

**MCPB**  
**Item #5**  
**Date: 3/8/07**

**MEMORANANDUM: SPECIAL EXCEPTION**

**DATE:** February 22, 2007  
**TO:** Montgomery County Board of Appeals  
**VIA:** Rose Krasnow, Division Chief  
Ralph Wilson, Acting Zoning Supervisor  
**FROM:** Carlton W. Gilbert, Planner Coordinator  
Development Review Division (301-495-4576)  
**REVIEW TYPE:** Special Exception and Parking Waivers  
**APPLYING FOR:** Non-Residential Professional Office  
**APPLICANT:** KATCO Investments RLLLP  
**CASE NUMBER:** S-2690  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance  
**ZONE:** R-60  
**LOCATION:** 7511 Arlington Road  
Bethesda, MD  
**MASTER PLAN:** Bethesda CBD Sector Plan  
**FILING DATE:** November 3, 2006  
**PUBLIC HEARING:** March 19, 2007 - 9:30 a.m. at the Hearing Examiner

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**STAFF RECOMMENDATION: APPROVAL** of the special exception petition for a non-residential professional office at 7511 Arlington Road, in Bethesda and the associated waivers of the required number of off-street parking spaces, drive aisle width, parking setbacks, and screening for parking. The following operational limitations apply:

1. The non-residential professional office use must be limited to a maximum of 2,115 square feet;
2. The applicant to limit the use to ten (10) employees with up to a maximum of ten (10) client visits per day;
3. Limit the hours of business operation from 8:30 a.m. to 6:00 p.m., Monday through Friday, and from 9:00 a.m. to 5:00 p.m., Saturday and Sunday; and
4. All evidence, testimony and exhibits of record are binding on the applicant.

In staff's view, the establishment of a non-residential professional office at the proposed location, with associated parking waivers, and operational limitations recommended by staff, will not constitute a nuisance because of traffic or physical activity and will not adversely affect the development of adjacent property. The use at the proposed location satisfies the following specific special exception requirements of 59-G-2.38: (1) it is located in a Central Business District that is designated on an approved and adopted master or sector plan as being suitable for the Transit Station-Residential (TS-R) zone; (2) it is designated for non-residential professional use on an approved and adopted sector plan; (3) it is located along a portion of an arterial road designated as a boundary of a Central Business District; and (4) will have at least 25 percent of the lot area devoted to green area.

### **PROJECT SUMMARY**

The applicant proposes to use an existing single-family detached dwelling as a non-residential professional office (law office). The property is located at 7511 Arlington Road in Bethesda, Maryland. The property is known as part of Lot 3, Block 12 A in the Edgemoor Subdivision and is located at the corner of Arlington Road and Moorland Lane. The property is zoned R-60 and contains approximately 5,082 square feet of land. The property is improved with a 2 ½ story single family dwelling constructed in 1928 and consisting of approximately 2,115 square feet of interior space. Although the existing dwelling fronts on Arlington Road, the property has access to Moorland Lane via an existing driveway.

The applicant is also requesting a waiver from certain requirements in the parking standards as provided under 59-E-3.7, 59-E-2.41 and 59-E-2.83. The applicant has submitted a parking facilities plan. The applicant is seeking a waiver from the required off-street parking spaces, drive aisle width, parking setbacks, and screening between the parking area and the adjacent properties.

Zoning History – The subject property is zoned R-60 as determined by the District Council on September 19, 2006 when it approved Corrective Map Amendment Application G-856. The Bethesda Central Business District Sectional Map Amendment inaccurately zoned the property TS-R when it should have retained the R-60 zone. Under the Corrective Map Amendment, the property was rezoned from TS-R to R-60.

### **Neighborhood Description**

Although the subject property is zoned R-60, the property is located in the Transit Station Residential District (TS-R) within the Bethesda Central Business District Plan. The existing residential structure fronts on Arlington Road. Bethesda Elementary School is located across the street from the subject property. To the east of the property is a medical office located on Moorland Lane. To the north of the property and across Moorland is a three-story office building. Abutting the property to the south is an

insurance agency. Most of the houses along Arlington Road have been converted to professional offices (i.e., medical, insurance, real estate, etc.)

### **Elements of the Proposal**

The applicant proposes to convert the existing residential structure to a law office. The activities of the law office will take place inside the existing structure. The applicant proposes to limit the use to ten (10) employees to support the law office with up to a maximum of ten (10) client visits per day. The applicant proposes to limit the hours of operation from 8:30 a.m. to 6:00 p.m. daily, Monday through Friday, and from 9:00 a.m. – 5:00 p.m., Saturday and Sunday. Clients are expected to park in the five parking spaces provided on the subject property. There is additional metered parking along Moorland Lane as well as several public parking garages in the immediate area. Furthermore, the property is located approximately 1,150 feet from the Bethesda Metro Station and is easily accessible by the Montgomery County Ride-On bus system.

### **PARKING WAIVERS**

As part of this application, the applicant seeks a waiver from the standard parking requirements as described below:

Off-street Parking Spaces (59-E-3.7) - The number of parking spaces required for a 2,115 square-foot non-residential professional office is 5.3 spaces (2.5 spaces per 1,000 square feet of gross floor area). The maximum number of spaces that are proposed on the site is five including one accessible space for persons with disabilities. The applicant is seeking a waiver for 0.3 (effectively 1) on-site, off-street parking space. Staff believes that 5 spaces can adequately serve the proposed use considering the site's convenient walking distance to the Bethesda Metro Station, the services of Metro Bus, the close proximity to on-street parking, and public parking garages in the Central Business District. Staff supports the waiver request.

Drive Aisle Width (59-E-2.41) -The property is currently accessed via a 10-foot wide driveway from Moorland Lane. The existing driveway is in the same configuration as the driveway for the residential use. The zoning code requires a 20-foot minimum width for a two-way driveway. The applicant maintains that this standard width (20 feet) for a two-way aisle cannot be accommodated on the corner lot. Given the relatively small size and nature of the proposed use, staff believes that the existing 10-foot wide driveway is adequate. Staff supports the waiver request.

Setbacks for Parking (59-E-2.83(b)) – This section of the code states that parking facilities, including driveways, must be setback a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone. The setback provisions of this section provide for greater setbacks for parking in a residential area than would be typically required of a commercial building. The intent is

to mitigate the potential impacts of a proposed parking facility on adjacent residential land uses. In this case, the adjacent non-residential land uses are similar to the proposed non-residential office use and include larger parking facilities. As proposed, the parking facility would be located approximately 12 feet from Arlington Road, approximately 10 feet from Moorland Lane, approximately 4 feet from the side yard and approximately 3 feet from the rear yard. The proposed parking is located behind and beside the existing building. The existing trees and proposed shrubs on the property will provide adequate screening when viewed from the public streets. Staff believes that the parking is consistent with similar surrounding uses and will not adversely impact any other use. Furthermore, complying with the setback requirements would virtually eliminate the opportunity to provide on-site parking for the proposed use. Staff supports the parking setback reductions.

Screening for Parking (Section 59-E-2.83(c)) – Staff believes that the required 6-foot high walls or fences are unnecessary and inappropriate given the scale and setting of the surrounding commercial properties. The parking facility is adequately screened from Arlington Road by a low wall and berm and existing evergreen trees. Additional evergreen shrubs are also proposed to supplement the buffer in this area. Staff supports the proposed parking screening waivers.

Lighting - The Lighting Plan submitted by the applicant shows four existing wall mounted lights on the front of the structure, three wall mounted lights on the rear and two wall mounted lights on the east side of the structure. The applicant seeks to retain these light fixtures that are designed to prevent glare to the surrounding properties. The lights are intended to provide safe access for clients in the evening hours, as well as security for the property. As reflected on the lighting plan, the existing wall mounted lights do not exceed 0.1 foot candles. The lighting plan will not adversely affect surrounding properties.

## **.ADDITIONAL REVIEW REQUIREMENTS**

The subject property consists of a lot recorded by subdivision plan. Neither subdivision nor site plan review is required to accommodate the requested special exception.

### **Analysis**

**Master Plan** - The subject property is in the Transit Station Residential District of the Bethesda Sector Plan. There are no master plan implications of the use of this building as a non-residential professional office. (See Attached Memo)

### **Transportation**

Transportation Planning staff recommends the following condition as part of the transportation-related requirements for granting of the petition:

**The petition must be limited to a maximum of 2,115 square feet of non-residential professional office use.**

With the recommended condition above, the Transportation Planning staff finds that the proposed special exception use satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or pedestrian facilities.

## DISCUSSION

### Site Location

The site is located on part of Lot 3, Block 12A in southeast corner of the intersection of Arlington Road and Moorland Lane.

### Vehicular Access

The vehicular access is from the existing driveway from Moorland Lane.

### Parking

Adequate parking is available on the site with approval of the requested parking waiver. On-street parking is permitted on Moorland Lane, but not on Arlington Road in front of the site.

### Pedestrian Facilities

Sidewalks exist along the site frontage on both Arlington Road and Moorland Lane. A 6-foot-wide sidewalk leads in from the sidewalk along Arlington Road to the existing house's front door.

### Available Transit Service

Although no transit routes directly serve this site along Moorland Lane or the segment of Arlington Road north of Edgemoor Lane, transit service is available one or two blocks away. Eight total bus routes operate along nearby Old Georgetown Road, Edgemoor Lane, or Arlington Road south of Edgemoor Lane. In addition, the Bethesda Metrorail Station is approximately 1,150 feet to the southeast of the site.

### Sector-Planned Highways and Bikeways

According to the *Bethesda Central Business District Sector Plan*, the two adjacent roadways are designated as follows:

1. Arlington Road is designated as an arterial, A-82, with an 80-foot right-of-way

and no bikeway.

2. Moorland Lane is designated as a business district street with a 70-foot right-of-way and no bikeway.

#### Bethesda Central Business District Transportation Management Organization

Although the site is located within the Bethesda Central Business District (CBD) Transportation Management Organization (TMO) boundaries, the petitioner is not required to participate in this TMO because the professional office is proposed to employ fewer than 25 persons. Due to the small size of this proposed office, a traffic mitigation agreement is not required.

#### Adequate Public Facilities Review

The proposed law office would be open from 8:30 a.m. to 6:00 p.m. on weekdays and from 9:00 a.m. to 5:00 p.m. on weekends. These weekday hours are within the weekday morning period (7:30 to 9:30 am) and the evening peak period (4:00 to 7:00 p.m.). A general office of 2,115 square feet would generate only three peak-hour vehicle trips within both the weekday morning and evening peak periods. A traffic study is not required to satisfy Local Area Transportation Review because the proposed lane use generates fewer than 30 peak-hour trips within the weekday morning and evening peak periods.

Policy Area Transportation Review is not considered in the APF review under the current *Annual Growth Policy*.

#### **Environment**

There are no environmental issues or concerns associated with the subject proposal. No environmentally sensitive areas are located on the property. This special exception is exempt from forest conservation law as the proposed use will not result in clearing of existing forest or trees.

#### **Development Standards**

The subject property is located in the R-60 zone which permits the proposed special exception. The property contains approximately 5,082 square feet of land. The applicant maintains that due to a public taking, the residual lot area, width, and front yard setback no longer meet the typical standards for the zone. The plat for Edgemoor, resubdivision of part of Block 12, was recorded in 1925. The existing house was built in 1928. Subsequent right-of-way dedications/acquisitions to Arlington Road and Moorland Lane reduced residual setback and lot width. The existing setbacks continue to meet the building restriction line location established in 1925. The following table

summarizes the relevant development standards for the R-60 zone that are applicable to the proposed special exception request.

| Development Standards  | Required (current)                      | Proposed/Existing   |
|--|---|---|
| Minimum Lot Area   | 6,000 sq. ft.                           | 5,082sq. ft.*   |
| Minimum Lot Width <ul style="list-style-type: none"> <li>• At front building line</li> <li>• At street line</li> </ul>   | 60 feet<br>25 feet                      | 57 feet *<br>140 feet (corner lot)                                |
| Minimum Building Setback: <ul style="list-style-type: none"> <li>Front Yard</li> <li>Side Yard <ul style="list-style-type: none"> <li>• One side yard</li> <li>• Sum of both sides</li> </ul> </li> <li>Rear Yard</li> </ul> | 25 feet<br>8 feet<br>18 feet<br>20 feet | 12 feet (approx.)*<br>24<br>N/A (corner lot)<br>32 feet (approx.) |
| Maximum Bldg. Height   | 2 ½ stories or 35 feet                  | 29 feet (approx.)   |
| Maximum Bldg. Coverage   | 35 percent                              | 20 percent  |

\*As stated above, the applicant maintains that public taking and subsequent right-of-way dedications/acquisitions to Arlington Road and Moorland Lane reduced residual setback and lot width. The house was built in 1928. The existing setbacks continue to meet the building restriction line location established in 1925.

**Community Concerns**

To date, staff has not received any comments from adjoining neighbors.

**Conclusion**

Staff recommends approval of the non-residential professional office and requested parking waivers, subject to the conditions noted on the first page of the technical staff report. The special exception as proposed will have no adverse impact on the surrounding neighborhood and will serve the needs of residents in the vicinity and Montgomery County residents in general.

## Montgomery County Zoning Ordinance

### Conditions of Approval

The Montgomery County Zoning Ordinance Section 59G-1.2 contains certain conditions for approval of any Special Exception. Additionally, specific requirements for a non-residential professional office are outlined in Section 59-G-2.38. The proposed special exception is consistent with these requirements and meets the conditions for approval as described below:

#### **Sec. 59-G-1.2. Conditions for granting.**

##### **59-G-1.2.1. Standard for evaluation**

*A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. 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. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.*

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. These criteria are used to identify the physical and operational characteristics of the use. Any special exception may have some or all of these effects in varying degrees. What must be determined during the analysis is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined.

Applying the above analysis to this case, the staff finds:

The inherent adverse effects, generic physical and operational characteristics associated with a non-residential professional office use include associated parking, lighting and noise generated by clients and vehicular trips to and from the site. There are no significant transportation impacts that would result from the proposed special exception. The applicant is seeking a waiver from standard parking requirements. There are metered parking and public parking garages in the area. There will be no changes to the existing dwelling, or driveway. Existing lighting on the property is adequate and consistent with the character of the neighborhood. All of the lighting fixtures are mounted on the front, sides and rear of the dwelling. No new lighting will be

added. The front and rear yards are well landscaped with mature trees. Flowers and shrubbery are located in the front, side and rear of the dwelling.

Provided that the applicant complies with the recommended conditions, there will be no unacceptable inherent impacts associated with the subject proposal that warrant denial.

**59-G-1.21. General conditions.**

*(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.*

The proposed use as a nonresidential law office is permitted by special exception in the R-60 zone.

*(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.*

The special exception as proposed complies with the standards and requirements set forth in Section 59-G-2.38 of the Zoning Ordinance as described 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 a special exception must be consistent with any recommendation in a 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.*

The proposed use is consistent with the recommendations in the Transit Station Residential District of the Bethesda Central Business District Sector Plan. Additional landscaping is proposed to further screen the parking lot from Arlington Road.

*(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.*

The special exception use will be in harmony with the general character of the neighborhood. The proposed special exception will not increase the intensity of activity or traffic and will provide parking in such a manner as to not affect parking conditions in the neighborhood. Daily client visits are not expected to exceed 10 which will be spread throughout the day. Five parking spaces will be provided on site. Metered parking and public parking spaces are available in the immediately surrounding area. The property is located approximately 1,150 feet from the Bethesda Metro. The applicant does not intend to change, alter, or modify the exterior of the building. The applicant will retain the single-family character and residential appearance of the building.

- (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.*

The properties surrounding the subject site are commercial uses. The property borders the Central Business District and is across Arlington Road from the Bethesda Elementary School. The use of the property for a professional office is compatible with adjacent commercial properties.

- (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.*

The proposed use as a law office will not cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity any different than if established elsewhere in the zone. Physical activities will be limited to the interior of the building. Deliveries will be for routine office supplies and/or delivery of mail. The existing lighting is designed to prevent glare.

- (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.*

The surrounding residential area is zoned TS-R. There are a high number of commercial uses in the vicinity. The use of the property as a law office will not adversely affect the area.

- (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.*

The special exception as proposed will not adversely affect health, safety, security, morals or general welfare of residents, visitors or workers in the area. The use will be in harmony with other activities in the immediate area.

- (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.*

The subject property is served by public water and sewer. The area is served by police and fire protection.

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

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, veterinarian, but not including the following:

- (a) *a medical, dental or veterinarian clinic*
- (b) *an in-patient treatment facility*
- (c) *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.*

The applicant proposes to lease the existing single-family structure for use as a law office.

*The property must be:*

- (a) *located in a central business district that is designated as being suitable for the transit station-residential (TS-R) zone on an approved adopted sector plan;*

*(b) 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; or*

*(c) located in the R-90 zone and:*

*(1) designated as historic in the Master Plan for Historic Preservation;*

*(2) located along a highway with an existing right-of-way of at least 120 feet; and*

*(3) contain a structure formerly used for nonresidential purposes*

The subject property has a unique land history. In the Bethesda Central Business District, the subject property is located in the Transit Station Residential District (TS-R) though it is zoned R-60. The Sector Plan recommends that office uses be permitted in locations facing Arlington Road in the TS-R District. Many of the surrounding residences have been converted to commercial uses. The subject property is in the R-60 zone, facing Arlington Road which is an arterial road designated as a boundary of the Bethesda CBD.

*The Board must find that the property:*

*(a) will not constitute a nuisance because of traffic or physical activity;*

The physical activities of the law office will primarily take place inside the building. Daily client visits are will not exceed 10 which will be staggered throughout the day. Five parking spaces will be provided on site. Metered parking and public parking spaces are available in the immediately surrounding area. The property is located approximately 1,150 feet from the Bethesda Metro. The applicant does not intend to change, alter, or modify the exterior of the building.

*(b) will not affect adversely the use and development of adjacent property;*

The properties surrounding the subject property are commercial and institutional uses. The use of the property for a professional office is compatible with the adjacent properties.

*(c) will have at least 25 percent of the lot area devoted to green area.*

At least 40 percent of the lot is devoted to green area.

*The Board may allow for other than a building designated as historic in the Master Plan of Historic Preservation, the exterior of the premises to be changed, altered or modified provided the single-family character and the basic residential appearance of the building are retained. A historic area work permit must be obtained before any work may be done to alter the exterior features of an historic structure.*

Other than installing a lift to assist the disabled at the rear of the building, the applicant does not intend to change, alter, or modify the exterior of the building. The applicant will retain the single-family character and basic residential appearance of the building.