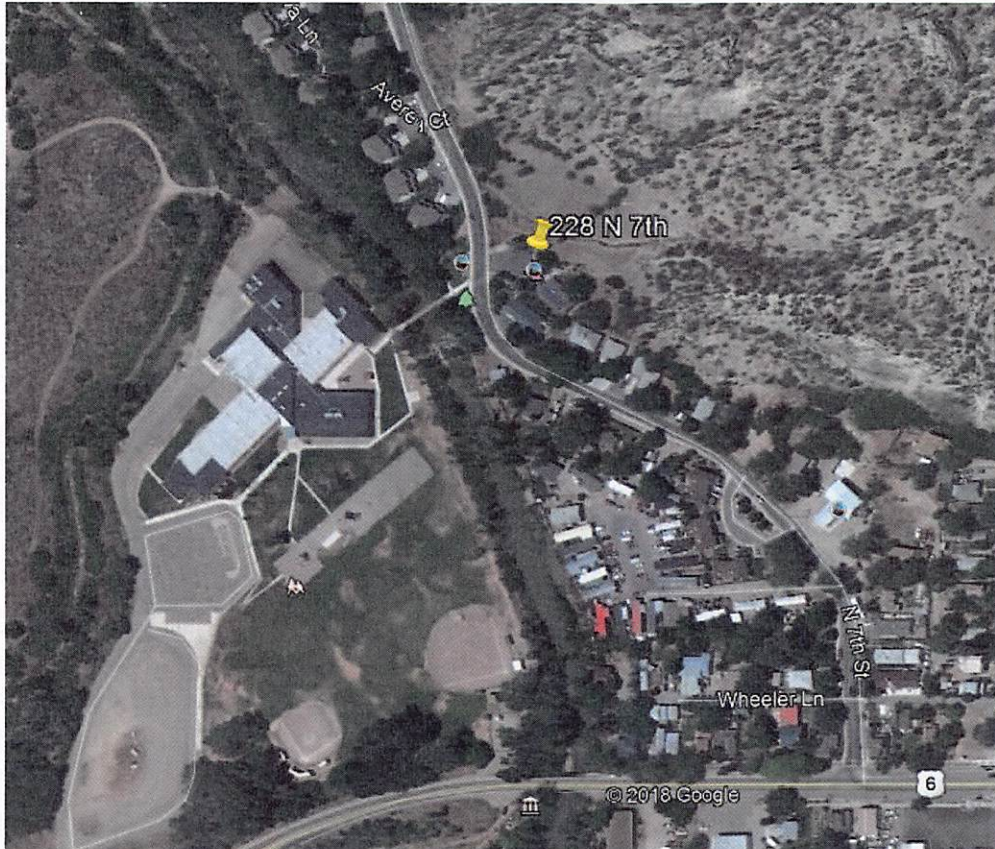
Nevertheless, after the Applicant retired 2018 the clinic was discontinued and remained unoccupied for over one year. As a result of this discontinuation, the exemption for a nonconforming use expired per MC 17.88.010. As a result, the Applicant must either default to a use permitted outright in the R-1 zone district or apply for a variance per MC 17.88.020. The Applicant has elected the latter.

2) Applicant's Reasons for Variance

The veterinary clinic, operating within the R-1 zoning, became nonconforming in 1983 as a result of Code changes to zoning changes in the Code. Upon retirement, the Applicant sold the business with a non-compete agreement, prohibiting anyone other than the purchaser from occupying as a veterinarian. As a result, the Applicant is committed to either the financial burden of updating the building to a residential dwelling unit or letting the property sit vacant. The Applicant contends that this predicament was a result of the Code updates by the Town. A variance would allow the structure to be adapted to other modes of business with likely very little impact on the surrounding neighborhood.

3) Property Location

228 N. 7th Street





4) Applicable Code Sections & Decision Criteria:

17.12.020 - Board of Adjustment. The Board shall hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of this Title. It shall also hear and decide all matters referred to it and the following matters as required under this Title:

- A. Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Title. The Board has the power to vary or modify the application of the regulations or provisions of this Title relating to the use, construction, or alteration of buildings or structures, or the use of land, so that the spirit of this Title is observed, public safety and welfare secured in substantial justice done, provided the Board finds that the following criteria, in so far as applicable, have been satisfied:
 - 1. That there are unique physical circumstances or conditions, such as a regularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
 - 2. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Title;
 - 3. That such unnecessary hardship has not been created by the applicant;
 - 4. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property;
 - 5. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Title's provisions that are in question.

- B. Where feasible, the Board may vary or modify the application of this Title for the purpose of considering access to sunlight for sewer energy devices.
- C. Hear and decide the proper application of unlisted uses or combination of uses to a use group as provided in Chapters 17.16 through 17.68.
- D. Hear and decide the proper off-street parking requirements as provided in Chapter 17.76.
- E. Hear and decide such other matters as the Town Council may by ordinance provide.

5) Required Findings and Staff Comments:

- 1. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;**

Staff Comment – The current structure is designed solely as commercial/office space. The structure is currently unsuitable as a residential dwelling since it lacks a kitchen and sleeping units.

- 2. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Title;**

Staff Comment – The lot is a commercial building in a residential zone requiring a substantial remodel to conform to the permitted uses in R-1 zoning, otherwise it will remain unoccupied.

- 3. That such unnecessary hardship has not been created by the applicant;**

Staff Comment – According to MC 17.88.010, a discontinuation of a nonconforming use for a period of one year requires that all future use conform to the R-1 zoning. And though the non-use was triggered by matters related to the sale of the business, Staff maintains that the Code modifications in 1983 were the genesis of the issue. The Code change created a nonconforming use where one originally did not exist. The Applicant and prior owner both operated within the constraints of the new Code until the business was retired. To require the Applicant to remodel the property in order to comply with R-1 zoning conditions, Staff contends, is unnecessarily burdensome. The variance exemption cited in MC 17.88.020 is a more equitable solution for all involved.

4. ***That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property;***

Staff Comment – No alterations are expected on or in the building. Traffic impacts will be minimal in comparison with the former use as a clinic.

5. ***That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Title's provisions that are in question.***

Staff Comment - The requested variance minimally modifies the use of the property. Moreover, the change of use to professional office will likely reduce traffic and noise impacts on surrounding properties.

6) Staff Recommendations:

The staff recommends **approval** of the variance application given the following conditions:

1. No other use shall be allowed within the building other than uses comprised of offices for the conduct of a business or profession pursuant to MC 17.36.040 § C, #10.
2. No more than two separate professional businesses shall operate on the premises at any time.
3. Off-street parking shall be maintained at a rate of one 9'x19' parking space for every 300sf of occupied floor space per 17.76.020 § F #3 (an equivalent of seven total spaces for 1,920sf). The parking area shall include at least one properly marked accessible van parking place per 2015 IBC Section 1106.
4. One portable fire extinguisher shall be available for each occupying business.
5. Occupants shall be required to comply with all performance standards per MC 17.72.090.
6. All representations for the Applicant contained in the Application or otherwise stated in writing or presented verbally at the public hearing before the Board of Zoning Adjustment shall be considered part of the Application and binding on the Applicant.
7. Applicant shall comply with all applicable building, residential, electrical and municipal code requirements including all sign code regulations. Notably, separation requirements per 2015 IBC section 508 for mixed use occupancy must be maintained.

8. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including, without limitation, all costs incurred by the Town's outside consultants such as legal and engineering costs.
9. If the structure is converted to a use permitted outright within the R-1 zoning district, the variance for professional office use will expire.
10. Violation of any of the above conditions shall be cause for revocation of the variance.

Administration Department
 (970) 984-2311
 Fax: (970) 984-2716
 www.newcastlecolorado.org



Town of New Castle
 PO Box 90
 450 W. Main Street
 New Castle, Co 81647

DEVELOPMENT APPLICATION

Applicant: <u>VICTORIA PARNER</u>	
Address: <u>228 N. 7TH ST. NEW CASTLE, CO</u>	Phone: <u>970-379-7312</u> FAX: E-mail: <u>bluemoondivm@comcast.net</u>
Property Owner: <u>VICTORIA PARNER</u>	
Address: <u>94 CEDAR WAY NEW CASTLE, CO</u>	Phone: <u>SAME</u> FAX: E-mail:
Contact Person: <u>SAME</u>	
Address:	
Phone: FAX: E-mail:	
Property Location/Address: <u>228 N. 7TH ST. NEW CASTLE, CO</u>	
Legal Description: <u>SECT: 31 Township: 5 Range: 90 Subdiv: 1 GORDON RESUB LOT 6 LOT: 1 AKA</u>	Acres: <u>.28</u>
Existing Zone (Not sure? Click here for help): <u>R-1</u> <i>see next page</i>	
Existing Land Use: <u>VETERINARY CLINIC SINCE 1981</u>	
TYPE(S) OF LANDUSE(S) REQUESTED	
<input type="checkbox"/> Pre-Annexation Agreement <input type="checkbox"/> Annexation <input type="checkbox"/> Subdivision (including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) <input type="checkbox"/> Amended Plat <input type="checkbox"/> Planned Unit Development (including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) <input type="checkbox"/> Floodplain Development Permit	<input type="checkbox"/> Lot Line Adjustment or Dissolution <input type="checkbox"/> Site Specific Development Plan/Vested Rights <input checked="" type="checkbox"/> Variance <input type="checkbox"/> Zoning <input type="checkbox"/> Zoning Amendment <input type="checkbox"/> Re-zoning <input type="checkbox"/> R-1-HC Identification <input type="checkbox"/> Conditional Use Permit or Special Review Use Permit <input type="checkbox"/> Other
This development would create <u>0</u> residences and <u>1920</u> square feet of commercial space.	
Applicant must also complete and submit the appropriate <u>checklist</u> for the type of land use requested. Both the applicant and the property owner must sign this application.	
Applicants are encouraged to schedule a pre-application meeting with the Town Administrator and/or Town Consultants prior to submitting this application.	

*AKA
228
N. 7TH
W. M
225*

AGREEMENT TO PAY CONSULTING FEES AND EXPENSES

It is the policy of the Town of New Castle that all land use applications must be filed in the Office of the Town Clerk to receive formal consideration. Please refer to the Town Clerk's Office for all applicable procedures.

However, the Town encourages land use applicants to consult informally with members of the Town Staff, including outside consultants, prior to filing applications if the applicant has questions regarding areas within Staff members' particular expertise; PROVIDED THAT THE POTENTIAL APPLICANT AGREES TO REIMBURSE THE TOWN FOR ALL FEES AND EXPENSES RELATING TO SUCH INFORMAL MEETINGS.

The Town employs outside consultants for engineering, surveying, planning, and legal advice. These consultants bill the Town on an hourly basis as well as for expenses including but not limited to copies, facsimile transmissions, and long distance telephone calls.

It is the Town's policy that all persons wishing to hold informal meetings with members of the Town Staff acknowledge responsibility for all fees and expenses charged by outside consultants by signing this Agreement below.

I acknowledge and agree to pay the Town of New Castle all actual costs incurred by the Town in relation to legal, engineering, surveying, planning, or other services performed by consultants to the Town as a result of such consultants' review and comment upon, or other services related to, land use proposals and/or applications proposed by me or on my behalf, regardless of whether or not such application is formally filed with the Town. Interest shall be paid at the rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In the event the Town is forced to pursue collection of any amounts due and unpaid, the Town shall be entitled to collect all costs of collection in addition to the amount due and unpaid, including but not limited to reasonable attorney's fees and costs.

SO AGREED this 20th day of September, 2019.

Victoria Palmer
Applicant (Print Name)

Victoria Palmer
Signature

970-379-7312
Telephone

94 CEDAR WAY New Castle, CO 81647
Mailing Address

Same
Property Owner

Mailing Address If Different From Above


Relationship to Applicant or Potential Applicant

Type of application: variance request

Property description: _____

NA COMMISSION EXPIRES MARCH 1 2023
MOLLYA ID 50094002822
STATE OF OREGON
MOLINA PUBLIC
MELODA FAINE HARRISON

CERTIFIED MAIL


Victoria Palmer
94 Cedar Way
New Castle, CO 81647



7019 0160 0000 9379 1593

*Town of New Castle
PO Box 90
New Castle, CO 81647*



1000



81647

U.S. POSTAGE PAID
FOM LETTER
NEW CASTLE, CO
81647
OCT 04, 19
AMOUNT

\$6.85

R2304W121344-04

**RETURN RECEIPT
REQUESTED**

*90
10-5*

NOTICE OF PUBLIC HEARING Town of New Castle

Date: November 5, 2019

Time: 7:00 PM

Place of hearing: New Castle Town Hall, 450 West Main Street, New Castle, CO

**Public body
conducting hearing:** Board of Adjustment

**Brief description
of application:** Variance for Commercial Office Profession in R-1 Zoning District

Legal description: Lot 1, A Resubdivision of Lot 6 of the Gordon Subdivision
according to the Plat thereof Recorded December 1, 1994,
Reception #471582, Town of New Castle, County of Garfield,
State of Colorado

Common address: 228 N. 7th Street, New Castle

Applicant: Victoria Palmer

Landowner: Victoria Palmer

The complete application is available at the Town Clerk's office at 450 West Main Street, P. O. Box 90, New Castle, CO 81647. All interested persons are invited to appear and state their views, protests or objections. If you cannot appear personally at such hearing, then you are urged to state your views by letter.

Respectfully, I am writing to you regarding the...
I am writing to you regarding the...
I am writing to you regarding the...

DATE: [illegible]

TO: [illegible]

FROM: [illegible]

RE: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

COMMUNITY DEVELOPMENT
OFFICE OF THE MAYOR

Victoria Palmer DVM
228 N. 7th Street
New Castle, Colorado 81647

May, 30, 2018

New Castle Mayor and Council/Board of Adjustments
450 W. Main Street
New Castle, Colorado 81647

Re: Request for a Change in Nonconforming Use at 228 N. 7th Street

Mayor and Council/Board of Adjustments:

Thank you for considering my request for a change in the nonconforming use at 228 N. 7th Street.

I am sending this request to you based on my understanding of the process: Chapter 17.88.020 Change of nonconforming use: A nonconforming use may be changed only to a conforming use unless a variance is granted in accordance with the provisions of this title.

Board of Adjustments: Chapter 17.12.020A: Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title. The board has the power to vary or modify the application of the regulations or provisions of this title relating to the use, construction, or alteration of building or structures, or the use of land so that the spirit of this title is observed, public safety and welfare secured and substantial justice done, provided the board finds that the following criteria, insofar as applicable, have been satisfied:

1. That there are unique physical circumstances or conditions...
2. That, because of such physical circumstances or conditions, the property cannot reasonably be developed...
3. That such unnecessary hardship has not been created by the applicant.
4. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located and not substantially or permanently impair the appropriate use or development of adjacent property.
5. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this title's provisions that are in question.

The following is a brief history of the property and I can add details if questions arise. Prior to 1981 Rollie Gordon owned the property at 228 N. 7th Street. He built an unfinished garage with a hard surface apron to work on cars – pull engines, replace brakes, etc. In 1981 Dr. Bob Anderson was a local vet and Rollie Gordon remodeled and expanded the building (garage) to serve as Dr. Anderson’s vet clinic (Rollie Gordon continued to own the building). In 1990 I worked with Dr. Anderson as a partner and eventually, Dr. Anderson moved out of town for another job and I took over the practice. In 1991 I applied for and received permits to remodel the building to create more exam rooms and also received permission from the Town to allow it to remain a vet clinic (Bob Gordon was the contractor for the remodel.) I purchased the building in 1991 from Rollie Gordon. I have operated this property as a vet clinic since 1990.

My vet clinic has been integrated into the neighborhood with very few complaints over the years. In my vet practice I typically had three employees. We would see patients in the morning, conduct surgeries and procedures in the later morning and resume appointments in the afternoon on weekdays. Generally, I had appointments every 20 minutes, which resulted in daily vehicle traffic of approximately 30 to 40 vehicle trips per day. We also opened one Saturday per month and started appointments at 9:00 a.m. and ended around 1:00 p.m.

In February of 2018 I decided to retire after 40 years of veterinary practice. I sold my client list to a local veterinarian, which stipulated that only that particular veterinarian could operate a vet clinic in my building.

My desire is to move into the building and make it my residence; however, this is not my decision alone (I have a partner) and it will take substantial funds to remodel the building for residential use. Between now and the time I am able to use the building as a residence I do not want the building to be vacant. Currently I visit the building every day to make sure no problems have cropped up, but would like to add another business to New Castle and keep the building in good repair at the same time.

My request is for the Board of Adjustments to allow a variance for a change in use to allow for professional offices, for example, an accountant and attorney (each having one employee.) I realize that I have until the end of February, 2019 to seek this variance and do not want too much time to pass with the building being vacant. (Chapter 17.88.010A: If a nonconforming use is discontinued for a period of one year, the structure where such use previously existed shall thereafter be occupied and used only for a conforming use.)

My response to the criteria in Chapter 17.12.020A is as follows:

1. Not applicable.
2. Not applicable.
3. After 40 years of veterinary practice I have decided to retire.
4. The change in use from a veterinary clinic to a professional office will not negatively alter the essential character of the neighborhood. The original use (vet clinic) allowed for daily office hours where clients walked to or parked in the lot and brought their pets in for care. The vet clinic typically generated 30 to 40 vehicle trips per day. The requested use will also allow for customer visits 5 days per week, but will have a lower daily

vehicle trip count. I think the impact of these professional offices will be no more and likely much less than that of the vet clinic (and no barking dogs!)

5. The change I request can be accomplished with only interior remodeling. The exterior of the building remains, the landscaping and parking area remain. I feel this is the minimum change that I can request.

Sincerely,

Victoria Palmer DVM

PERFORMANCE STANDARDS

I, Victoria Palmer, ON THIS DATE 09/19/19 agree to abide by the following PERFORMANCE STANDARDS:

Performance Standards

- (A) Smoke. No use shall be permitted in any district unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of smoke.
- (B) Particulate Matter. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of particulate matter.
- (C) Dust, Odor, Gas, Fumes, Glare or Vibration. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to emission of dust, odor, gas, fumes, glare or vibration.
- (D) Radiation Hazards and Electrical Disturbances. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to radiation control.
- (E) Noise. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to noise.
- (F) Water Pollution. No operation shall be conducted unless it conforms to the standards established by the Colorado Department of Public Health's rules and regulations pertaining to water pollution.

Source: Ord. 261, Sec. 15.04.090, 1983