



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB 9/18/08
ITEM _____

September 8, 2008

MEMORANDUM

TO: Montgomery County Planning Board

FROM: *RK* Rose Krasnow, *DBO* Ralph Wilson, and Damon Orobona
Montgomery County Planning Department, Development Review Division

SUBJECT: **Special Exception No. 2732: M. Wajeed Khan, M.D.** Request for a special exception to permit a nonresidential professional office, R-60 Zone, 12014 Georgia Avenue, Wheaton, Maryland.

REPORT AND RECOMMENDATION

Staff recommends that special exception application S-2732 be approved subject to the following conditions:

- (1) The applicant improves the sidewalk along 12014 and 12016 Georgia Avenue by reconstructing the walkway farther back from street and creating a green panel with street trees to buffer the realigned sidewalk from Georgia Avenue;
- (2) The applicant constructs an ADA ramp for the east/west movement of Grandview Avenue at its intersection with Cory Terrace on the north side to mitigate one peak hour vehicle trip and satisfy PAMR requirements. Prior to the release of any building permit, the applicant must supply to the MNCPPC building permit reviewer a copy of a DPS permit for construction of the ADA ramp;
- (3) The final Sediment Control Plan must be consistent with the limits of disturbance as shown on the approved forest conservation exemption dated August 20, 2008;
- (4) The applicant is bound by all submitted statements and materials of record; and
- (5) The applicant attains approval of a preliminary plan of subdivision.

Staff also (1) recommends approval of the applicant's request for a waiver of the parking facility setback standard, and (2) recommends that the required number of parking spaces be satisfied by providing 9 parking spaces on-site and two parking spaces at the adjacent nonresidential professional office located at 12016 Georgia Avenue.

SUMMARY OF REPORT

Application Filing Date:	April 3, 2008
Scheduled Public Hearings:	September 18, 2008 (Planning Board) September 22, 2008 (Hearing Examiner)
Overview of Site:	The subject property is an 18,459 square foot unplatted parcel that has a property address of 12014 Georgia Avenue, Silver Spring, Maryland. The site is generally located 1,500 feet north of the Wheaton Central Business District.
Current Zone and Use:	The site is zoned R-60 and is developed with a single-family residential house.
Proposed Use:	The applicant proposes to convert the existing single-family house into a nonresidential professional office to accommodate a medical practice for a licensed medical practitioner. The existing single-family house will be modified to accommodate the medical practice while retaining the appearance of a single-family home. The abutting property to the north of the subject site is also a nonresidential professional office owned by the applicant. As part of the subject application, the applicant wishes to consolidate the parking area and access driveways for both office uses, which will require allowance of off-site parking for the subject special exception and the waiver of a 16-foot setback requirement.
Master Plan Consistency:	The subject property is specifically recommended in the 1989 <i>Master Plan for the Communities of Kensington-Wheaton</i> as suitable for a nonresidential professional office special exception use. The two adjoining parcels directly north of the subject site are also recommended for nonresidential professional offices. With a condition pertaining to the improvement of the sidewalk along Georgia Avenue, the proposed project is consistent with the goals and objectives of the Kensington-Wheaton Master Plan.

Environmental Impact:	No environmental issues are present with the application.
Traffic Impact:	There is minimal traffic impact associated with the use. The application satisfies both the Local Area Transportation Review (LATR) and the Policy Area Mobility Review (PAMR) and will not have an adverse effect on area roadway conditions.
Zoning Ordinance:	The proposal meets all of the general and specific standards relating to a nonresidential professional office under §§ 59-G-1.23 and 59-G-2.38, respectively.
Recommendation:	Staff recommends approval of the special exception as long as all conditions of approval are satisfied.
Subsequent Review:	The applicant will need to undergo subdivision review.

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I. PROCEDURAL HISTORY

Petition No. S-2732, filed April 3, 2008, seeks a special exception, pursuant to § 59-G-2.38 of the Montgomery County Zoning Ordinance, to permit a nonresidential professional office at 12014 Georgia Avenue, Wheaton, Maryland. The subject property is zoned R-60, which allows a nonresidential professional office by special exception.¹

The Planning Board ("Board") now must review the application and recommend to the Board of Appeals whether to approve the special exception request. Planning staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") has reviewed all materials of record and is recommending that the Board approve the application subject to the conditions listed on the cover page of this report. The Planning Board's public hearing will be held on September 18, 2008 in the MNCPPC Auditorium located at 8787 Georgia Avenue, Silver Spring, Maryland. A subsequent public hearing will be held by the Office of Zoning and Administrative Hearings on September 22, 2008 in the Stella B. Werner Council Office Building at 100 Maryland Avenue, Rockville, Maryland.

II. SPECIFIC DETAILS OF APPLICATION

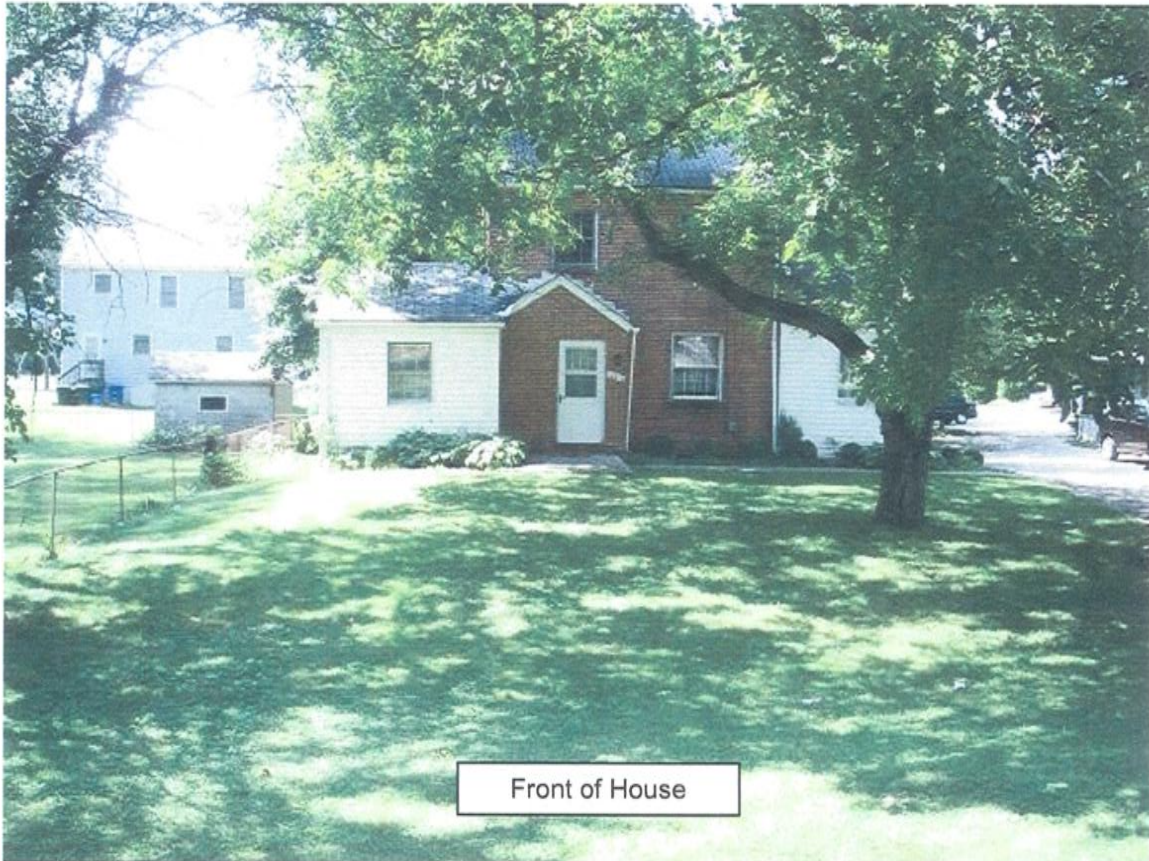
A. Subject Property and Neighborhood

The subject property is located at 12014 Georgia Avenue, Wheaton, Maryland, about 1,500 feet north of the Wheaton Central Business District. The subject property measures 18,459 square feet and is developed with a 1,460 square foot single-family house. The property is owned by the applicant, who also owns and operates a nonresident professional office on the adjacent property at 12016 Georgia Avenue. Both the subject property and the property at 12016 are through lots with access to both Georgia Avenue and Grandview

¹ § 59-C-1.31(d).

Avenue via easement (as explained in section II.D.). The subject property has approximately 70 feet of street frontage along Georgia Avenue and 80 feet of frontage on Grandview Avenue. The rectangular site is generally level, with the house being approximately 4 feet lower in elevation than the street level elevation along Georgia Avenue.

Subject Property (12014 Georgia Avenue)



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Adjacent Property (12016 Georgia Avenue)



Front of House

Street View of Both Properties



Subject Property
(12014 Georgia Ave)

Adjacent Property
(12016 Georgia Ave)

Staff has defined the neighborhood boundaries that surround the proposed special exception to be comprised of properties that could be most affected by the possible impact from a professional medical office use. The neighborhood is bound by Weisman Road to the North, Georgia Avenue to the East, Henderson Avenue to the South, and the single-family homes along the western side of Grandview Avenue.

As defined, the neighborhood consists of a mix of single-family detached residential uses and professional office uses developed under the R-60 and the C-T Zones. The neighborhood has a predominantly residential appearance. However, a large professional office building is located in the northeast corner of the neighborhood. Only one special exception – a nonresidential professional office located at 12016 Georgia Avenue – exists within the neighborhood boundary.²

Slightly outside the neighborhood to the north are commercial uses such as fast food and carry-out restaurants, car rental offices, and retail shopping venues. Directly to the east of the defined neighborhood (across Georgia Avenue) is the Wheaton Park Shopping Center that contains a bank, video store, and grocery store, among other things. Slightly to the south of the shopping center is a nursing home. The neighborhood boundary is outlined in blue on the map below. An aerial photograph follows that illustrates the neighborhood's existing conditions.



² S-1735



B. Proposed Special Exception Use

The applicant is proposing to convert the ground floor of the existing residential structure into a nonresidential professional office to be used by three medical practitioners (two on site at a time). The second level of the home would remain a residential dwelling to be rented out to a third party.³ A 780 square foot addition will be added to the ground floor to accommodate the medical practice, whereas a 660 square foot addition is proposed for the second floor to expand the residential living area. In total, the expanded house would total 2,852 square feet. The single-family character and residential appearance of the building will

³ The second-floor residential area is permitted by-right in the R-60 Zone and is not part of the special exception application.

be retained. Additionally, the applicant is adding a 6-foot wrought iron fence and plantings along the rear of the property along Grandview Avenue. Two additional street trees will be added along the Grandview Avenue sidewalk.

The first floor office space will be comprised of a waiting area for patients, a reception area for the practice's administrative staff, three offices, seven exam rooms, and bathroom facilities. Typical equipment in the office will be of a medical nature (such as X-Ray machines and EKG equipment).

There will be three practicing physicians, 1 full-time nurse/assistant, and 3 part-time nurses/assistants associated with the proposed medical office; however, no more than two physicians will be on site at any one time. The receptionist, office manager, and bookkeeper associated with the subject site will be located in the adjacent medical office located at 12016 Georgia Avenue. The proposed office hours are from 9AM to 5PM on Monday, Wednesday, and Friday; 9AM to 7PM on Tuesday and Thursday; and 10AM to 2PM on Saturday. The applicant has stated that, on average, each physician will see four patients per hour.

C. Master Plan Compliance

The property is located within the geographic region covered by the 1989 *Master Plan for the Communities of Kensington-Wheaton*. The subject property is part of a 5-property group specifically identified on pages 54 through 57 of the Kensington-Wheaton Master Plan. The Plan designates the subject property (as well as the two properties directly to the north) as "suitable for a non-resident professional office use as a special exception."

_____ An important master plan objective for Georgia Avenue is an attractive, functional, and safe sidewalk network that adequately serves the needs of pedestrians and bikers throughout the Kensington-Wheaton Area.⁴ As part of the 1989 Master Plan, Planning Staff has developed a vision for Georgia Avenue as

⁴ Paraphrased from the Kensington-Wheaton Master Plan. See pages 36, 70-76, and 104 of the Plan.

a green corridor and has identified the improvement of the sidewalks along Georgia Avenue to be critical in enhancing the green corridor concept as well as the overall mobility of Georgia Avenue. Additionally, both the County Executive's *Pedestrian Safety Initiative* (December 2007) and the Planning Department's *Georgia Avenue Concept Study* (currently underway) have identified Georgia Avenue as a major concern for pedestrian safety.

The existing sidewalk for Georgia Avenue along the subject property is a typical example of a sidewalk that is not safe or attractive for pedestrians. Currently, Georgia Avenue is heavily congested with traffic that travels at relatively high speeds. The sidewalk along Georgia Avenue at the subject property offers minimal protection from oncoming traffic as the sidewalk is directly against the roadway. Further, pedestrian perception of safety is likely minimal as there are no trees or landscaped panel to buffer the pedestrian from oncoming vehicular traffic. The following photographs illustrate the site's existing sidewalk along Georgia Avenue.





Planning Staff is proposing that the applicant improve the sidewalk along the subject property and the adjacent nonresidential professional office to the north (12014 and 12016 Georgia Avenue) by reconstructing the walkway farther back from the road. Street trees should then be located between Georgia Avenue and the realigned sidewalk, helping to provide a more pleasing pedestrian perception of the road and enhancing the Avenue's image as a green boulevard.

Another benefit of widening the distance between sidewalk and road will be the increased utilization of the sidewalk during the winter months. During snow storms, when it is necessary for snow plows to remove ice and snow from the roadway, snow mounds will pile on the panel between the road and sidewalk and allow for sidewalk utilization even during inclement winter weather.

With the condition of an improved sidewalk design along Georgia Avenue, Planning Staff finds the proposed special exception to be consistent with the

goals and objectives of the *Master Plan for the Communities of Kensington-Wheaton*.⁵

D. Development Standards and Parking Requirements for Special Exceptions

Special exception uses are subject to the development standards of the underlying zone where the use is located, as well as all parking requirements under Article 59-E of the Zoning Ordinance.⁶ In this particular application, the applicant meets all development requirements of the R-60 Zone as shown in the table on page 14.⁷ However, the proposed application does not satisfy (1) the parking facility setback requirement, or (2) the required number of parking spaces for the proposed use as required under Article 59-E. The non-compliant parking provisions are highlighted on the table below.

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⁵ See Community-based Planning Memorandum at attachment 1.

⁶ § 59-G-1.23(a) and (b).

⁷ Currently, the house on the subject property does not meet the 8 ft. side yard setback required in the R-60 Zone. However, the applicant is proposing to remove a 2-foot portion of the house to bring the proposed special exception into compliance with the required setback.

Development Standard	Required	Provided	Applicable Zoning Provision
Maximum Building Height	2.5 Stories or 35 ft.	25 ft.	§ 59-C-1.327
Minimum Lot Area	6,000 sq. ft.	18,459 sq. ft.	§ 59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft.	60 ft.	§ 59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft.	55 ft.	§ 59-C-1.322(b)
Minimum Setback from Street	25 ft.	68 ft.	§ 59-C-1.323(a)
Minimum Side Yard Setback	8 ft. one side; sum of 18 ft. both sides	8 ft. south sideyard; 16 ft. north side yard; 24 ft. sum of both	§ 59-C-1.323(b)(1)
Minimum Rear Yard Setback	20 ft.	120 ft.	§ 59-C-1.323(b)(2)
Maximum Building Coverage	35%	10%	§ 59-C-1.328
Minimum Green Area	25%	71%	§ 59-G-2.38(c)
Parking	5 spaces per every 1,000 sq. ft. of medical space = 8.56 spaces 2 spaces per residential dwelling unit = 2 spaces 11 spaces required	9 Spaces Applicant is providing off-site parking on adjacent lot to satisfy requirement	§ 59-E-3.7 and § 59-E-3.4
Parking Setback	16 ft.	Waiver Requested	§ 59-E-2.83(b) and § 59-E-4.5

For the proposed nonresidential professional office (hereinafter “12014 Georgia”), the applicant is required to provide 11 parking spaces to satisfy the parking standard. The applicant proposes to satisfy the parking requirement by providing nine parking spaces on-site and two parking spaces on the adjacent nonresidential professional office site (hereinafter “12016 Georgia”). 12016 Georgia has 15 existing parking spaces, but only 13 of the spaces are required for the property, creating a 2-space surplus that 12014 Georgia proposes to use to satisfy its requirement. As proposed, 12014 Georgia will add 9 spaces to the existing parking area and both nonresidential professional offices will operate under a shared parking arrangement to serve each office use. Patients visiting the site will use the Grandview Avenue access driveway. Only the applicant and his medical associates will use the Georgia Avenue driveway.⁸

Under § 59-E-3.4, any off-site property to be used to satisfy a parking requirement must be deed-restricted and the deed must specify that the off-site property provides parking for a use on another property. The applicant has provided a deed-restriction to be recorded in the land records that grants the 12014 Georgia access and parking rights on and across 12016 Georgia. A copy of this deed is attached to the report.⁹ Staff believes that off-site parking and the use of a shared parking arrangement for the two adjacent properties is a reasonable solution for satisfying the parking standard. The proposed parking arrangement is an efficient and safe use of the property, reduces the amount of impervious surface, and allows for the retention of green space at the rear of 12014 Georgia.

The other parking requirement that the applicant does not satisfy is the 16-foot parking facility setback. Under § 59-E-2.83(b), any special exception parking facility in a residential zone must be set back twice the distance of the applicable building side yard setback. Since the subject property is in the R-60 Zone and has an 8-foot side yard building setback, the parking facility for the subject special exception is required to be 16 feet from all property lines. However, due

⁸ This was a condition of approval to the existing special exception on 12016 Georgia. The applicant has proposed the same restrictions in the submitted materials for this special exception.

⁹ See Draft Deed Restriction at attachment 2.

to the applicant's shared parking arrangement with 12016 Georgia, the applicant cannot meet the 16-foot setback. Therefore, the applicant must obtain a parking waiver under § 59-E-4.5 from the parking facility setback standard.¹⁰ The Planning Board or Board of Appeals may waive the parking facility setback requirement if the setback is not necessary to accomplish certain objectives. These objectives are as follows:

- (1) 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.
- (2) The safety of pedestrians and motorists within a parking facility.
- (3) 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.
- (4) The provision of appropriate lighting, if the parking is to be used after dark.¹¹

Staff believes that the proposed shared parking arrangement satisfies these objectives and that a waiver from the 16-foot setback requirement is justified. To the south, there is approximately 45 feet between the proposed parking lot and the nearest single-family dwelling, well over the required 16-foot setback. Additionally, there is adequate landscaping and a wrought-iron fence to buffer the parking area from the single-family homes to the south and west. By allowing the waiver and the shared parking arrangement, preservation of a residential appearance is achieved by not having to require a separate driveway cut through the subject property's rear yard. As proposed, driveway circulation is

¹⁰ See letter from applicant requesting a setback waiver at attachment 3.

¹¹ § 59-E-4.2

sufficient for the safety of both motorists and pedestrians, and no additional lighting is necessary to illuminate the lot beyond the existing lighting. For these reasons, Planning Staff recommends that the 16-foot parking facility setback requirement be waived.

Existing Parking Area on 12016 Georgia Avenue



Existing Driveway Entrance and
Parking Area on 12016 Georgia
(as seen from Grandview Avenue)

Backyard of Subject Property (12014 Georgia Avenue)



Existing Rear Yard of 12014
Georgia (as seen from Grandview
Avenue)

E. Traffic Impacts

As previously mentioned, the subject property has frontage on both Georgia Avenue (MD 97) and Grandview Avenue. Georgia Avenue is classified as a major highway (M-8) with a 120-foot right-of-way and six travel lanes. Grandview Avenue is built to secondary residential roadway standards within a 60-foot right-of-way and is classified as a signed, shared roadway (S-20).

The proposed nonresident professional office will generate fewer than 30 peak-hour vehicular trips during the weekday morning and evening periods. The accepted traffic statement from the applicant calculates the trip generation as five morning peak-hour trips and 8 evening peak-hour trips for a 1,760 square foot medical-dental office (ITE land use category 720). Therefore, no traffic study is required to satisfy the Local Area Transportation Review (LATR) for APF purposes.

However, the Kensington/Wheaton policy area is classified as acceptable with partial mitigation for Policy Area Mobility Review (PAMR), which requires the applicant to mitigate 10% of new vehicle trips. Here, this calculates to only one peak-hour morning and one peak-hour evening trip. To satisfy PAMR, the applicant has proposed to install an ADA ramp for the east/west movement on the southwest corner of the subject property along Grandview Avenue to mitigate traffic impact. Planning Staff is satisfied that constructing the ADA ramp at this location will bring the intersection into compliance with the ADA and mitigate one vehicle trip.¹²

F. Environmental Impacts

There is no forest on site and the subject property is exempt from submitting a Forest Conservation Plan. A Tree Save Plan was not required as

¹² See Transportation Planning Memorandum at attachment 4.

there are no large or specimen trees present on site. There are no streams, wetlands, or floodplains on the property.¹³

G. Community Involvement in Application

As of the date of this memorandum, Staff has not received any correspondence from the community in regard to this matter. In requesting a parking facility setback waiver under § 59-E-4.5, the applicant has stated that a letter was sent to all nearby property owners and citizen associations notifying them of the waiver request.

III. ZONING ORDINANCE ANALYSIS

A. Inherent and Non-inherent Adverse Effects

The standard of evaluation for a special exception requires consideration of the inherent and non-inherent adverse effects on the nearby properties and general neighborhood where the use is proposed. Inherent adverse effects are the harmful effects caused by the physical and operational characteristics necessarily associated with the particular use irrespective of the size or scale of operations. Non-inherent adverse effects are any harmful effects caused by physical and operational characteristics not necessarily inherently associated with the particular special exception use, or adverse effects created by unusual characteristics of the site.¹⁴

Any analysis of inherent and non-inherent adverse effects must first establish what physical and operational characteristics are necessarily associated with a particular special exception use. As established by past cases, the following are the inherent physical and operational characteristics necessarily associated with a nonresidential professional office use: (1) the building; (2)

¹³ See Environmental Planning Memorandum at attachment 5.

¹⁴ § 59-G-1.2.1.

vehicular activity and lighting associated with parking; (3) people entering and exiting the building; and (4) employment related items associated with the professional office.

Any adverse effects of the proposed nonresidential professional office that result from the above four characteristics are considered inherent adverse effects. Alone, inherent adverse effects are not sufficient to constitute a denial.¹⁵ On the other hand, adverse effects that are not characteristic of a nonresidential professional office use, or inherent adverse effects that are accentuated due to distinctive site characteristics, are considered non-inherent adverse effects, which may be sufficient to result in the denial of the special exception application.

There are no adverse effects associated with the subject special exception application that will negatively impact the community above and beyond those necessarily inherent to a nonresidential professional office. Here, although the applicant is modifying the exterior of the existing house, the design will retain the appearance of a residential single-family home. As mentioned under section II.D., the parking area has been designed to minimize the impervious surface typically associated with an office use. Although the unusual parking arrangement could be considered a non-inherent characteristic of a nonresidential professional office, no adverse effects will arise from the arrangement that would warrant a denial of the application. No new lighting is proposed, as the existing lighting from the adjacent medical office is sufficient to illuminate the expanded parking facility. Both existing and proposed tree coverage will buffer the activity of pedestrians entering or exiting the office. All medical equipment associated with the use will be stored inside the house.

Therefore, the operational and physical characteristics of the proposed nonresident professional office are consistent with the inherent characteristics of a nonresident professional office use. There are no non-inherent *adverse* effects present in this case.

B. General Conditions Precedent to Approval of Use

§ 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.

Analysis: A nonresident professional office is a permissible special exception use in the R-60 Zone pursuant to § 59-C-1.31(d).

- (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.

Analysis: The proposed use complies with the specific regulations set forth in § 59-G-2.38 for a nonresident professional office. See section III.C. for analysis.

- (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.

Analysis: The subject property is specifically mentioned in the Kensington-Wheaton Master Plan as being appropriate for a nonresidential professional office. As long as the applicant satisfies the condition for an improved design of the sidewalk along Georgia Avenue, the proposal will be consistent with the Plan.

- (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 Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Analysis: The general character of the neighborhood is a mix of residential and professional office uses. Slightly outside the neighborhood boundary to the north, east, and south are larger commercial uses. Single-family homes exist to the west of the neighborhood. Given the single-family appearance and generous green area of the proposed medical office, the use will be in harmony with the existing character of the neighborhood. Public facilities and services are adequate to serve the proposed special exception.

- (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.

Analysis: There is no evidence to support a finding that the proposed office at the subject site will be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties and neighborhood. All activity for the proposed office will take place within the interior of the building so as not to affect the peaceful enjoyment of the surrounding properties; the proposal furthers the Kensington-Wheaton Master Plan's objective for a nonresident professional office at this location.

- (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.

Analysis: No new outdoor lighting is associated with the proposed office. Existing lighting from the adjacent office use will be used to illuminate the shared parking lot. The applicant's submitted lighting plan shows 0.0 foot-candles along

the property line, resulting in no objectionable glare. The applicant has stated that no objectionable noise, vibrations, fumes, odors, or dust will be present on site. Any physical activity will occur within the building's interior.

- (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.

Analysis: The proposed special exception is recommended for this site in the Kensington-Wheaton Master Plan and therefore does not alter the nature of the surrounding 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.

Analysis: There is no evidence of record to suggest that the proposed use will adversely affect the health, safety, security, morals, or general welfare of the community.

- (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.
 - (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.
 - (B) If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public

facilities and services will be adequate to serve the proposed development under the growth Policy standards in effect when the application was submitted.

- (C) With regard to public roads, the Board or the hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Analysis: This special exception application will require approval of a preliminary plan of subdivision, therefore this application must be analyzed under subsection (A) above. The applicant has stated that the subject site is adequately served by public facilities and Planning Staff has confirmed that the use will result in only minimal traffic increase.¹⁶ Approval of a preliminary plan of subdivision is a condition of approval to granting the subject special exception. There is no evidence of diminished vehicular safety with the subject proposal, and as long as the condition to reconstruct the sidewalk along the subject property is satisfied, there is no evidence of reduced pedestrian safety.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Analysis: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Analysis: The applicant has satisfied this standard.

C. Specific Conditions Precedent to Approval of Use

§ 59-G-2.38. Offices, professional, nonresidential.

¹⁶ See Transportation Planning Memorandum at Attachment 4.

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:

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

Analysis: The existing single-family house is being proposed for use as a professional office by a recognized member of the medical profession. The office will not be used as a clinic or in-patient facility.

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 and 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.

Analysis: The site has been designated as suitable for a nonresidential professional office in the R-60 Zone in the Kensington-Wheaton Master Plan and is located along Georgia Avenue, a highway with a 120-foot right-of-way width.

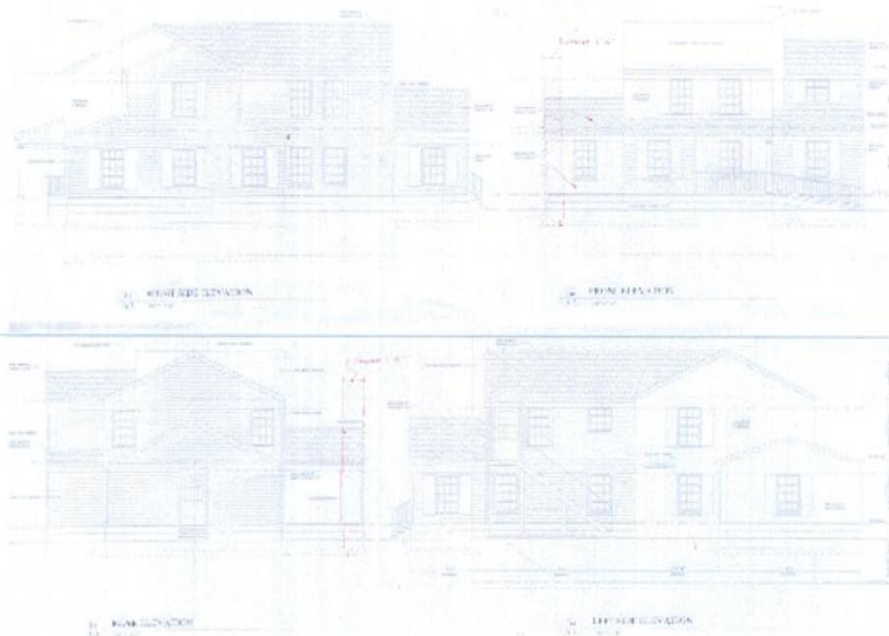
The Board must find that the property:

- (a) will not constitute a nuisance because of traffic or physical activity;
- (b) will not affect adversely the use and development of adjacent property;
- (c) will have at least 25 percent of the lot area devoted to green area.

Analysis: As previously stated, the proposal will not constitute a nuisance because of traffic or physical activity, will not adversely affect the use and development of the adjacent property, and retains over 70% of the lot for 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.

Analysis: The exterior of the existing house is to be modified, but the applicant has designed the office to retain its single-family residential character and appearance. The subject property is not a designated historic structure. Architectural elevations of the proposed office are shown below.



IV. STAFF RECOMMENDATION

Based on the forgoing analysis, Staff recommends that application S-2732 be approved with the conditions found at the beginning of the staff report.

V. ATTACHMENTS

1. Community-based Planning Internal Memorandum
2. Draft Deed Restriction
3. Letter from Applicant Requesting Setback Waiver
4. Transportation Planning Internal Memorandum
5. Environmental Planning Internal Memorandum

Orobona, Damon

From: Afzal, Khalid
Sent: Tuesday, July 22, 2008 8:57 AM
To: Orobona, Damon
Subject: RE: S-2732 (Khan Nonresident Medical Office)

Damon,

Here are my comments.

The proposed special exception is located in the 1989 Kensington/Wheaton Master Plan. In the land use section of the Master Plan, it is one of a group of properties identified as "#11 Geroiga Avenue and Weisman Road and Grandview Avenue near Weisman Road." The plan designates the subject property (along with two adjacent properties) "as suitable for a non-resident professional office use as a special exception" (Page 57).

The proposed non-resident professional office use is therefore consistent with the goals and recommendations of the applicable master plan. However, the implementation of this special exception should be done in such a way that it enhances the other goals and objectives of the master plan such as "to provide a sidewalk and trail network that adequately serves both the transportation and recreation needs for the pedestrians and bikers in the Kensington-Wheaton area" (page 36); and, "to provide a non-motorized mobility network that is attractive, functional, and safe for pedestrians and bikers in and around the Kensington-Wheaton area" (page 104). During the Georgia Avenue Concept Study (underway) staff has identified the sidewalks along Georgia Avenue to be a critical part of enhancing mobility along Georgia Avenue. The sidewalks along this property are typical of the sidewalks along Georgia Avenue frontage in that they have no green panel to provide a buffer between the pedestrian and the high-speed traffic on Georgia Avenue. Improvement of existing sidewalk on the property along Georgia Avenue should be a priority if it is needed to serve the proposed special exception or as a mitigation measure required for this proposal. The special exception should also provide additional trees and landscaping to meet the Master Plan's concept of Georgia Avenue as a green boulevard.

Khalid

DEED OF ACCESS AND PARKING EASEMENT

This Deed of Access and Parking Easement ("Easement") made this _____ day of _____, 2007 by M. Waheed Khan and Bebe Z. Khan (collectively "Grantors").

RECITALS

- A. Grantors are the fee simple owners of the following land, improvements and appurtenances located in Montgomery County, Maryland.
1. Tax Parcel 241 (hereinafter "Parcel 241") with a street address of 12014 Georgia Avenue, Silver Spring, Maryland 20902, as more fully described by deed dated November 30, 1955 recorded in Liber 2149 at Folio 149 among the Land Records of Montgomery County, Maryland, reflected on Tax Map HQ62; and
 2. Tax Parcel 242 (hereinafter "Parcel 242") with a street address of 12016 Georgia Avenue, Silver Spring, Maryland 20902, as more fully described in a deed dated November 7, 1990 recorded in Liber 9543 at Folio 583 among the Land Records of Montgomery County, Maryland, reflected on Tax Map HQ62.
- B. Parcel 241 has access currently only to Georgia Avenue and Grantors are seeking to establish by special exception a non-resident professional office (medical) and a permitted residential use with ingress and egress access and parking rights on and across Parcel 242 to a public right-of-way known as Grandview Avenue.

- C. Parcel 242 currently has an established parking area and direct full movement access to Grandview Avenue and ingress only access from Georgia Avenue.
- D. Grantors are executing this Deed of Easement to establish and maintain in perpetuity an Easement to and for the benefit of Parcel 241 on across and over Parcel 242 for ingress and egress access to Grandview Avenue and to park vehicles upon spaces provided on Parcel 242.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) paid in hand, the above Recitals, and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Grantors covenant and agree as follows:

1. Grantors hereby grant, establish and convey for their own benefit and for the benefit of their successors, heirs and assigns, a non-exclusive perpetual easement (the "Easement") and right-of-way from and to Parcel 241 on, over and across Parcel 242 for purposes of pedestrian and vehicular ingress and egress to Grandview Avenue and for parking of vehicles upon Parcel 242 to support the uses established upon Parcel 241.
2. Grantors, their successors, heirs and assigns shall have use of the Easement for the purposes set forth above at all times except for such periods as may be temporarily interrupted only as may be necessary for repairs and or maintenance and further shall not make any use of the Easement that would impair a parties rights to use the Easement for the purposes described above.
3. Grantors, theirs successors, heirs and assigns in Parcel 241 and Parcel 242

shall maintain the access drives and parking areas on Parcel 242 and shall pay in equal amounts the cost of any repairs and maintenance related to the access drives and parking area on or over Parcel 242.

4. The rights to use the Easement for the purpose set forth in the Easement may be exercised by Grantors, their successors, heirs and assigns, tenants, guests, invitees, employees and occupants of Parcel 241 and Parcel 242 and no party or beneficiary of this Easement shall obstruct, restrict or impair the rights granted under this Easement.
5. All of the provisions of this Easement, including the benefits and burdens, shall touch, concern and run with the land. This Easement shall be binding upon and inure to the benefit of Grantors and their respective successors, heirs and assigns.
6. The Recitals to this Easement are incorporated into and made a substantive part of this Easement.
7. No restriction, condition, obligation or provision of this Easement shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.
8. The terms and provisions of this Easement are severable and in the event that any term or provision of this Easement is invalid or unenforceable for any reason, the remaining terms and provisions of this Easement shall remain in full force and effect.

9. This Easement shall be governed by and construed in accordance with the laws of the State of Maryland.
10. Modifications, waivers, and consents respecting this Easement shall only be binding if in writing and signed by the party against whom any such modification, waiver, or consent is to be enforced. In addition, no amendment or modification of this Easement shall be effective unless and until duly recorded among the Land Records of the Montgomery County, Maryland.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Deed of Access and Parking Easement as of the day and year first written above.

WITNESSES:

GRANTORS:

By: _____
M. Waheed Khan

By: _____
Bebe Z. Khan

ABRAMS & WEST, P.C.

ATTORNEYS AT LAW
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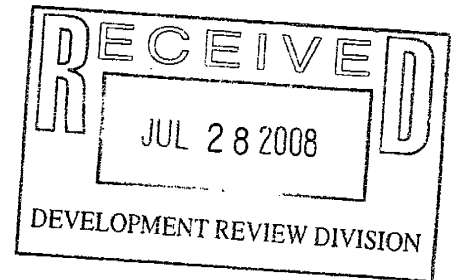
PRACTICING IN MARYLAND AND
DISTRICT OF COLUMBIA

JAMES L. PARSONS, JR.
OF COUNSEL

WRITER'S DIRECT NUMBER
(301) 951-1540
EMAIL: "sabrams@awsdlaw.com"

July 24, 2008

Francoise M. Carrier, Esq., Director
Office of Zoning & Administrative Hearings
County Council Office Building, Room 200
100 Maryland Avenue
Rockville, MD 20850



**RE: Special Exception S-2732
Waiver Request Related to Parking Facilities**

Dear Ms. Carrier:

On behalf of the Petitioner, M. Wajeed Khan, M.D., Petitioner for the above referenced special exception at 12014 Georgia Avenue, Wheaton, Maryland, for non-resident professional office we hereby request as part of this special exception application that the Board of Appeals approve a waiver of up to ten (10) feet from the sixteen (16) foot side yard setback from the common side property line between Parcels 241 & 242 required pursuant to §59-E-2.83 to accommodate the projects parking facility. The normal required side yard setback in the R-60 Zone is eight (8) feet but parking facilities for special exceptions under §59-E-2.83 are required to be setback twice the minimum required side setback or in this case sixteen (16) feet.

Both Parcels 241 & 242 are owned by Petitioner. The Petitioner conducts his medical practice from Parcel 241 and has an existing parking facility behind his offices. The subject special exception for additional medical offices on Parcel 242 requires eleven (11) parking spaces. As part of the request, Petitioner intends to use via permanent cross easement, two (2) parking spaces on Parcel 241 which are in excess of the minimum required for Petitioner's current medical offices. The remaining nine (9) parking spaces for the subject use will be located on site (Parcel 242) and will be linked to the parking facility on Parcel 241 by a driveway for access to the public street.

To place the totality of the parking on the subject property (Parcel 242) would have several unnecessary consequences:

- (1) It would destroy the existing rear yard lawn area and detract from the residential appearance of the property.
- (2) A separate driveway cut would be required to the public street.
- (3) The narrow width of the "through lot" and its angular configuration would make location of a double loaded parking facility for all vehicles on this site difficult if not impermissible. The Zoning Ordinance setbacks under §59-E-2.83 would require sixteen (16) feet of setbacks on each side yard or 32'. The parking spaces on each side are 18' in length and a drive aisle of 20' is required. Even with all parking along one side property line a parking facility would be very tight if the required setbacks were to be used.

The requested waiver of up to ten (10) feet will promote shared parking between the two Parcels, reduce the amount of impervious area if all parking were located on the subject Parcel 242, retain most of the green area in the rear of Parcel 242 consistent with the residential appearance of the property and improve traffic circulation and safety by eliminating a separate driveway cut into the public street and promote safe pedestrian and vehicular circulation.

The location of the parking facility on Parcel 242 will face the parking spaces on the existing parking facility on Parcel 241 as shown on the site plan controlling glare and noise from vehicles and reduce the views of the parking facility from adjacent residentially occupied properties. The office hours do not require additional lighting of parking facility on the subject Parcel 242. The approval of the waiver is mostly consistent with the normally required R-60 Zone setbacks of 8' and will improve on-site traffic management and enhance the environmental setting.

A copy of an amended site plan which will be submitted under separate letter is attached to reflect the location of the spaces and setbacks involved in this waiver request. Letters are being sent to nearby property owners and citizens associations notifying them of this waiver request as referenced in the attached certification. Thank you for your attention to this request.

Sincerely,



Stanley D. Abrams



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

August 20, 2008

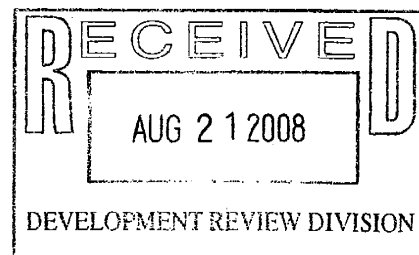
MEMORANDUM

TO: Damon Orobona, Analyst
Development Review Division

VIA: Shahriar Etemadi, Supervisor
Transportation Planning

FROM: David Paine, Coordinator
Transportation Planning

SUBJECT: Board of Appeals Petition S-2732
Non-resident (medical) professional office
12014 Georgia Avenue
Kensington Wheaton Policy Area



This memorandum is Transportation Planning staff's Adequate Public Facilities (APF) review of the subject application for a Non-resident (medical) professional office.

RECOMMENDATION

We recommend the following conditions to satisfy the transportation-related requirements of this special exception use:

1. Limit the Special Exception use to 1,760 square feet of Non-resident medical office use.
2. Prior to the release of any building permit, the applicant must supply a copy of a DPS permit to the building permit coordinator for construction the following improvement within the ROW to meet the PAMR requirements:
 - a. Construct an ADA ramp for the east/west movement of Grandview Avenue at its intersection with Cory Terrace on the north side to mitigate one peak hour vehicle trip.

With these conditions, we find that the proposed special exception use satisfies the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests and will have no adverse affect on area roadway conditions or nearby pedestrian facilities.

DISCUSSION

The project is located at 12014 Georgia Avenue in the Kensington/Wheaton Policy Area. Vehicular access to this site is via a one-way driveway from Georgia Avenue shared with the property located at 12016 Georgia Avenue. The proposed use will not change the on-site vehicular access or the existing pedestrian facilities.

Master-Planned Roadways and Bikeway

According to the Kensington/Wheaton Master Plan, Georgia Avenue (MD 97) is classified as a Major Highway, M-8, with a 120-foot wide right-of-way and six proposed travel lanes. Grandview Avenue is built to Secondary Residential Roadway standards within a 60-foot right-of-way. Grandview Avenue is classified as a signed, shared roadway (S-20) listed in the 2005 Countywide Bikeways Functional Plan.

Adequate Public Transportation Facilities Review

The proposed use will generate fewer than 30 peak-hour vehicular trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. The accepted traffic statement from the applicant calculates the trip generation as 5 AM peak hour and 8 PM peak hour trips for 1,760 square feet of Medical-Dental Office (ITE land use category-720). Therefore, no traffic study is required to satisfy the Local Area Transportation Review for APF purposes.

PAMR

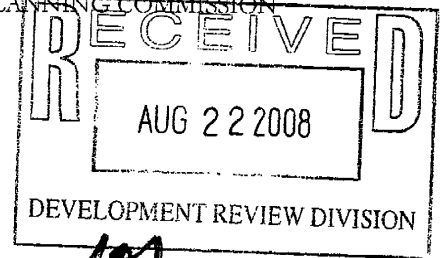
Under the *FY 2007-2009 Growth Policy*, The Kensington/Wheaton Policy area is classified as “acceptable with partial mitigation Policy Area Mobility Review (PAMR). PAMR requires that the applicant mitigate 10% of their new vehicle trips, calculated as 1 AM peak hour and 1 PM peak hour trip. Due to the small nature of the mitigation requirement, a traffic mitigation agreement would not be feasible. Therefore the applicant has proposed to install a non-automobile facility to mitigate their impact: Constructing an ADA ramp for the east/west movement on the southwest corner of the subject property along Grandview Avenue at its intersection with Cory Terrace. **We recommend that the applicant construct this ADA ramp at the location stated to bring the intersection into compliance with ADA, to satisfy the PAMR requirement and mitigate one vehicle trip.**

DP:tc

s2732 mmo to orobona.doc



MONTGOMERY COUNTY PLANNING DEPARTMENT
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION



MEMORANDUM

TO: Damon Orabona, Development Review

VIA: Stephen Federline, Supervisor, Environmental Planning

FROM: Amy Lindsey, Environmental Planning *AL*

DATE: August 20, 2008

SUBJECT: Special Exception S-2732
 Khan Property

RECOMMENDATION: Approval.

1. Final sediment control plan must be consistent with limits of disturbance as shown on the approved forest conservation exemption, dated 8/20/08.

BACKGROUND

The 0.42-acre property is located on Georgia Avenue in the Kensington/Wheaton Master Plan area. This plan proposes a special exception for a non-residential professional office. The property is bounded by mixed commercial and office uses to the north, south, and east. Parcel 242, directly adjacent to the west, is also developed as a non-residential professional office under special exception SE-1735. These two special exceptions will share an entrance and some parking. The development to the west is residential. There is no forest onsite and no large or specimen trees present. No streams or wetlands are onsite, nor any environmental buffer. Environmental Planning staff approved a Forest Conservation Exemption (42009039E) on 8/20/2008. The property is within the Rock Creek watershed; a Use 1/1P watershed.

Forest Conservation

There is no forest on-site and this property is exempt from submitting a Forest Conservation Plan. A Tree Save Plan was not required to be submitted, as there are no large or specimen trees present

Environmental Buffers

The site does not include any streams, wetlands, or floodplains and there is no environmental buffer on the property.

Green Building

This project will not need to comply with County Council Bill 17-06, Montgomery

County Green Buildings Law.

Water Quality

The subject property is located in the Josephs Branch subwatershed of the Lower Rock Creek watershed. The *Countywide Stream Protection Strategy* (CSPS) assesses this tributary as having poor overall conditions. The subwatershed is designated a Watershed Restoration Area where the CSPS recommends where the CSPS recommends restoration efforts to improve conditions.

Special Exception Required Finding

Section 59-G-1.21(a) (6) of the Montgomery County Zoning Ordinance reads as follows:

(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 non-residential office will not cause any adverse affects as outlined in the above passage. No aspect of this proposal is in conflict with the above required finding.

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