

ANALYSIS AND FINDINGS

BANFIELD VETERINARY CLINIC

November 19, 2020

Case #:	CUP 20-0001
Project:	Banfield Veterinary Clinic
Location:	7975 SW Nyberg St; Tax ID: 2S124B Lot: 02000
Applicant:	Jeff Hammond, Scott Edwards Architecture
Owner’s Representative:	Centercal Properties

TABLE OF CONTENTS

I.	INTRODUCTION	2
	A. Applicable Criteria	2
	B. Conditional Use Permit Description	2
	C. Previous Land Use Actions.....	2
	D. Site Description and Surrounding Uses	2
	E. Exhibit List.....	3
II.	FINDINGS.....	4
	Chapter 33: Applications and Approval Criteria	13
	Chapter 53: Central Commercial Zone.....	15
	Chapter 74: Public Improvement Requirements	15
III.	RECOMMENDATION.....	16

Arrangements can be made to provide these materials in alternative formats such as large type or audio recording. Please contact the Planning Division at 503.691.3026 and allow as much lead time as possible.

I. INTRODUCTION

A. Applicable Criteria

The following Chapters of the Tualatin Development Code (TDC) are applicable to the subject proposal:

- TDC 32: Procedures
- TDC 33.040: Conditional Use Permit
- TDC 53: Central Commercial
- TDC 74: Public Improvement Requirements

B. Conditional Use Permit Description

The applicant, Scott Edwards Architecture, on behalf of Centercal Properties, requests approval of an a Conditional Use Permit (CUP 20-0001) for an approximately 2,975 square foot veterinary located within in existing multi-tenant commercial building at 7975 SW Nyberg Street (Tax Lot: 2S124B 02000), in the Nyberg Rivers shopping center. The property is zoned Central Commercial, which permits veterinary clinics as a conditional use.

No traffic study was required as part of this Conditional Use Permit review, as a preliminary trip analysis using ITE 10th Edition found that veterinary clinic trips are typically less intensive than common shopping center trips. The PM Peak Hour Trip demonstrates that veterinary clinics typically generate 3.53 trips per 1,000 square feet, while shopping centers and restaurants generate 3.81 and 7.8 trips respectively.

No exterior building, site improvements, or public facility improvements are required as part of the conditional use permit review or tenant needs. As a result, there will be no Architectural Review following this decision.

C. Previous Land Use Actions

- AR 13-07 – Nyberg Rivers
- AR 06-02 – Building Renovation

D. Site Description and Surrounding Uses

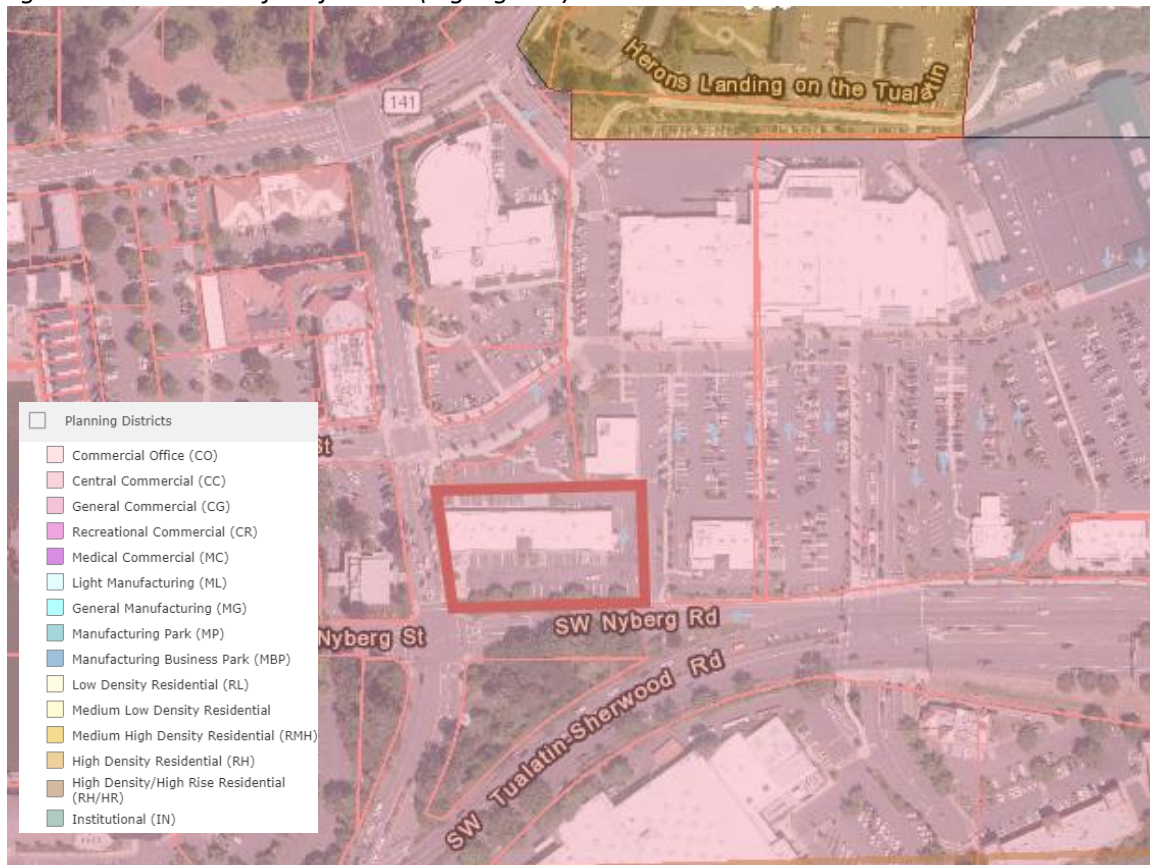
The proposed use would be located within a 2,975 square foot tenant space within a multi-tenant commercial building on a 1.21 acre lot that is a portion of a the greater 31.91 acre Nyberg Rivers shopping center, which is zoned Central Commercial (CC). The property is located east of downtown Tualatin, north of SW Nyberg Road, and south of the City Offices. The primary public access is taken from SW Nyberg Road with secondary access from SW Martinazzi Avenue.

Surrounding uses indicate commercial areas that include:

- North: Central Commercial (CC)
- City Offices
 - Nyberg Rivers shopping center
- South: Central Commercial (CC)
- SW SW Nyberg Road
 - Fred Meyer grocery store

- West: Central Commercial (CC)
- SW Martinazzi Avenue
 - Wells Fargo bank
- East: Central Commercial (CC)
- Nyberg Rivers shopping center
 - Interstate-5

Figure 1: Aerial view of subject site (highlighted)



E. Exhibit List

- A: Applicant's Narrative
- B: Plan Set
- C: Supporting Documents
- D: Memorandum from Clean Water Services
- E: Memorandum from Engineering Department

II. FINDINGS

The Planning Division findings reference the TDC, unless otherwise noted.

Chapter 32: Procedures

Section 32.010 – Purpose and Applicability.

[...]

(2) Applicability of Review Procedures. All land use and development permit applications and decisions, will be made by using the procedures contained in this Chapter. The procedure “type” assigned to each application governs the decision-making process for that permit or application. There are five types of permit/application procedures as described in subsections (a) through (e) below.

Table 32-1 lists the City’s land use and development applications and corresponding review procedure(s).

[...]

(c) Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III procedure is used when the standards and criteria require discretion, interpretation, or policy or legal judgment. Quasi-Judicial decisions involve discretion but implement established policy. Type III decisions are made by the Planning Commission or Architectural Review Board and require public notice and a public hearing, with an opportunity for appeal to the City Council.

[...]

(3) Determination of Review Type. Unless specified in Table 32-1, the City Manager will determine whether a permit or application is processed as Type I, II, III, IV-A or IV-B based on the descriptions above. Questions regarding the appropriate procedure will be resolved in favor of the review type providing the widest notice and opportunity to participate. An applicant may choose to elevate a Type I or II application to a higher numbered review type, provided the applicant pays the appropriate fee for the selected review type.

Table 32-1 – Applications Types and Review Procedures

Application / Action	Procedure Type	Decision Body*	Appeal Body*	Pre-Application Conference Required	Neighborhood/Developer Mtg Required	Applicable Code Chapter
[...]						
Conditional Use Permit	III	PC	CC	Yes	Yes	TDC 33.040
[...]						
* City Council (CC); Planning Commission (PC); Architectural Review Board (ARB); City Manager or designee (CM); Land Use Board of Appeals (LUBA).						

Finding:

The proposed use, a veterinary clinic, is identified as a Conditional Use in Chapter 53. The Conditional Use Permit application is classified as Type III procedure according to Table 32-1. The application has been processed according to the applicable code for Type III procedures. This standard is met.

[...]

Section 32.030 – Time to Process Applications.

(1) Time Limit - 120-day Rule. The City must take final action on all Type II, Type III, and Type IV-A land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under TDC 32.160, unless the applicant provides

written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-B (Legislative Land Use) decisions.)
[...]

Finding:

The application was deemed complete on October 1, 2019. The 120th day will be January 29, 2021. The hearing for CUP 20-0001 is scheduled November 19, 2020. The final action will take place within the 120 days unless the applicant requests an extension in compliance with ORS 227.178. This standard is met.

Section 32.110 – Pre-Application Conference.

(1) Purpose of Pre-Application Conferences. Pre-application conferences are intended to familiarize applicants with the requirements of the TDC; to provide applicants with an opportunity discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.

(2) When Mandatory. Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 32-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.

(3) Timing of Pre-Application Conference. A pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood/Developer meeting.

(4) Application Requirements for Pre-Application Conference.

(a) Application Form. Pre-application conference requests must be made on forms provided by the City Manager.

(b) Submittal Requirements. Pre-application conference requests must include:

(i) A completed application form;

(ii) Payment of the application fee;

(iii) The information required, if any, for the specific pre-application conference sought; and

(iv) Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.

(5) Scheduling of Pre-Application Conference. Upon receipt of a complete application, the City Manager will schedule the pre-application conference. The City Manager will coordinate the involvement of city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.

(6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences. A follow-up conference is required for those mandatory pre-application conferences that have previously been held when:

(a) An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within six (6) months of the pre-application conference;

(b) The proposed use, layout, and/or design of the proposal have significantly changed; or

(c) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.

Finding:

A pre-application meeting is mandatory. The applicant participated in a pre-application meeting on August 5, 2020, approximately four weeks prior to submittal. These standards are met.

Section 32.120 – Neighborhood/Developer Meetings.

(1) Purpose. The purpose of this meeting is to provide a means for the applicant and surrounding property owners to meet to review a development proposal and identify issues regarding the proposal so they can be considered prior to the application submittal. The meeting is intended to allow the developer and neighbors to share information and concerns regarding the project. The applicant may consider whether to incorporate solutions to these issues prior to application submittal.

(2) When Mandatory. Neighborhood/developer meetings are mandatory for all land use actions identified in Table 32-1 as requiring a neighborhood/developer meeting. An applicant may voluntarily conduct a neighborhood/developer meeting even if it is not required and may conduct more than one neighborhood/developer meeting at their election.

(3) Timing. A neighborhood/developer meeting must be held after a pre-application meeting with City staff, but before submittal of an application.

(4) Time and Location. Required neighborhood/developer meetings must be held within the city limits of the City of Tualatin at the following times:

(a) If scheduled on a weekday, the meeting must begin no earlier than 6:00 p.m.

(b) If scheduled on a weekend, the meeting must begin between 10:00 a.m. and 6:00 p.m.

(5) Notice Requirements.

(a) The applicant must provide notice of the meeting at least 14 calendar days and no more than 28 calendar days before the meeting. The notice must be by first class mail providing the date, time, and location of the meeting, as well as a brief description of the proposal and its location. The applicant must keep a copy of the notice to be submitted with their land use application.

(b) The applicant must mail notice of a neighborhood/developer meeting to the following persons:

(i) All property owners within 1,000 feet measured from the boundaries of the subject property;

(ii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases; and

(iii) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9.

(c) The City will provide the applicant with labels for mailing for a fee.

(d) Failure of a property owner to receive notice does not invalidate the neighborhood/developer meeting proceedings.

(6) Neighborhood/Developer Sign Posting Requirements. The applicant must provide and post on the subject property, at least 14 calendar days before the meeting. The sign must conform to the design and placement standards established by the City for signs notifying the public of land use actions in TDC 32.150.

(7) Neighborhood/Developer Meeting Requirements. The applicant must have a sign-in sheet for all attendees to provide their name, address, telephone number, and email address and keep a copy of the sign-in sheet to provide with their land use application. The applicant must prepare meeting notes identifying the persons attending, those commenting and the substance of the comments expressed,

and the major points that were discussed. The applicant must keep a copy of the meeting notes for submittal with their land use application.

Finding:

The applicant has provided evidence that they held a Neighborhood/Developer meeting on August 31, 2020, one day prior to application submittal. The applicant has provided documentation of sign posting and notification in compliance with this section, as well as a sign-in sheet and notes from the meeting. These standards are met.

Section 32.130 – Initiation of Applications.

(1) Type I, Type II, Type III, and Type IV-A Applications. Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

- (a) The owner of the subject property;**
- (b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;**
- (c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or**
- (d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent's authority.**

[...]

Finding:

The application has been signed by an agent of CenterCal Properties, who serves as the property owner's legal representative. This standard is met.

Section 32.140 – Application Submittal.

(1) Submittal Requirements. Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

- (a) A completed application form. The application form must contain, at a minimum, the following information:
 - (i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;**
 - (ii) The address or location of the subject property and its assessor's map and tax lot number;**
 - (iii) The size of the subject property;**
 - (iv) The comprehensive plan designation and zoning of the subject property;**
 - (v) The type of application(s);**
 - (vi) A brief description of the proposal; and**
 - (vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).****
- (b) A written statement addressing each applicable approval criterion and standard;**
- (c) Any additional information required under the TDC for the specific land use action sought;**
- (d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;**
- (e) Recorded deed/land sales contract with legal description.**
- (f) A preliminary title report or other proof of ownership.**
- (g) For those applications requiring a neighborhood/developer meeting:**

- (i) The mailing list for the notice;
 - (ii) A copy of the notice;
 - (iii) An affidavit of the mailing and posting;
 - (iv) The original sign-in sheet of participants; and
 - (v) The meeting notes described in TDC 32.120(7).
- (h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;
- (i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;
- (2) Application Intake. Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.
- (3) Administrative Standards for Applications. The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

Finding:

The applicant submitted an application for CUP 20-0001 on September 1, 2020. The application was deemed complete on October 1, 2020. The general land use submittal requirements were included with this application. These standards are met.

Section 32.150 - Sign Posting.

- (1) When Signs Posted. Signs in conformance with these standards must be posted as follows:
- (a) Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and
 - (b) Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.
- (2) Sign Design Requirements. The applicant must provide and post a sign(s) that conforms to the following standards:
- (a) Waterproof sign materials;
 - (b) Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and
 - (c) Sign text must be at least two (2) inch font.
- (3) On-site Placement. The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.
- (4) Removal. If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:
- (a) The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or

(b) The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.

Finding:

The applicant provided certification within Exhibit C that signs in conformance with this section were placed on site in accordance with this section. These standards are met.

Section 32.160 – Completeness Review.

(1) Duration. Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.

(2) Considerations. Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

(3) Complete Applications. If an application is determined to be complete, review of the application will commence.

(4) Incomplete Applications. If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(5) Vesting. If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.

(6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

[...]

Finding:

The applicant submitted an application for CUP 20-0001 on September 1, 2020. The application was deemed complete on October 1, 2020. These standards are met.

Section 32.230. - Type III Procedure (Quasi-Judicial Review—Public Hearing).

Type III decisions involve the use of discretion and judgment and are made by the Planning Commission or Architectural Review Board after a public hearing with an opportunity for appeal to the City Council. The decision body for each application type is specified in Table 32-1. A hearing under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria and the resulting determination will directly affect only a small number of identifiable persons.

(1) Submittal Requirements. Type III applications must include the submittal information required by TDC 32.140(1).

(2) Determination of Completeness. After receiving an application for filing, the City Manager will review the application will for completeness in accordance with TDC 32.160.

(3) Written Notice of Public Hearing—Type III. Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the hearing.

(a) Recipients:

- (i) The applicant and, the owners of the subject property;**
- (ii) All property owners within 1,000 feet measured from the boundaries of the subject property;**
- (iii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;**
- (iv) All recognized neighborhood associations within 1,000 feet from the boundaries of the subject property;**
- (v) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;**
- (vi) Any person who submits a written request to receive a notice;**
- (vii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; and where the project site would access a County road or otherwise be subject to review by the County, then the County; and Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code;**
- (viii) Utility companies (as applicable); and,**
- (ix) Members of the decision body identified in Table 32-1.**

(b) The Notice of a Public Hearing, at a minimum, must contain all of the following information:

- (i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;**
- (ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;**
- (iii) The type of application and a concise description of the nature of the land use action;**
- (iv) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;**
- (v) Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;**
- (vi) The date, time and location of the hearing;**
- (vii) Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;**
- (viii) The name of a City representative to contact and the telephone number where additional information may be obtained; and**
- (ix) Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and**

- (x) Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.**
- (c) Failure of a person or agency to receive a notice, does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.**

Finding:

After submittal and completeness review as required by this section, notice for the Type III hearing concerning CUP 20-0001 was mailed by city staff on October 16, 2020 and contained the information required by this section. These standards are met.

(4) Conduct of the Hearing—Type III. The person chairing the hearing must follow the order of proceedings set forth below. These procedures are intended to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide for a full and impartial hearing on the application before the body. Questions concerning the propriety or the conduct of a hearing will be addressed to the chair with a request for a ruling. Rulings from the chair must, to the extent possible, carry out the stated intention of these procedures. A ruling given by the chair on such question may be modified or reversed by a majority of those members of the decision body present and eligible to vote on the application before the body. The procedures to be followed by the chair in the conduct of the hearing are as follows:

- (a) At the commencement of the hearing, the person chairing the hearing must state to those in attendance all of the following information and instructions:**
 - (i) The applicable substantive criteria;**
 - (ii) That testimony, arguments and evidence must be directed toward the criteria described in paragraph (i) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision;**
 - (iii) That failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals based on that issue;**
 - (iv) At the conclusion of the initial evidentiary hearing, the decision body must deliberate and make a decision based on the facts and arguments in the public record; and**
 - (v) Any participant may ask the decision body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the decision body grants the request, it will schedule a date to continue the hearing as provided in TDC 32.230(4)(e), or leave the record open for additional written evidence or testimony as provided TDC 32.230(4)(f).**
- (b) The public is entitled to an impartial decision body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to ex parte contact are concerned, members of the decision body must follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the decision body must not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the decision body must individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they must be excused from the proceedings.**
- (c) Presenting and receiving evidence.**
 - (i) The decision body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;**

(ii) No oral testimony will be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and

(iii) Members of the decision body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

(d) The decision body, in making its decision, must consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.

(e) If the decision body decides to continue the hearing, the hearing must be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity must be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the decision body may limit additional testimony to arguments and not accept additional evidence.

(f) If the decision body leaves the record open for additional written testimony, the record must be left open for at least seven days after the hearing. Any participant may ask the decision body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the decision body must reopen the record, as follows:

(i) When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;

(ii) An extension of the hearing or record granted pursuant to this section is subject to the limitations of TDC 32.030, unless the applicant waives his or her right to a final decision being made within the required timeframe; and

(iii) If requested by the applicant, the decision body must grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.

Finding:

The Tualatin Planning Commission will follow the hearing requirements set forth by this section in hearing CUP 20-0001. These standards will be met.

(5) Notice of Adoption of a Type III Decision. Notice of Adoption must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type III Notice of Adoption must contain all of the following information:

(a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;

(b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;

(c) A statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;

(d) The date the decision becomes final, unless a request for appeal is submitted; and

(e) The notice must include an explanation of rights to appeal the decision to the City Council in accordance with TDC 32.310.

Finding:

A final decision and any appeal will follow the requirements of this section. These standards will be met.

Chapter 33: Applications and Approval Criteria

[...]

Section 33.040 Conditional Use Permit

[...]

(2) Applicability. A request for a conditional use, modification of an existing conditional use permit, or a review of an existing conditional use permit may be initiated by a property owner or the owner's authorized agent.

Finding:

The proposed conditional use request is a request submitted by the owner's authorized agent, Scott Edwards Architecture. This proposal is a Type III review, and follows the procedures in Chapter 32. This standard is met.

[...]

(5) Approval Criteria. The applicant must provide evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied and demonstrate that the proposed use also satisfies the following criteria:

(a) The use is listed as a conditional use in the underlying zone;

Finding:

The proposed use is a veterinary clinic. A veterinary clinic, is categorized as a conditional use in Table 53-1 in the Central Commercial (CC) zone chapter. Additionally TDC 53.210(2) states, "Veterinary clinics may be permitted as a conditional use if treatment is limited to small animals." Condition of approval CUP-1 is recommended to ensure this standard is met.

b) The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements and natural features;

Finding:

The site is a 1.21 acre lot that is a portion of a larger 31.91 acre, fully developed shopping center. The shopping center consists of a mix of retail, personal service, and restaurant uses, and is well suited for the proposed veterinary use with no infrastructure improvements necessary. Pedestrian amenities, parking, landscaping, and public utilities are in place to serve the proposed use. This standard is met.

(c) The proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use;

Finding:

The Nyberg Rivers shopping center is fully developed with an adequate transportation system and public facilities to support the proposed use. These improvements were reviewed as part of Master Plan 13-01, which included a Transportation Impact Analysis and corresponding mitigations. Primary access is provided by Nyberg Road, a major arterial, and secondary access is provided by Martinazzi Avenue, a minor arterial.

Per ITE 10th Edition, veterinary clinic trips are less intensive than typical shopping center trips. A PM Peak Hour Trip evaluation is provided below:

- *ITE Classification 820 Shopping Center – 3.81 trips per 1,000 SF*
- *ITE Classification 931 Restaurant – 7.8 trips per 1,000 SF*
- *ITE Classification 640 Veterinary Clinic – 3.53 trips per 1,000 SF*

The development is served by a 12" water line, a 12" storm line, and a 10" sanitary line within the Martinazzi Avenue right-of-way. This standard is met.

(d) The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying zone; and

Finding:

The subject site and surrounding properties are a part of the Nyberg Rivers shopping center and are zoned Central Commercial. The purpose of this zoning district is to provide areas that are suitable for a full range of retail, professional, and service uses of the kind usually found in downtown areas. Adjacent uses in the shopping center include a bank, café, and dentist.

The Banfield veterinary facility would complement the surrounding character. Banfield provides full-service veterinarian care; including diagnostic capabilities, a surgery room, pharmacy and retail pet supply sales. All clinic activities occur within tenant spaces. No outdoor amenities, such as dog runs or storage yards, and no grooming, long term kenneling, boarding, daycare or overnight stays are proposed at this facility.

Hours of operation:

Banfield clinics primarily operate 7:00am – 7:00pm, 7 days per week. No overnight care or boarding is proposed.

(Note: all critical care patients requiring long-term care are transferred to other local 24-hr veterinary hospital facilities)

Employees:

Typical Banfield clinics operate with a staff of 4 to 7, including Licensed Veterinarians, Veterinary techs and administrative support staff.

Noise & nuisance:

All functions are fully contained within the premises minimizing impact on adjacent tenants or properties. Any potential sound transmission from within the premises will be mitigated by insulated exterior walls.

Waste & ventilation:

A pet-waste station with bags and disposal are typically provided adjacent to the clinic entry for customer and employee use. Biohazardous waste is kept in a freezer and removed by a third-party vendor on an as needed basis. Waste air/odor is exhausted through multiple rooftop mounted exhaust fans. Banfield staff routinely walk the exterior of the space every couple of hours to clean up any animal waste found along the public sidewalk areas.

Conditions of approval CUP-2, 3, 4, and 5 are recommended to ensure this standard is met.

(e)The proposal satisfies those objectives and policies of the Tualatin Community Plan that are applicable to the proposed use.

TUALATIN COMMUNITY PLAN CHAPTER 6 – COMMERCIAL PLANNING DISTRICTS

Section 6.040 Commercial Planning District Objectives.

(4)Central Commercial Planning District (CC). To provide areas for a full range of retail, professional and service uses of the kinds usually found in downtown areas patronized by pedestrians. Civic, social, and cultural functions that serve the general community are also appropriate. The Central Commercial Planning District is almost entirely within the downtown portion of the urban renewal area. The Urban Renewal Plan contains extensive development policies and design standards that apply to this district. These policies and standards are intended to help create a village atmosphere in the downtown area.

Finding:

The Nyberg Rivers shopping center has been developed to the Urban Renewal Plan development policies and design standards. The proposed veterinary clinic provides the neighboring community with routine veterinary services for their household pets in a location that is convenient to a variety of shopping, personal services, and restaurants. No exterior building or site improvements are proposed as part of the tenant improvement process. This standard is met.

Chapter 53: Central Commercial Zone

[...]

Section 53.200 Use Categories

(1)Use Categories. Table 53-1 lists use categories Permitted Outright (P) or Conditionally Permitted (C) in the CC zone. Use categories may also be designated as Limited (L) and subject to the limitations listed in Table 53-1 and restrictions identified in TDC 53.210. Limitations may restrict the specific type of use, location, size, or other characteristics of the use category. Use categories which are not listed are prohibited within the zone, except for uses which are found by the City Manager or appointee to be of a similar character and to meet the purpose of this zone, as provided in TDC 31.070.

Table 53-1: Use Categories in the CC Zone		
USE CATEGORY	STATUS	LIMITATIONS AND CODE REFERENCES
COMMERCIAL USE CATEGORIES		
Retail Sales and Services	C	Conditional use permit required for veterinary clinic

Finding:

The subject site is within the Central Commercial (CC) Planning District, which requires a conditional use permit for veterinary clinic. With submittal and review of CUP 20-0001 application, the standard is met.

Chapter 74: Public Improvement Requirements

[...]

Section 74.440 Streets, Traffic Study Required

(1)The City Manager may require a traffic study to be provided by the applicant and furnished to the City as part of the development approval process as provided by this Code, when the City Manager determines that such a study is necessary in connection with a proposed development project in order to:

(a) Assure that the existing or proposed transportation facilities in the vicinity of the proposed development are capable of accommodating the amount of traffic that is expected to be generated by the proposed development; and/or

(b) Assure that the internal traffic circulation of the proposed development will not result in conflicts between on-site parking movements and/or on-site loading movements and/or on-site traffic movements, or impact traffic on the adjacent streets.

Finding:

No traffic study was required as part of this Conditional Use Permit review, as a preliminary trip analysis using ITE 10th Edition found that veterinary clinic trips are typically less intensive than common shopping center trips. The PM Peak Hour Trip demonstrates that veterinary clinics typically generate 3.53 trips per 1,000 square feet, while shopping centers and restaurants generate 3.81 and 7.8 trips respectively.

III. RECOMMENDATION

Based on the application materials and analysis and findings presented above, staff finds that the applicable criteria have been met relative to CUP 20-0001, and therefore recommends approval of the application with the following conditions of approval:

- CUP-1** Veterinary treatment must be limited to small animals.
- CUP-2** Outdoor pet amenities, such as dog runs or storage yards are prohibited.
- CUP-3** Pet daycare and boarding are prohibited.
- CUP-4** Animal waste in public areas adjacent to the veterinary use are subject to Tualatin Municipal Code Chapter 6-04.
- CUP-5** Hours of Operation are limited to 6:00 a.m. to 10:00 p.m., Monday through Sunday.
- CUP-6** Modification or expansion of the veterinary use may require an additional Conditional Use Permit application review.