



2. *Landscaping and Lighting*:..... 14

3. *Signage*:..... 18

**F. Traffic Issues** ..... 20

**1. Transportation Policy Area Review and Local Area Transportation Review** ..... 20

**2. Circulation, Parking and Access** ..... 21

*a. Access*: ..... 21

*b. Number of spaces*: ..... 21

*c. Circulation and Traffic Safety*: ..... 22

*d. Waiver of Parking Facility Setbacks*:..... 23

**G. Community Response** ..... 24

**III. SUMMARY OF TESTIMONY** ..... 25

**IV. FINDINGS AND CONCLUSIONS**..... 25

**A. Standard for Evaluation** ..... 25

**B. General Standards** ..... 27

**C. Specific Standards**..... 31

**D. Development Standards of the Zone**..... 33

**V. RECOMMENDATION** ..... 39

## I. STATEMENT OF THE CASE

Filed on May 30, 2014, Petitioners Faik and Lauren Tugberk seek a special exception to operate a professional office at 9400 Old Georgetown Road, Bethesda, Maryland. By notice dated June 11, 2014, the Hearing Examiner scheduled a public hearing on the application for October 3, 2014. The Petitioner requested a postponement of the hearing because staff of the Montgomery County Planning Department (Technical Staff) could not attend the Planning Board's hearing on the date the Board needed to file its recommendation prior to the public hearing. Exhibit 18. The Hearing Examiner granted this request and rescheduled the public hearing to October 24, 2014. Exhibit 19.

Petitioners filed a motion to amend the petition on August 13, 2014, and notice of the motion to amend was sent shortly thereafter. Exhibit 21, 24. On October 2, 2014, Technical Staff issued its report recommending approval of the application, subject to 7 conditions. Exhibit 30. The Planning Board also recommended approval, although it revised two of the conditions initially recommended by Staff. Exhibit 32.

The public hearing proceeded as scheduled on October 24, 2014. One individual, Mr. Michael Naas, appeared to express concerns about the application. At the public hearing, the Hearing Examiner requested the Petitioners to provide details on the design of a sign proposed fronting Old Georgetown Road. Petitioners did so and the Hearing Examiner forwarded the sign design to Technical Staff for their review. Exhibit 40. Technical Staff recommended approval of the sign, and Petitioners concurred in Technical Staff's comments. Mr. Naas did not submit further comments on the sign. The Hearing Examiner re-opened and closed the record to admit these exhibits. Exhibit 43.

## **II. FACTUAL BACKGROUND**

### **A. History of Special Exception**

In 1965, the Board of Appeals approved a special exception for a medical office (with no more than two doctors) on the subject property. The approval permitted no more than two doctors on-site and required that 50% of the building be devoted to residential use. It also approved eight parking spaces for the use of the business. *See*, Board of Appeals Case No. CBA 1749, Petition of Dr. Stanley A. Radvan-Ziemnowica.

According to the Petitioners, the property was purchased 14 years ago by the applicant who began operating the non-residential professional office (his architectural practice). T. 19.<sup>1</sup> In 2013, a Department of Permitting Services (DPS) inspector informed the applicant that special exception CBA 1749 needed to be updated to comply with the existing use on the property. DPS did not issue a violation to the applicant. Exhibit 30, p. 2.

In March 2014, the applicant filed a modification to CBA 1749 requesting an architect's office on the subject site. On April 2, 2014, the Hearing Examiner informed Staff and the Petitioners that it must file a new application, rather than a modification to the original special exception because the requirements for a medical practitioner's office (§59-G-2.36 of the Zoning Ordinance governing this case) were different than the requirements for a professional office (i.e., §59-G-2.38.)<sup>2</sup> Exhibit 30, Attachment B.

### **B. Subject Property**

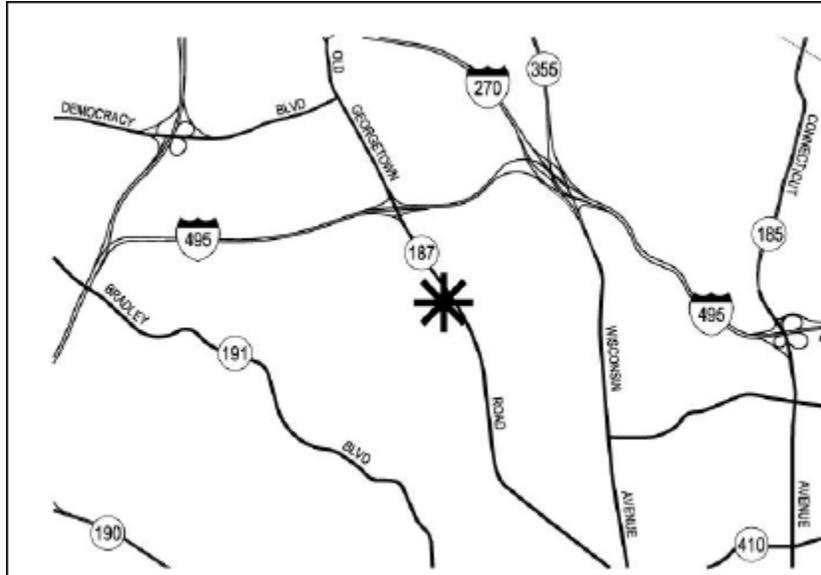
The property is located on the west side of Old Georgetown Road south of the intersection with Spruce Tree Lane, and is in the R-60 Zone. The YMCA is located on the opposite side of

---

<sup>1</sup> All transcript citations are to the transcript of the public hearing held on October 24, 2014.

<sup>2</sup> The 1965 special exception was approved under §104-29(r) of the Zoning Ordinance in effect as of the date of approval (Chap. 104, Mont. Co. Code 1960, as amended). The Hearing Examiner concluded that this provision was the direct predecessor of §59-G-2.38. Exhibit 30, Attachment B.

Old Georgetown Road. A vicinity map from the Technical Staff Report shows the general location of the subject property (Exhibit 30, p. 1):



Staff advises that the property consists of approximately 18,400 square feet and is rectangular in shape. It is a through lot, with approximately 80 feet of frontage on both Old Georgetown Road and Singleton Drive and is 230 feet in length.<sup>3</sup> Exhibit 30, p. 5; T. 34. Staff advises that the property slopes gently up from Old Georgetown Road and is relatively level in the rear. Portions of the north and south property lines are bordered by a 6-foot high board-on-board wooden fence, and a 4-foot high wire fence is located along a portion of the southern property line. The property also contains extensive bamboo plantings in excess of 20 feet high located adjacent to all on-site fences along both the northern and southern property lines. *Id.* Petitioners' expert land planner, Mr. William Landfair, testified that the screening along these edges is primarily very

<sup>3</sup> Because the lot is a through lot, it technically has two front yards and no rear yard for zoning purposes. The existing dwelling is oriented with its front toward Old Georgetown Road and its rear toward Singleton Drive. The Hearing Examiner uses the term "rear" or "rear yard" colloquially to refer to the portion of the lot fronting on Singleton Drive. *Montgomery County Zoning Ordinance* (2004 as amended), §59-A-2.1.

mature bamboo, but there also are arboreta and Leyland Cyprus trees and various mature trees scattered around the property. At the suggestion of Staff, the Petitioners commissioned an arborist to determine the health of some of these trees. The arborist recommended that two white pines in the rear yard be removed. Exhibit 23. The Petitioners did so because they did not serve any purpose for screening and there were safety concerns if the trees were not removed. T. 37.

Staff advises that the property is improved with a two-story single-family home with a carport containing a total floor area of 5,300 square feet. Exhibit 30, p. 5. The upper story is used as a residence, and is not part of this special exception request. The front of the property (along Old Georgetown Road) has a parking area that can accommodate 6 cars; the carport has space for two cars. *Id.* An aerial view of the property, submitted by the Petitioners, is shown below (Exhibit 12(b)):



Mr. Landfair testified that mature trees located in the front yard screen the property, including the parking, from Old Georgetown Road. T. 30. A pathway of brick pavers leads from the front parking area to the main entrance. A photograph of the property from Old Georgetown Road, was submitted by the Petitioners (Exhibit 12(b), below):



The Singleton Drive frontage has a concrete parking pad with room for one car. A gravel path runs along the northern property line, providing access to the property. A photograph submitted by the Petitioners shows the subject property viewed from Singleton Drive (Exhibit 12(c), on the following page).

### **C. Surrounding Area**

Technical Staff defined the surrounding area (for the purposes of determining the compatibility of the proposed use) as Beech Lane on the north, Alta Vista Road on the south, properties bordering Singleton Drive on the west, and properties bordering Old Georgetown Road to the east, as shown on the following page. Exhibit 30, p. 6.



View from Singleton Drive  
Exhibit 12(c)



Aerial View of Surrounding Area  
Defined by Technical Staff  
Exhibit 30, p. 6

Staff did not characterize the area, but did report that it contains single-family detached homes and some special exceptions. Special exceptions include the YMCA (BAS 92, approved on June 7, 1962), a non-residential professional office (approved July 3, 1966), a medical and dental clinic (S-529, approved on August 4, 1977), a medical office building (CBA 2202, approved on June 6, 1987), and another non-residential professional office (BAS 1446, approved on November 25, 1986). *Id.* at 6.

The Hearing Examiner characterizes the area as consisting of single-family dwellings in the R-60 Zone with several special exception uses along Old Georgetown Road.

#### **D. Master Plan**

The property is located within the geographic area covered by the *Bethesda-Chevy Chase Master Plan*, approved and adopted April, 1990 (Master Plan or Plan). This property comes within “The Old Georgetown Road Plan,” of the larger Plan area, which includes properties immediately adjacent to Old Georgetown Road. Characterized as an important commuter and employment link to downtown Bethesda and major employers such as the NIH, the Plan envisioned Old Georgetown Road as a “front door” to the existing residential uses behind and sought to achieve a “pleasing boulevard with a residential character...” *Plan*, p. 57.

The Plan reconfirmed that this property, already recommended for a special exception for non-residential professional office in prior master plans, was again suitable for such a use. The graphic for the Old Georgetown Road Plan contained in the Master Plan (shown on the following page) confirms this and marks the subject property for non-residential professional office. The Plan discouraged additional special exceptions (except those that served the community) along Old Georgetown Road or in the interior of the neighborhoods to ensure that the roadway maintained its residential character. *Plan*, p. 60. The Plan recommended that new special

exceptions be reviewed on a case-by-case basis with an eye toward maintaining the residential nature of the highway. *Id.*

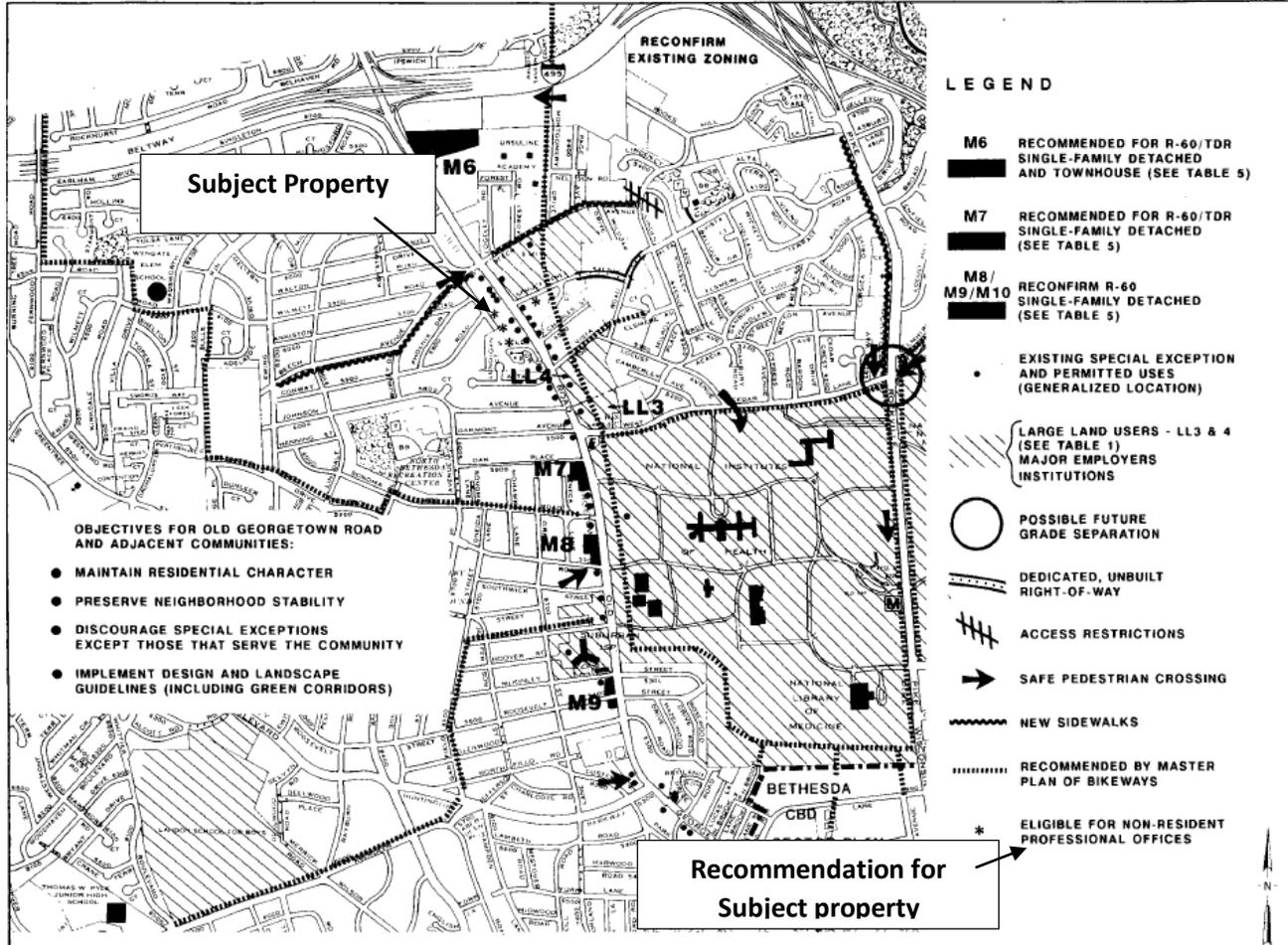


Figure 9  
Bethesda-Chevy Chase Master Plan

Technical Staff concluded that the proposed petition complies with the Master Plan (Staff Report, pp. 6-7):

MD 187 also hosts a number of existing special exceptions which have allowed for the introduction of commercial and service uses within this residential area. As many of these uses are located within former dwelling units, the corridor appears to be residential in nature. However the abundance and concentration of institutional and professional offices (i.e. special exception uses) has led to a loss of the residential character desired by the Plan along MD 187. To prevent further

loss, the Plan recommended that many types of additional special exceptions be discouraged and that future requests for these uses be evaluated by the Board of Appeals.

The Plan, however, acknowledged and reconfirmed the subject property, in addition to several other sites, as being suitable for non-residential professional offices (page. 59). The Plan recognized that the previously approved non-residential medical practitioner office (CBA-1749) was community serving in nature and therefore desirable. The applicant is requesting, a different type of special exception use, non-residential professional office, for this site. The applicant has been operating non-residential professional office on this site, since 2000 and has had no adverse impact to the surrounding area. The application is not proposing any physical and operational changes to the property which would further alter the one-family character and feel along the MD 187 roadway.

Additionally, the Plan recommended a number of design and landscape guidelines in an effort to maintain quality of character, appearance and to address traffic concerns along the corridor. These included a number of strategies for special exceptions which addressed physical appearance of the structure, business hours and access. The applicant has successfully addressed these concerns by maintaining the overall residential appearance of the proposed use, by no increase in existing access points or adding or altering the existing one-family structure, by increasing supplemental screening on site and by limiting weekday hours of operation.

Staff notes that the Plan reconfirmed the R-60 Zone on this site and recommended the appropriateness of a “community-serving” special exception use in this location. The applicant provides architectural services for residential and commercial property owners in the Bethesda community and will continue to offer these services under this subject special exception. Staff believes that the proposed use is in line with the vision and overall theme of community services uses noted within the Master Plan as it continues to be an appropriate use for this site and therefore, recommends approval of the subject application.

Mr. Michael Naas, who has lived approximately 50 yards from the property since 1971, testified that the original special exception was supported by the local community because they wanted a doctor’s office near the neighborhood. T. 9-10. Petitioners assert that the proposed use is “neighborhood-serving” because it provides some residential remodeling in the “Bethesda community.” While perhaps not as directly neighborhood-serving as a local physician, the Hearing Examiner agrees that there is a sufficient nexus to the Master Plan’s recommendation to meet its

overall vision, particularly because of the extensive existing and supplemental proposed screening that permits the property to maintain a strong residential character.

### **E. Proposed Use**

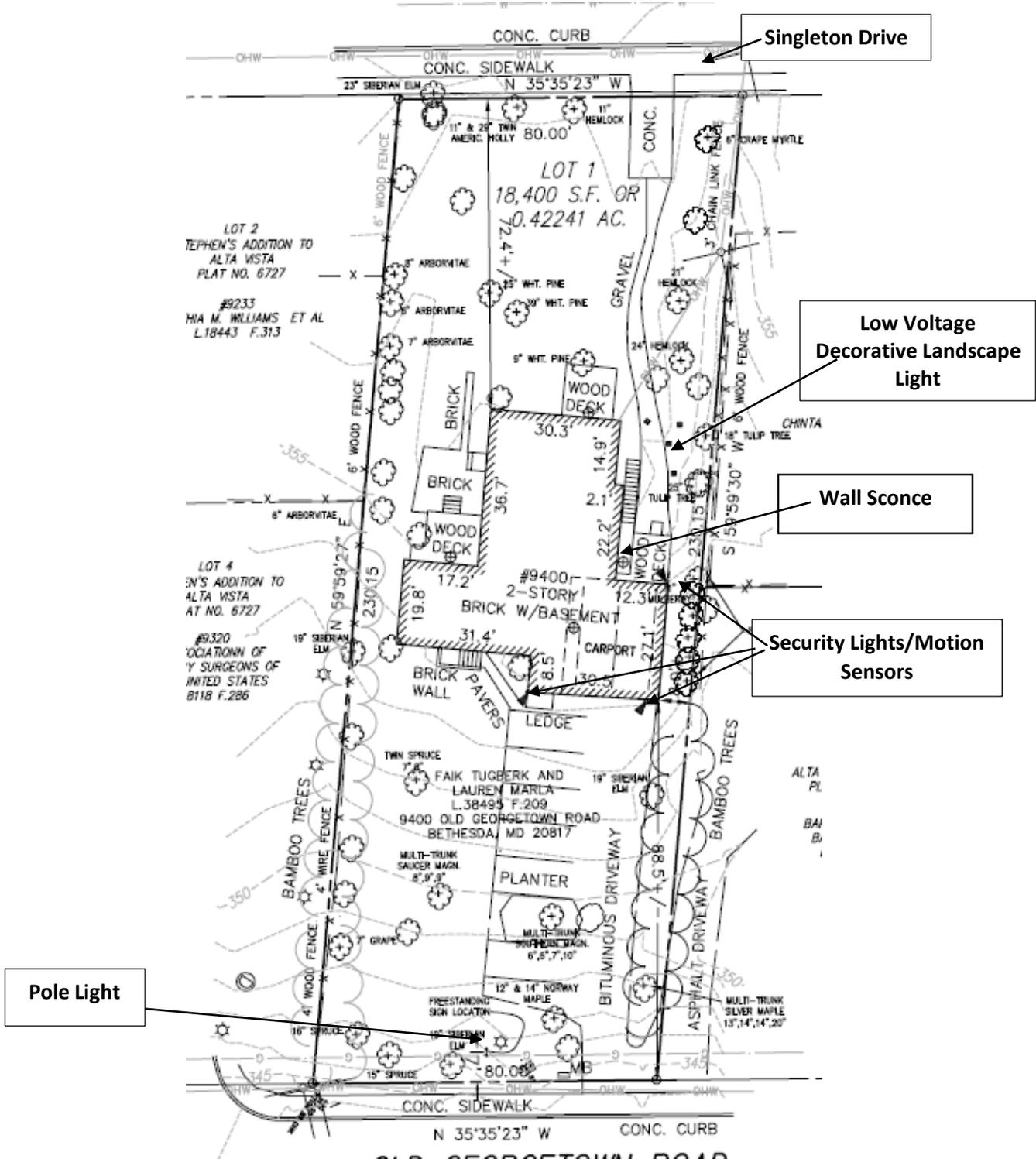
Mr. Faik Tugberk, a principal of the firm “Architects Collaborative, Inc.” testified regarding the proposed use. He has been in business for 24 years, 14 of which have been at the subject property. He moved his business to the property next door in 1997 and stayed there for three years. At that point, the current property came on the market and he and his wife purchased it. According to him, the property had been run down and abandoned and the mortgage holder was in default. T. 19.

When in the adjacent property, he discovered that it was a wonderful location for the business. When the subject property became available, he went through lengthy negotiations with the bank holding the mortgage regarding the repairs and maintenance. Individuals living on Singleton Drive and Conway Road would use it as a cut-through, and neighborhood kids used it as a hangout. When they moved in, he repaired and maintained the property. T. 20.

Over the years, Mr. Tugberk continued, his business grew from 3 or 4 to 11 employees. His firm does multi-family residential projects as well as custom home renovations. His family has worked to maintain the existing screening to shield the property. His family helps with the business; his wife, Lauren, does marketing and accounting and his son, an attorney, provides some legal advice. He would love to be able to continue what they are doing on the property and does not wish to expand the number of employees because he would like to retire there. T. 20-21, 28.

He does not propose to expand the existing structure. Currently, the business uses the first floor and the cellar (for storage and a break room) as shown on the site plan reproduced on the next page. The first floor is approximately 2,200 square feet, and the cellar area is approximately

1,900 square feet, 400 square feet of which is a break room. The upper floor contains a residential use of approximately 1,200 square feet, which is not part of this petition. Exhibit 30, p. 3. The site plan for the proposed use is shown below (Exhibit 21(b)):

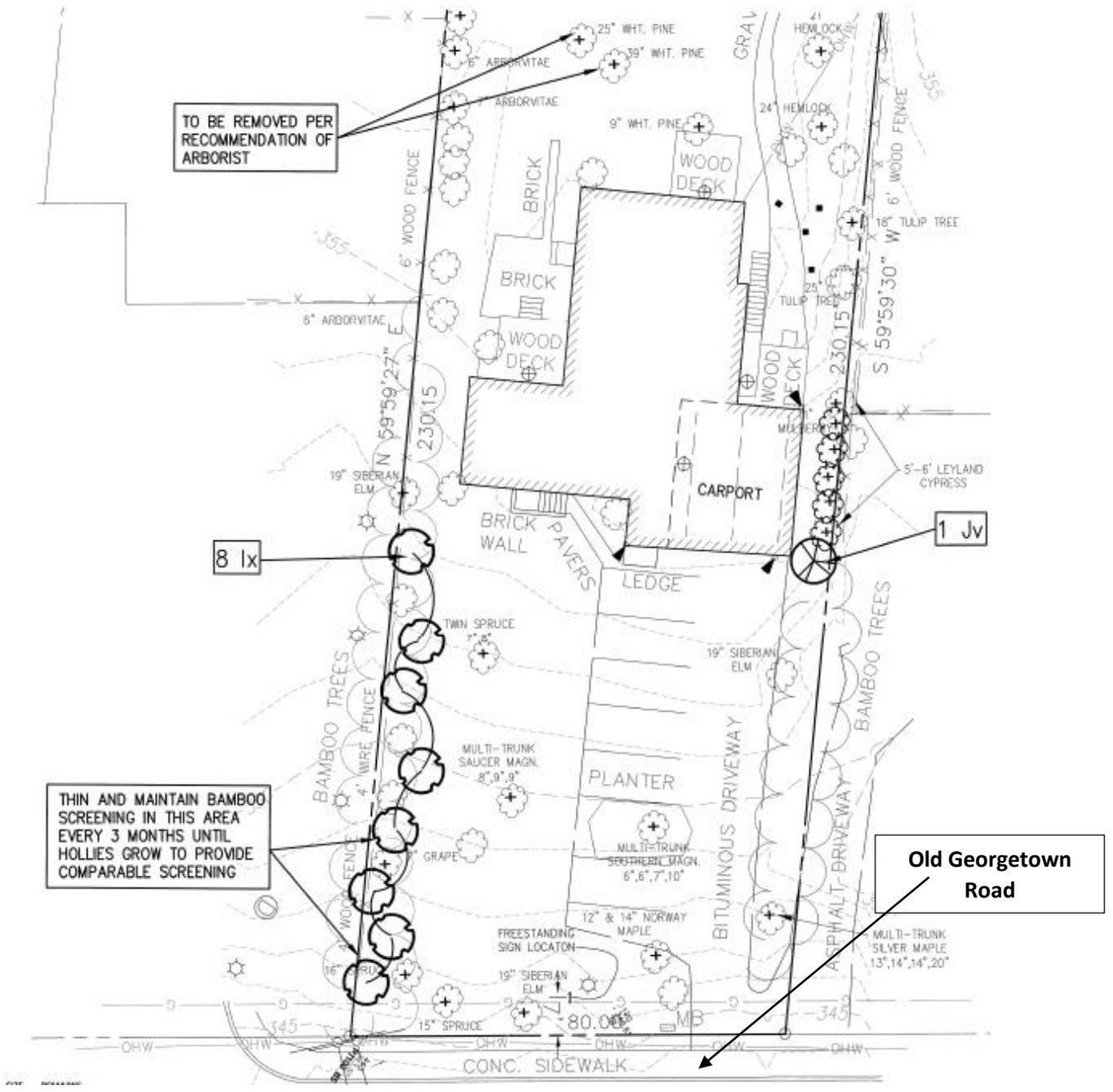


*1. Operations:*

Mr. Tugberk stated that all activities for the business are conducted inside the building. The hours of operation are Monday – Friday, 9:00 a.m. to 6:00 p.m. Occasionally, he works on Saturday just to prepare for the work week. Meetings at the property occur infrequently, approximately one per week, because they typically visit the client’s offices or use e-mail and teleconferences. They generally get one delivery per week, usually paper supplies. T. 21-22.

*2. Landscaping and Lighting:*

Staff advises that screening of the existing use is primarily from bamboo on the north and south sides of the property, which extends across the property line to adjacent lots. Because bamboo is an aggressive, invasive species, Staff recommended that some, but not all, of the existing bamboo be removed. Staff recognized that it is difficult to eliminate bamboo when it is permitted to grow on the other side of the property line, finding that “sprouting will continue to occur within a notable radius of an existing bamboo colony,” and it would take years for new evergreen growth to provide the same level of screening. Exhibit 30, p. 9. At Staff’s request, Petitioners agreed to remove portions of the bamboo along the northern and southern property lines and replace it with 8 American Holly evergreen trees along the southern property line and one red cedar tree along the northern property line near the carport. These two species provide food for native birds, which the bamboo does not. Staff also recommended that a note be placed on the landscape plan requiring the Petitioners to maintain removal of the bamboo. Exhibit 30, p. 9. The Planning Board revised this condition at its hearing to specify time frames, and the revised note was included on the landscape plan submitted to the Hearing Examiner, shown on the following page (Exhibit 36(a)).



Landscape Plan  
Exhibit 36(a)

# LEGEND

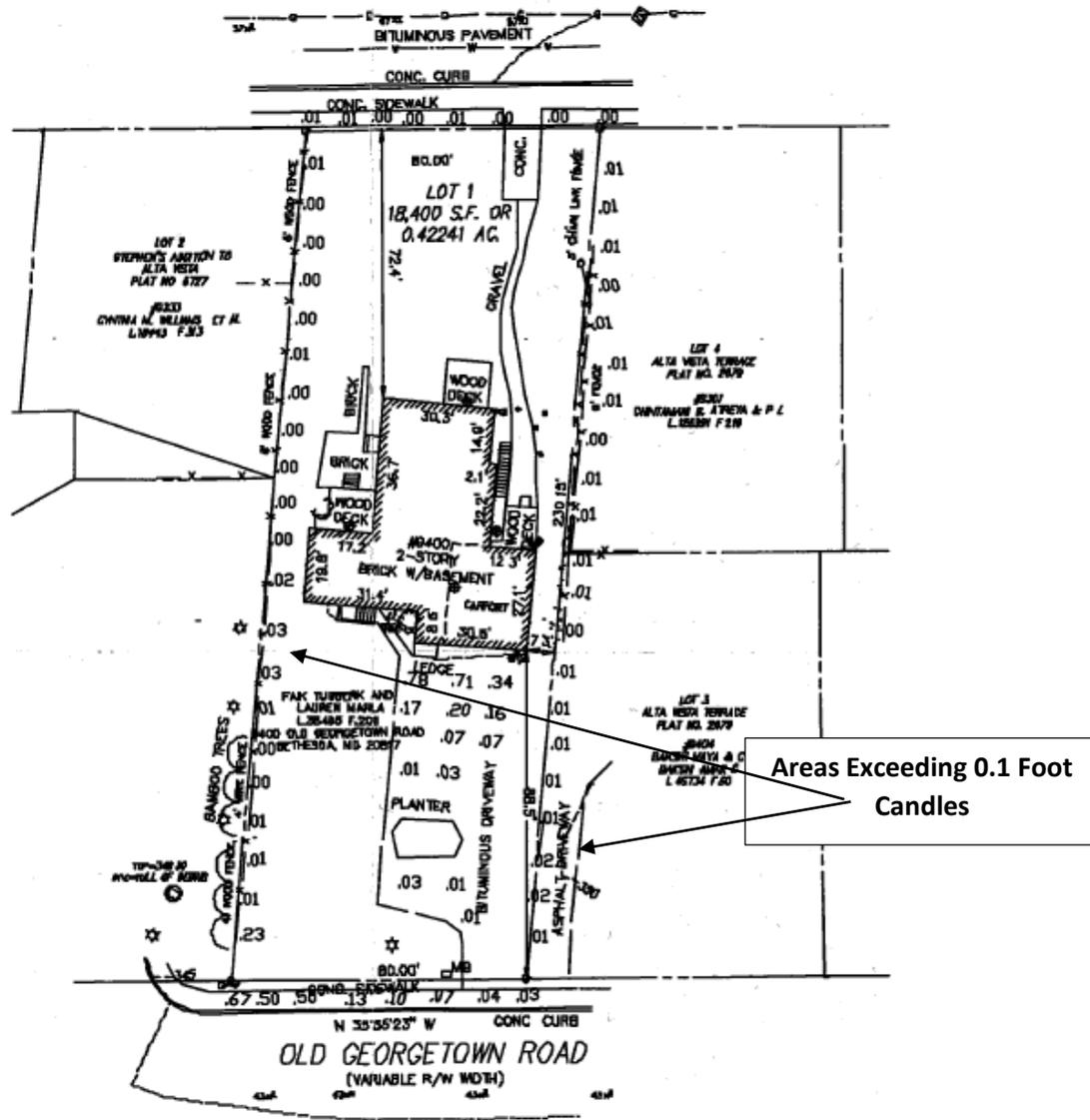
	CABLE TELEVISION CONDUIT
	ELECTRICAL CONDUIT
	EDGE OF PAVEMENT
	FENCE LINE
	NATURAL GAS CONDUIT
	OVERHEAD WIRES
	TELEPHONE/COMMUNICATIONS CONDUIT
	PROPERTY LINES
	PUBLIC UTILITIES EASEMENTS
	SANITARY SEWER CONDUIT
	STORM DRAIN CONDUIT
	WATER CONDUIT
	SANITARY CLEANOUT
	STORM DRAIN MANHOLE
	ELECTRICAL JUNCTION BOX
	ELECTRICAL MANHOLE
	FIRE DEPARTMENT CONNECTION
	FIRE HYDRANT
	GAS MANHOLE
	GUY POLE
	GAS VALVE
	LIGHT POLE
	PHONE PEDESTAL
	PHONE MANHOLE
	UTILITY POLE
	SANITARY MANHOLE
	TRAFFIC CONTROL BOX
	TRAFFIC SIGNAL POLE
	<b>TREE</b>
	CABLE TELEVISION PEDESTAL
	UNKNOWN UTILITY MANHOLE
	WATER METER
	WATER MANHOLE
	WATER VALVE
	BOLLARD
	SIGN POST
	INLETS
	CURB INLET
	MAIL BOX

Legend for Landscape Plan  
Exhibit 36(a)

The lighting plan for the property would maintain the three existing exterior lights: a soffit floodlight above the carport entrance, a 24-inch high light along the gravel path, which Staff

advises is low-voltage, and a 60-watt modern globe light along Old Georgetown Road access that is 5 feet high. Exhibit 30, p. 6. The locations of these fixtures are shown on the site plan on page 12 of this Report.

The Petitioners submitted a photometric study that shows that light along portions of the north and south property lines will exceed 0.1 foot candles, the standard for special exceptions in residential zones, as shown on Exhibit 6(a), below:



**Plan View**

**EXHIBIT NO. .**

The Petitioners submitted a statement from Petitioners' light designer, who concluded that the higher foot candles were caused by lighting outside the property line. These external lights included a Cobrahead light fixture at the front left corner of the property on Old Georgetown Road, and three globe fixtures on the adjacent property to the south. Exhibit 6(b).

Staff found the lighting plan acceptable because the on-site fixtures were located so that they did not cause the higher foot candles at the property line. Exhibit 30, p. 17.

### 3. Signage:

Staff initially recommended a condition requiring the Petitioners to submit a signage plan to the Sign Review Board prior to issuance of a use and occupancy permit. Exhibit 30, p. 2. The Hearing Examiner concludes, however, that the Sign Review Board does not have jurisdiction over signs that meet the standards of the zone and finds that the Board of Appeals is the proper entity to approve the sign with the special exception approval.<sup>4</sup> Exhibit 37.

Petitioner did submit a signage plan at the public hearing. Exhibit 39. The Hearing Examiner referred the signage plan to Technical Staff, who advised that it meets the requirements for residential signs contained in Section 59-F-4.2(a)(1) of the Zoning Ordinance. The Hearing Examiner further finds that the sign is compatible with the residential character of Old Georgetown Road because of its small size and relatively unobtrusive design. She also finds that it will help direct individuals visiting the business to park in front of the property, alleviating any traffic impacts along Singleton Drive (discussed in the next section). Excerpts from the signage plan are shown below and on the following page (Exhibit 40(a), on the following page).

---

<sup>4</sup> Section 59-F-10.1(d)(1) gives the Sign Review Board authority to approve variances from sign requirements, but does not give the authority to approve signs that meet the residential sign requirements. Further, case law suggests that the Board may not delegate to another agency an issue that is part of a special exception approval. *See, Concerned Citizens of Great Falls Maryland v. Constellation-Potomac, LLC*, 122 Md. App. 700, 761 (1998).



Excerpt from Signage Plan  
Exhibit 39

Old Georgetown  
Road



Rendering of Sign  
Excerpt from Sign Plan  
Exhibit 39

## F. Traffic Issues

### 1. Transportation Policy Area Review and Local Area Transportation Review

Technical Staff and Petitioners' expert in traffic engineering and planning concluded that the use satisfies the requirements of both Transportation Policy Area Review (TPAR) and Local Area Transportation Review (LATR).

Staff reports that, based on the Petitioners' traffic statement, the use will generate fewer than 30 trips and is therefore exempt from LATR because of its minimal traffic impacts. Based on the trip generation rates used by the Planning Board, the use for professional office will generate two fewer weekday morning peak hour trips and three fewer weekday peak hour trips than the medical office previously approved for the site. Exhibit 30, p. 8. Staff based this conclusion on the following trip generation rates (Exhibit 30, p. 8):

**TABLE 1  
SUMMARY OF SITE TRIP GENERATION  
PROPOSED NON-RESIDENTIAL PROFESSIONAL OFFICE**

	AM Peak Hour			PM Peak Hour		
	In	Out	Total	In	Out	Total
<b>Previous Special Exception</b>						
Residential Apartment <sup>1</sup> (1 DU)	0	1	1	1	0	1
Medical Office <sup>2</sup> (2,200 SF)	4	1	5	2	6	8
Total Existing	4	2	6	3	6	9
<b>Subject Special Exception</b>						
Residential Apartment <sup>1</sup> (1 DU)	0	1	1	1	0	1
Professional Office <sup>1</sup> (2,200 SF)	3	0	3	1	4	5
Total Proposed	3	1	4	2	4	6
Net Increase/ Decrease	-1	-1	-2	-1	-2	-3

<sup>1</sup> January 2013 LATR/TPAR Guidelines

<sup>2</sup> ITE Trip Generation Manual, 9<sup>th</sup> Edition: Land Use Code: 720 (Medical-Dental Office Building)

Staff advises that the use also meets the TPAR requirements. Petitioners will not have to pay the general impact district tax required for new development in the Bethesda-Chevy Chase

Policy Area because they are not adding floor area. *Id.* Based on its review of both LATR and TPAR guidelines, Staff concluded that roadway facilities are adequate to serve the use.

## **2. Circulation, Parking and Access**

### *a. Access:*

Petitioners and Staff advise that the primary vehicular access is from Old Georgetown Road. The driveway widens to a paved area 34-feet wide, which provides parking for 6 cars. Two additional cars may be parked in the carport and one may park in the concrete pad along Singleton Drive. The Maryland State Highway Administration (SHA) initially determined that the Petitioners would have to combine their driveway with an adjacent lot. Mr. Chris Kabatt, Petitioners' expert in traffic engineering and planning, testified Petitioners contacted SHA when they received the letter requiring consolidated access. Petitioners clarified for SHA that they were not proposing any increase in floor area. Based on this, SHA subsequently removed the shared access requirement in a second letter submitted into the record. Exhibit 27. According to Mr. Kabatt, SHA focused more on the fact that there was no expansion of the existing use than the fact that the use might change from medical offices to professional offices. T. 54.

### *b. Number of spaces:*

Mr. Tugberk testified that his employees currently park in the front parking lot adjacent to Old Georgetown Road. The resident of the upstairs apartment parks on the concrete pad adjacent to Singleton Drive. There are nine parking spaces on the site, but these are never full because a number of employees take public transportation. There is a bus stop at a nearby corner. In the past 14 years, Mr. Tugberk couldn't remember any issues with parking. If the office grows much bigger, they would move out of this site, although he does not envision that happening because he would like to retire here. T. 27-28.

Mr. Landfair opined that the existing parking is adequate to serve the use, if the maximum number of employees is limited to eleven. Most meetings are held offsite. He testified that, based on the square footage of the office, seven parking spaces are required and that, because there are nine spaces on-site (6 in the front parking area, two in the carport, and one by Singleton Drive) the use provides two more parking spaces than required. He also felt that the parking provided is adequate because some employees take public transportation and there is a bus stop directly opposite the property on Old Georgetown Road. T. 42.

Technical Staff advises that the 2004 Zoning Ordinance requires 9 on-site parking spaces, two for the residence and 7 for Petitioners' business. It concluded that parking was adequate because the site has nine parking spaces—6 located in the front of the property, 2 in the carport, and one on the concrete pad along Singleton Drive. Exhibit 30, pp. 14-15. Staff further found that the six spots in the front parking area and the concrete pad along Singleton Drive could be used for the business and the two spaces in the carport could be used for the residence. Due to traffic concerns raised at the public hearing, the Hearing Examiner recommends that all employee parking be in the front parking area and (if necessary) a single spot in the carport, leaving another carport space and the rear concrete pad for the residential use.

*c. Circulation and Traffic Safety:*

Staff concluded that the use would not have an adverse effect on the immediate local area. Exhibit 30, p. 14. Mr. Michael Naas, who lives on Singleton Drive approximately 50 yards from the subject property testified that traffic had increased significantly on that road because employees from Petitioners' business were parking along Singleton Road and Conway Drive. He testified that when he first moved to the neighborhood, there was little traffic on Singleton Drive. There was only a big boat parked in the parking space in the rear of the property. A few years later,

people started parking on Singleton and on Conway until there were between 5 and 11 cars along these side streets at one time. T. 10. This causes a lot of traffic going in and out of the neighborhood along Singleton Drive and Conway Road. He believes that parking for the use should be in the front parking area. T. 10-11.

Mr. Tugberk testified that he now requires all employees to park in the front parking area rather than along Singleton Drive. Mr. Naas acknowledged that traffic has significantly decreased along Singleton Drive since Petitioners implemented this policy. T. 58.

*d. Waiver of Parking Facility Setbacks:*

Section 59-G-1.23 of the 2004 Zoning Ordinance requires all special exceptions to meet the parking requirements in Division 59-E. Section 59-E-2.83 requires parking facilities for special exceptions in residential zones to have a front setback equal to that required in the zone and side setbacks double that required in the zone. The R-60 Zone requires a minimum front yard setback of 25 feet and a minimum side yard setback of 8 feet with a minimum setback of 18 feet for both side yards. *Montgomery County Code*, §59-C-1.323.

Petitioners request a waiver of 15 feet of the front setback from Old Georgetown Road. Staff advises that the parking area near Old Georgetown Road is setback 13 feet from the roadway, thus necessitating a 12-foot waiver of the front yard setback. Exhibit 30, p. 15.

Petitioners also request a waiver of 9 feet from the required side yard setback, stating, “the required side yard setback is 16 feet and the setback provided is just over 7 feet...” Exhibit 21(a), p. 11. Staff stated that the closest side setback is approximately 8 feet from the northern property line. They concluded that the side setback from the southern property line is approximately 38 feet.

Having scaled the site plan, the Hearing Examiner concludes that the closest portion of the parking facility to Old Georgetown Road is 13 feet, thus necessitating a 12-foot setback waiver from the roadway. She agrees with the Petitioners that the setback from the northern property line is just over 7 feet, but finds that the combined side yard setback must be 18 feet, rather than the 16 feet stated by the Petitioner. Because the setback from the southern property line is approximately 38 feet, Petitioners need only a one-foot waiver from the side setback requirements.

Staff recommended approval because the parking area still meets the objectives for special exception parking facilities in residential zones. Staff relied on the fact that refiguring the facility to comply with the setbacks would require removal of the existing screening, adversely impacting the property's existing residential character.

#### **G. Community Response**

Technical Staff did not receive letters of opposition to the petition. Mr. Michael Naas appeared at the public hearing and expressed concerns primarily related to the impact of the proposed use on Singleton Drive. He lives on Singleton Drive approximately 50 yards from the property. He clarified that he didn't think that the majority of the neighbors had an objection to having a business at that location. Their biggest concerns related to activities in the rear yard. In addition to the traffic issues stemming from employee parking, he expressed concerns regarding the large amount of trash placed in the rear of the property. According to him, the neighbor across Singleton Drive diagonally from the subject property does not like the fact that the trash is placed along Singleton because that is what she sees from her front window. He believes that trash pick-up should be from Old Georgetown Road, consistent with the practice of several doctor's offices in the area. T. 11. According to him, the trash is the biggest concern of many in the neighborhood.

He stated that almost all the doctor's offices that are located there place their trash on Old Georgetown Road. T. 32.

### **III. SUMMARY OF TESTIMONY**

Petitioners' witnesses included Mr. Tugberk, who described the operation and history of the use, Mr. Kabatt, an expert traffic engineer, and Mr. Landfair, an expert in land planning, who addressed the standards and requirements of the Zoning Ordinance. Their testimony is set forth in this report where relevant and summarized in full in the appendix attached hereto and incorporated herein.

### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*see* Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational

characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a non-residential professional office. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Physical characteristics associated with a non-residential professional office are a single-family structure to house the office use, a parking facility adequate to accommodate employees and visitors and an identification sign. Technical Staff suggests that typical operational characteristics of a non-residential professional office include: (1) vehicular trips to and from the site; (2) noise from additional vehicles onsite; (3) illumination associated with the use; and (4) deliveries of mail and small parcels to the site. Staff found that the size, scale, and scope of the proposed use is minimal and is not likely to result in any unacceptable noise, traffic, illumination or environmental impacts. Vehicular trips to and from the site as well deliveries would be less than

those activities associated with the approved special exception, a medical office, for the site. Staff found that there are no non-inherent operational or physical characteristics of the site.

The Hearing Examiner finds that there is one non-inherent physical characteristic of the site. The use is located on a through lot, where other special exceptions nearby are not. Thus, the rear of the property faces the front yards of the residential neighborhood behind it, thus particularly impacting those properties along Singleton Drive. The Hearing Examiner does not believe that this non-inherent physical characteristic warrants denial of the use, and that with the conditions recommended, the use will be compatible with the surrounding area.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

*(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: A non-residential professional office is a permitted use in the R-60 Zone at locations designated as appropriate for such uses in the applicable master or sector plan. As discussed in Part IV.B, below, the subject property is designated for non-residential professional office in the Bethesda-Chevy Chase Master Plan.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.38, as detailed in Part IV.B, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The Hearing Examiner finds that the proposed use will be consistent with the Master Plan, as did Technical Staff and the Planning Board, for the reasons set forth in Part II.D. of this Report.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: Because this is an existing use, Technical Staff correctly points out that there will be no increase in density, design, scale, bulk or intensity or character of activity, nor are any new structures proposed. While Staff did not have the benefit of Mr. Naas's testimony regarding parking and trash pick-up, Mr. Naas indicated that traffic has significantly decreased since Petitioners have required employees to park in the area fronting Old Georgetown Road. The Hearing Examiner finds that neighborhood concerns may be met with conditions requiring clients and employees to park in the front of the property, and to place trash and recycling along Old Georgetown Road. With these conditions, the Hearing Examiner finds that the professional office will be in general harmony with the character of the surrounding neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Due to the low intensity of the activities involved and their unobtrusive nature, as well as the extensive screening of the property, the evidence supports the conclusion that the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Staff found that the use as proposed met this standard because there has been a special exception on the property since 1965 without adverse effects to the surrounding properties. The Hearing Examiner finds that there have been some adverse impacts from the existing use, but these may be addressed by conditions requiring employee parking in front of the property and trash pick-up along Old Georgetown Road. The outdoor lighting plan consists of only three outdoor lights, which are residential in character. With the extensive screening, the Hearing Examiner finds that this standard has been met.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The proposed use will replace an existing special exception, although the prior special exception was non-operational for some period. Staff found it unlikely that the property will revert to residential use in the near future, and the existing parking area and layout support this finding.

In addition, this use is consistent with the recommendations of the area master plan, which designates the property as appropriate for a non-residential professional office, the use sought here. The existing and supplemental landscaping, the negligible exterior lighting, and the reduction of trip generation from the prior medical office indicate that the intensity of the use will be less than the medical office previously approved. For these reasons, the Hearing Examiner finds that this standard has been met, as did Technical Staff and the Planning Board.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Concerns relating to parking, traffic and trash (as impacting the residential character of the surrounding community), may be addressed with the recommended conditions. The Hearing Examiner finds that this standard has been met.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
- (i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.*

Conclusion: Because this lot is already subdivided, the Board of appeals must make the finding that public facilities are adequate to serve the use. The evidence demonstrates that the property

meets the requirements of LATR and TPAR, and that its impact on roadways will be minimal. Mr. Landfair testified that other public utilities are available and adequate to serve the use. The Hearing Examiner finds that facilities will be adequate to serve the use.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Staff concluded that the use will not reduce the safety of vehicular or pedestrian traffic. The Hearing Examiner finds credible the testimony of Mr. Naas that traffic along Singleton Drive greatly increased while employees were parking on that road and Conway Road, but testimony also indicates that the traffic ceased once Petitioners required employees to park in the parking area along Old Georgetown Road. With this made a condition of approval, the Hearing Examiner finds that the use will not reduce the safety of vehicular or pedestrian traffic.

### **C. Specific Standards**

The specific standards for a non-resident professional office are found in §59-G-2.38. The provisions of this section and the Hearing Examiner's findings with respect thereto are as follows:

#### **Sec. 59-G-2.38. Offices, professional, nonresidential.**

(a) *An existing single-family structure may be used for professional office purposes by any member or members of a recognized profession, such as a doctor, lawyer, architect, accountant, engineer, or veterinarian, but not including the following:*

- (1) *a medical, dental, or veterinarian clinic;*
- (2) *an in-patient treatment facility; or*
- (3) *a general business office, such as an insurance company office, a trade association, a manufacturing company, an investment company, a bank, or a real estate company.*

Conclusion: The proposed use would be for an architectural firm, which is one of the recognized professions enumerated.

- (b) *The property must satisfy one of the following criteria:*
- (1) *be located in a central business district that is designated as being suitable for the transit station-residential (TS-R) zone on an approved and adopted sector plan;*
  - (2) *be designated as suitable for a nonresidential professional office in the R-60 zone on an approved and adopted master or sector plan and located along a highway with an existing right-of-way width of at least 90 feet or along a portion of an arterial road designated as a boundary of a Central Business District;*
  - (3) *be located in the R-90 zone and:*
    - (A) *designated as historic in the Master Plan for Historic Preservation;*
    - (B) *located along a highway with an existing right-of-way of at least 120 feet; and*
    - (C) *contain a structure formerly used for nonresidential purposes; or*
  - (4) *be located in the R-200 zone and abut a fire station, police station, ambulance squad, or rescue squad on more than 1 lot line.*

Conclusion: The subject property is located on Old Georgetown Road, which has a 120-foot wide right of way and is recommended for a non-residential professional office on the Master Plan. Therefore, the proposed location and use meets the criteria in §59-G-2.38(b)(2) above.

- (c) *The Board must find that the property meets the following criteria:*
- (1) *Such use will not constitute a nuisance because of traffic or physical activity;*
  - (2) *Such use will not affect adversely the use and development of adjacent properties;*
  - (c) *A minimum of 25 percent of the lot area shall be devoted to green area;*
  - (d) *The board may allow the exterior of the premises to be changed, altered or modified provided the single-family character and the basic residential appearance of the building is retained.*

Conclusion: The evidence supports the conclusion that the limited levels of physical activity associated with the proposed use would not rise to the level of a nuisance, nor would they have an adverse effect on the use and development of adjacent properties, especially with the recommended conditions. The supplemental landscaping, in addition to the existing screening, would buffer the surrounding properties from the view of the parking area and any impacts from its modest activity levels. Based on the Landscape Plan (Exhibit 36), Staff advises that approximately 65% of the property, or 12,065 square feet, is green area. Except for supplemental landscaping recommended by Technical Staff, the Petitioners do not propose any changes to the exterior of the two buildings on the property, which would retain their residential appearance.

#### **D. Development Standards of the Zone**

In addition to the general and specific special exception standards, special exception uses must also meet all requirements of the underlying zone, in this case, the R-60 Zone, as required by Section 59-G-1.23. These standards, along with the Hearing Examiner's findings on each standard, are set forth below:

**59-G-1.23. General development standards.**

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: Technical staff concluded that the improvements on the property meet all of the requirements of the R-60 Zone, summarized in the following table from the Technical Staff Report (Exhibit 30, p. 14, below), shown on the following page.

Having no evidence to the contrary, the Hearing Examiner agrees with Staff's finding.

**Development Standards for the R-60 Zone**

<b>Development Standards</b>	<b>Min/Max Required</b>	<b>Proposed</b>
Lot Area	6,000 sq ft	18,400 sq ft
Lot width at street line	25 ft	80 ft
Minimum lot width at front building line	60 ft	80ft
Building Setbacks		
- front		
MD 187	25 ft	88 ft
Singleton Drive	25 ft	72 ft
- side	8/18 ft	8/18 ft
- rear	20 ft	NA*
Maximum Building Height	35 ft	25± ft
Maximum Building coverage	35%	28 %
Maximum Green Area	10% (600 square feet)	65% (12,050 square feet)

\* The subject site has two front yards; no rear yard.

*(b) Parking requirements. Special exceptions are subject to all relevant requirements of Section 59-E.*

Conclusion:

1. *Number of Spaces:* A non-residential office use requires 2.5 parking spaces for every 1,000 square feet used by each professional, excluding cellar and storage spaces that are not actually occupied by a professional. The floor plans here (Exhibit 21(b)), demonstrates that 2,200 square feet will be used for professional offices and 400 square feet will be used for a break room, totally 2,600 square feet. Technical Staff determined that 7 on-site parking spaces were required

for the proposed use (i.e., 2,600/1,000 square feet x 2.5 = 6.5 spaces) and the Hearing Examiner concurs.

Staff concluded that the minimum spaces were provided because of the six spaces in the parking area fronting Old Georgetown Road, and the single space on the concrete pad in the rear of the property. Staff also concluded that the minimum required parking spaces for the residential unit above the office were provided by the two spaces in the carport shown on the site plan. Mr. Landfair testified that the nine on-site spaces exceeded the minimum 7 required spaces, apparently not counting the two spaces needed for the residence.

The Hearing Examiner concludes that both uses require a minimum of 9 on-site parking spaces, but not necessarily used in the way described in the Technical Staff Report. Testimony at the public hearing indicated that occupants of the residential apartment use the concrete pad along Singleton Drive while the business uses the front parking area and carport. Because of the concerns raised relating to traffic along Singleton Drive, the Hearing Examiner recommends that all employee parking be in the front parking area along Old Georgetown Road, and if necessary, the carport, reserving the concrete pad along Singleton Drive and one other space on the property for the residential apartment.

2. *Waivers:*

Petitioners here also request waivers from the minimum setbacks required by §59-E-2.83(b) of the Zoning Ordinance. The Hearing Examiner finds that Petitioners need a waiver of 12 feet from the front setback requirement of 25 feet and one foot from the minimum side yard setback of eight feet.

Section 59-E-4.5 of the Zoning Ordinance permits the Board of Appeals to waive requirements for parking facilities if the requirement is “not necessary to accomplish the objectives in Section 59-E-4.2.” The objectives for these facilities is articulated in §59-E-4.2:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.
- (b) The safety of pedestrians and motorists within a parking facility.
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.
- (d) The provision of appropriate lighting, if the parking is to be used after dark.

Technical Staff determined that reconfiguring the existing parking area would require removal of the existing screening, which would “significantly change the residential appearance use has maintained over 35+ years as well as the residential appearance and character of the MD 187 roadway.” Exhibit 30, p. 15. Staff reasoned that removal of the parking facility “would also eliminate existing mature and healthy landscaping on site that serve as screening and contributes to the site’s green area.” *Id.*

Having no evidence to the contrary, the Hearing Examiner finds that Staff’s assessment is correct and that the harm done by strict compliance with the setback requirements outweighs any benefits that could be obtained, especially in the immediate future, from removing the use’s existing screening. Maintaining the existing screening is particularly important here because it is an existing use and the Hearing Examiner recommends a condition of approval requiring employees to park in the front parking area. For this reason, the Hearing Examiner concludes that

the waivers better serve the objectives for special exception parking facilities in residential zones than strict compliance with the setback requirements.

*c ) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) Rifle, pistol and skeet-shooting range, outdoor.*
- (2) Sand, gravel or clay pits, rock or stone quarries.*
- (3) Sawmill.*
- (4) Cemetery, animal.*
- (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) Equestrian facility.*
- (7) Heliport and helistop.*

*Conclusion:* Staff advises that the property has 80 feet of frontage on both Old Georgetown Road and Singleton Drive. The minimum required frontage is 60 feet, thus, no waiver of this standard is required.

*(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

*Conclusion:* The record reflects that the property is exempt from the requirements of the County's Forest Conservation Law. Exhibit 30, Attachment D.

*(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: This property is not located in a special protection area, thus, no water quality plan is required. Exhibit 30, p. 16.

**(f) Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: Technical Staff initially recommended a condition requiring the Sign Review Board to approve a signage plan for this property. The Hearing Examiner finds that the Sign Review Board has no authority to approve a sign that conforms to the required standards and requested the Petitioners to submit a signage plan for the Board's review. Petitioners did so and Technical Staff informs that the sign meets all residential sign requirements. The Hearing Examiner finds that the design and size of the sign is appropriate and will not alter the existing residential character of the property. She further concludes that having a sign will assist clients as well as employees to park in the front parking area rather than along Singleton Drive, thus eliminating adverse impacts to the residential neighborhood bordering that road.

**(g) Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: Staff found that the use will meet this standard because no changes are proposed to the existing single-family residential structure. The Hearing Examiner concludes that the existing screening adequately buffers the non-residential characteristics of the site (the front parking area) and the single-family structure will not be altered, thus meeting this requirement.

**(h) Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: Petitioners propose only three outdoor lights for the subject property, a floodlight above the carport, a light along the gravel pathway in the rear, and a 60-watt globe light adjacent to the access from Old Georgetown Road. Petitioners have submitted a photometric study revealing that light levels will exceed 0.1 foot candles at some locations on the north and south side property lines. Staff determined that the higher foot candles were caused by spill over from lighting on adjacent property and that the existing light fixtures were directed to prevent light spillage onto adjacent properties. Having no evidence to the contrary, the Hearing Examiner concludes that this standard has been met.

## V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2875, which requests a special exception under the R-60 Zone for a non-residential professional office to be located in an existing building at 9400 Old Georgetown Road, Bethesda, Maryland, be *granted* with the conditions listed below and that the requested parking waivers be *granted* to permit the setbacks shown on the Site Plan (Exhibit 21(b)):

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report
2. Petitioner must comply with the terms of its revised Site Plan (Exhibit 21(b)), Landscape Plan (Exhibit 36), Signage Plan (Exhibit 39).
3. Trash and recycling pick-up shall occur on Old Georgetown Road.
4. All employees must park in the front parking area nearest Old Georgetown Road or in one space in the carport shown on the Site Plan (Exhibit 21(b)).

5. A sign permit must be obtained for the proposed for the sign shown on the Signage Plan (Exhibit 39), and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is installed. If required by the Department of Permitting Services, Petitioner must obtain a sign variance for the proposed sign or amend the design of the proposed sign to have it conform to all applicable regulations. If the design is amended, a diagram showing the amended design must be filed with the Board.
6. The special exception use is limited to 2,200 square feet of non-residential professional office space as shown on the floor plans Exhibits 5(a) and (b), and 33.
7. The special exception use is limited to the hours of 9:00 AM – 6:00 PM, Monday – Friday, with a maximum of eleven employees.
8. Prior to issuance of use and occupancy permit for the non-residential professional office, the applicant must extinguish the existing special exception (CBA 1749) on the subject site with the Board of Appeals.
9. Pursuant to Zoning Ordinance §59-E-4.5, a waiver is hereby granted from the setback requirements of Zoning Ordinance §59-E-2.83 for the parking area to the extent necessary to allow parking as depicted in the Site Plan (Exhibit 21(b)).
10. The plantings shown on the submitted landscape plans must be installed by the applicant within the first spring planting season after approval of special exception (S-2875) by the Hearing Examiner.
11. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: December 17, 2014

Respectfully submitted,



---

Lynn A. Robeson  
Hearing Examiner

**APPENDIX**  
**SUMMARY OF TESTIMONY**

1. Mr. Michael Naas:

Mr. Naas testified that he lives approximately 50 yards from rear of the existing building. He testified that in 1956 a physician built an office on the property with a parking lot in the front along Old Georgetown Road. At the time, Old Georgetown Road was just a two lane road without sidewalks and the community supported locating the office because they wanted a doctor in their neighborhood. Old Georgetown Road became a six-lane highway in the early 1960's. T. 9-10.

His major concern about the proposed use is parking. He testified that when he first moved to the neighborhood, there was little traffic on Singleton Drive. There was only a big boat parked in the parking space in the rear of the property. A few years later, people started parking on Singleton and on Conway until there were between 5 and 11 cars along these side streets at one time. T. 10. This causes a lot of traffic going in and out of the neighborhood along Singleton Drive and Conway Road. He believes that parking for the use should be in the front parking area. T. 10-11.

According to Mr. Naas, the other problem he and other neighbors have experienced is the amount of trash left for pick-up in the rear of the property. He believes that trash pick-up should be from Old Georgetown Road, consistent with the practice of several doctor's offices in the area. T. 11. According to him, the trash is the biggest concern of many in the neighborhood. He stated that almost all the doctor's offices that are located there place their trash on Old Georgetown Road. T. 32.

Mr. Naas further testified that the parking problems have improved by about 90% in recent months. In addition, he complained that there was a motorcycle that would "vroom" down the street in the early morning hours and parked in the concrete pad adjacent to Singleton Drive. According to him, the motorcycle hasn't been there for the last seven or eight months. T. 12-13.

Mr. Naas also expressed concerns about impacts on the residential character of the neighborhood from more future special exceptions. He felt that a condition prohibiting parking on Singleton Drive would address some of his concerns. T. 16-17.

Later in the hearing, Mr. Naas clarified that he didn't think that the majority of the neighbors had an objection to having a business at that location. Their biggest concerns related to activities in the rear yard. The neighbor that is across Singleton Drive diagonally from the subject property does not like the fact that the trash is placed along Singleton because that that is what she sees from her front window. The traffic has slowed down in the last few months and there are only a few cars there. He doesn't want the traffic to start up again. T. 58.

2. Faik Tugberk:

Mr. Tugberk testified that he is the principal of Architects Collaborative, the business located on the subject property. He has been in business for 24 years, 14 of which have been at the subject property. He moved his business to the property next door in 1997 and stayed there for three years. At that point, the current property came on the market and he and his wife purchased it. According to him, the property had been run down and abandoned and the mortgage holder was in default. T. 19.

When in the adjacent property, he discovered that it was a wonderful location for the business. When the subject property became available, he went through lengthy negotiations with the bank holding the mortgage regarding the repairs and maintenance. Individuals living on Singleton Drive and Conway Road would use it as a cut-through, and neighborhood kids used it as a hangout. When they moved in, he repaired and maintained the property. T. 20.

Over the years, Mr. Tugberk continued, his business grew from 3 or 4 to 11 employees. His firm does multifamily residential projects as well as custom home renovations. His family has worked to maintain the existing screening to shield the property. His family helps with the business; his wife, Lauren, does marketing and accounting and his son, an attorney, provides some legal advice. He would love to be able to continue what they are doing on the property. T. 20-21.

The business currently has 10-11 architects, although that can fluctuate with the market, and one administrative staff person. An individual rents the upstairs apartment and parks her car in the rear pad. T. 20-21.

Mr. Tugberk stated that all activities for the business are conducted inside the building. The hours of operation are Monday – Friday, 9:00 a.m. to 6:00 p.m. Occasionally, he works on Saturday just to prepare for the work week. Meetings at the property occur infrequently, approximately one per week, because they typically visit the client's offices or use e-mail and teleconferences. They generally get one delivery per week, which is generally paper supplies. T. 21-22.

The business does generate a lot of paper, even though almost everything is on the computer. He proposes to continue operating as they have done for the last 14 years. T. 22.

He stated that he did not know he needed a new special exception because it was an existing special exception and was already designed for a business with the parking lot on Old Georgetown Road. The only change he proposes is a small, two-square foot sign identifying the business. T. 22-23. Currently, the business has only a mailbox with 9400 written on it. The sign may assist people to locate the business. T. 22-24.

Mr. Tugberk testified that his employees currently park in the front parking lot adjacent to Old Georgetown Road. The resident in the apartment upstairs parks on the concrete pad adjacent to Singleton Drive. There are nine parking spaces on the site, but these are never full because a number of employees take public transportation. There is a bus stop at a nearby corner. In the past 14 years, Mr. Tugberk couldn't remember any issues with parking. If the office grows much bigger, they would move out of this site, although he does not envision that happening because he would like to retire here. T. 27-28.

Mr. Tugberk explained that trash and recycling pick-ups are currently in the rear of the property along Singleton Drive because Old Georgetown Road has a very narrow sidewalk. Some of his neighbors do place trash on Old Georgetown Road and it blocks the sidewalk. They do not generate much trash, but they do generate recycled paper. They have two bins for paper, one for plastic, and a trash can that they place on Singleton. In addition, the area from the rear of the building toward Singleton is level and it is easier to push them up and back. They could place the

receptacles on the Old Georgetown side, but they would be very close to the road. T. 30. The front yard has about 9 or 10 feet of rise from Old Georgetown Road. T. 32.

Mr. Tugberk agreed that he would operate the special exception, if granted, in compliance with all terms and conditions of the special exception approval. T. 30.

3. Mr. William Landfair:

Mr. Landfair qualified as an expert in land planning and described the subject property. T. 34. He reported that the property has 80 feet of frontage along Old Georgetown Road, and extends from Old Georgetown approximately 230 feet to Singleton Drive. It is a through lot, and improved with a two story structure measuring 5,300 square feet. Within the structure, there is an architect's office on the main floor which consists of 2,200 square feet and then on the second floor there is a residential unit, or apartment which measures approximately 1,200 square feet. A basement measuring approximately 1,900 square feet is the lowest level and serves as a storage area and break room for the office. T. 35.

Existing access is from a driveway from Old Georgetown Road, which has been there for many years. It is built to current standards and leads to the parking area with eight spaces. Six of the spaces are aligned perpendicular to the driveway and two spaces are within a car port in front of the building. The 9<sup>th</sup> space is a concrete parking pad in the rear yard along Singleton Drive. T. 35-36.

Mr. Landfair testified that the property has a "gentle rise" from Old Georgetown Road and the rear yard is level. It is heavily landscaped, particularly along the side property lines (i.e., the north and south property lines). The screening along these edges is primarily very mature bamboo. In addition to the bamboo, there are arboreta and Leyland Cyprus trees. The landscaping is very thick and effective at screening the use. Various mature trees are scattered around the property. They commissioned an arborist to determine the health of these trees, who recommended that they remove two white pines in the rear yard. The Petitioners did so because they did not serve any purpose for screening and there were safety concerns if the trees were not removed. T. 37.

The front of the property is also landscaped, with a number of mature trees that help to screen the business from Old Georgetown Road. It is easy to miss the business because of this screening. T. 30.

There are three wall-mounted lights on the property very similar to those typically found in residential areas. These lights are for safety and security; two are mounted on the front of the building and one on the rear. There is little to set this property apart from a typical residential property except for the parking lot in the front yard. T. 38.

Mr. Landfair described the surrounding neighborhood. He opined that it contains a mixture of residential-type structures along both the east and west sides of Old Georgetown Road. Many were originally built as residences, but have been converted over time to office uses, and primarily medical office uses. Immediately adjacent to the north is a single family residence in the R-60 Zone. To the south is a building occupied by offices. To the rear are the homes that front Singleton

Drive, which are zoned R-60. Because the property consists of 18,000 square feet of area, it could potentially be re-subdivided into two residential parcels. T. 38-39.

Although neighbors have never complained about the thick bamboo on the property, Technical Staff asked that the Petitioners reduce this screening over time and gradually add new plant materials. Staff requested them to plant eight American Holly trees on the south side and one red eastern cedar tree on the north side to fill in some gaps between the Leyland Cyprus trees and the bamboo. T. 39.

In Mr. Landfair's opinion, the proposed special exception conforms to the Bethesda Chevy Chase Master Plan. He stated that the plan recognizes that there has been a proliferation of office and non-residential uses within the planning area and along Old Georgetown Road in particular. This property was specifically recommended as being suitable for non-residential professional offices. T. 40.

He further opined that the proposed use is compatible with the existing surrounding uses, partly because the office has operated at this location for 14 years and generally has been well received by the community. Aside from front parking area, there is little to distinguish the property from a residential property. They are not proposing any changes in lighting, new construction, or parking, and the property is already very well screened. The additional screening recommended by Technical Staff ensures that this will continue. T. 41-42.

The existing parking is adequate to serve the use, in Mr. Landfair's opinion. The Petitioners have agreed to limit the maximum number of employees to eleven. Most meetings are held offsite. The minimum number of parking spaces is seven based on the size of the office and parking for the residential building. Thus, they have two more parking spaces than required, which have proved to be adequate. In addition, some employees do take public transportation because there is a bus stop on the opposite side of Old Georgetown Road. T. 42.

The parking area does require a waiver from the setbacks established for special exceptions in residential zones. The minimum setback is 25 feet from the front property line and 15 feet from the side property line. The setbacks for the existing parking area are 15 feet from Old Georgetown Road and 7 feet from the side property line. In Mr. Landfair's opinion, the existing screening, lighting, and the alignment of the spaces (organized perpendicular to the drive aisle) contribute to the compatibility of the parking area with neighboring properties and a waiver of the setback requirements is warranted. T. 43.

Mr. Landfair stated that, in his opinion, public facilities were adequate to serve the use. Public water and sewer are available to serve the property. There are gas lines and overhead electric lines along Old Georgetown Road and Singleton Drive. Police and fire stations are located relatively close by and there is also the public bus stop directly opposite the property along Old Georgetown Road. Because the proposed use is a business, it will have no impact on local schools. T. 45.

Finally, Mr. Landfair agreed with the findings included in the Technical Staff Report and the Planning Board's recommendation. T. 46.

Mr. Landfair testified that it may be possible to add one more parking space to the front parking lot if one could remove an existing planter, although he thought that this might only widen the drive aisle rather than actually adding a space. Widening the drive aisle would impact the critical root zone of some mature trees in the front yard. From an environmental perspective, this would not be optimal.

4. Chris Kabatt:

Mr. Kabatt qualified as an expert in traffic engineering and planning. T. 50. Because of the low number of trips expected to be generated by the use, Staff of the Planning Department required a traffic statement rather than a full traffic study because the use generates fewer than 30 trips. The combination office and residential use will generate four peak hour trips in the morning and six in the afternoon. He fully reviewed the transportation infrastructure in the area and found the access to be safe, adequate and efficient. T. 51-52. He concurred with the findings and conclusions of Technical Staff. T. 52.

Mr. Kabatt also explained SHA's recommendations regarding access to the site. It issued a letter in July 31, 2014, which required shared access with a neighboring property. Conversations with SHA revealed that it thought there would be a change to the existing use and did not realize there would be no expansion. They subsequently removed the shared access requirement in a second letter submitted into the record. According to Mr. Kabatt, SHA focused more on the fact that there was no expansion of the existing use than the fact that the use might change from medical offices to professional offices. T. 54.