

Nina and Val Aks, Applicant, Board of Appeals, Special Exception, S-2791

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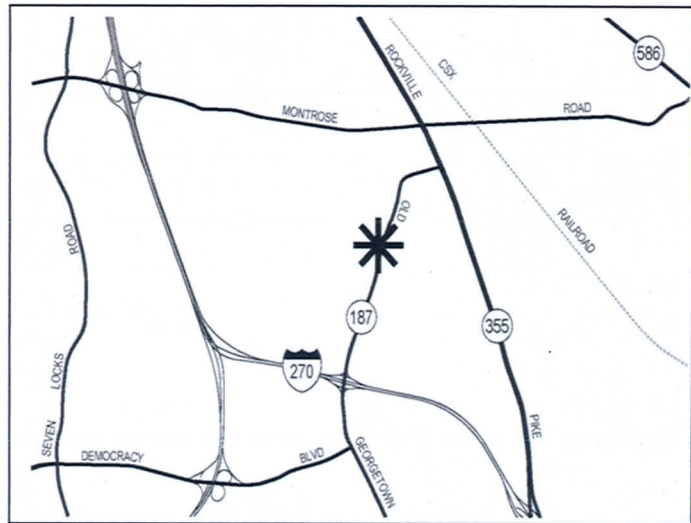
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Description

**Special Exception-Board of Appeals No. S-2791:
Nina and Val Aks, Applicant**

- 11406 Old Georgetown Road, Rockville, MD
- R-200 Zone, 1992 North Bethesda/Garrett Park Master Plan, 23,642 square feet (.54 acre)
- Construction of a two-story medical/dental clinic consisting of 3,589 square feet.
- Application Date: 10-10-10
- Public Hearing Date: 2-17-12

A Parking Waiver to reduce the setback of the parking facility along the southern property line to 12 feet instead of 30 feet, as required, is associated with this request.



Summary

Staff recommends Denial of the special exception for a medical/dental clinic and the associated parking waiver request.

The applicant is requesting a special exception to construct a new two-story (with a walk-out cellar) medical/dental clinic that will accommodate up to four medical practitioners. The first floor will be occupied by the dentists and associated staff; medical practitioners will occupy the second floor; and the cellar will be used as a laboratory. A reconfigured parking facility would provide eighteen (18) parking spaces on the site. An existing single-family dwelling will be demolished.

To obtain approval for a medical/dental clinic special exception, the applicant must satisfy the general zoning standards applicable to all special exceptions and specific requirements tailored specifically to a medical/dental clinic. Staff finds that the requested special exception does not comply with the specific standards set forth in Sections 59-G-1.2 and 59-G-2.14 of the Zoning Ordinance. While the application meets some of the technical requirements for a medical/dental clinic, the proposal is inconsistent with the 1992 North Bethesda/Garrett Park Master Plan as the plan discourages over-concentration of commercial service or office-type special exception uses, such as a medical or dental clinic, in residential communities. Master Plan consistency is a general standard that every special exception must satisfy to be approved.

RECOMMENDATION

Staff recommends denial of Special Exception S-2791 for the following reasons:

- The special exception application for a medical/dental clinic is inconsistent with the North Bethesda/Garrett Park Master Plan.
- The application does not meet the General Standards (59-G-1.21(3) and 59-G-1.21(7) of the Zoning Ordinance.
- The application does not comply with the primary road access requirement specified under (59-G-2.14(b)).
- The size and scale of the physical building and the parking facility associated with the proposed medical/dental clinic could potentially alter the residential character of the neighborhood.
- The size and scale of the proposed building requires a waiver of the parking setback standard as required by the Zoning Ordinance. Staff does not recommend the granting of a waiver in this case.

Background

This staff report is a replacement of the staff report and recommendation that was originally scheduled for a June 30, 2011 Planning Board meeting to discuss this special exception case (S-2791). The staff report, with a denial recommendation, was posted on our website on June 17, 2011. However, the case was not heard by the Planning Board on June 30 due to the applicant's request to postpone the case to another date. Ultimately, the Hearing Examiner rescheduled the public hearing to be held on February 17, 2012 in order to give the applicant more time to further revise their submissions in order to meet concerns raised by technical staff and the community. In response, the applicant submitted revised plans and amended the special exception application on December 16, 2011.

The subject property is located in the southwest corner at the intersection of Old Georgetown Road (MD 187), and Sedgwick Lane. In the original site plan, vehicular access (both ingress and egress) to the facility and the eighteen (18) space parking lot was provided by a driveway from Sedgwick Lane. Sedgwick Lane currently only has one travel lane in each direction. Access from Old Georgetown is not permitted by the Maryland State Highway Administration (SHA) due to restrictions placed on new curb cuts from major highways. Sedgwick Lane is currently a paved 18-foot wide residential tertiary street with no sidewalks. As a result of SHA restrictions, the applicant proposed widening Sedgwick Lane to 26 feet in an effort to comply with primary road standards and to the specific standards for a clinic in Section 59-G-2.14(b) of the Zoning Ordinance.

This provision states that a medical/dental clinic must meet the following condition: "the property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds the access to be appropriate and not detrimental to the existing residential uses on the primary street". In analyzing this proposal, staff determined that the proposed use does not front on and have direct access to a primary street as defined by the Zoning Ordinance. As previously noted, Sedgwick Lane is 18-foot wide and is not a primary street. Although, the applicant proposed to widen Sedgwick Lane to 26 feet between Old Georgetown Road and its driveway to meet primary road standards, staff strongly believes that widening the street along only the frontage of the subject property does not make Sedgwick Lane a primary street or reclassify it as such. Staff concluded, in its previous staff report, that the proposal did not satisfy the specific standard requirement of the

Staff concluded, in its previous staff report, that the proposal did not satisfy the specific standard requirement of the Ordinance. Noncompliance with this provision is one of several reasons that the special exception application was recommended for denial by staff. Furthermore, the required upgrade to Sedgwick Lane would necessitate the removal of the existing cherry trees along the property's frontage on Sedgwick Lane, which is a significant concern of neighborhood residents.

In an effort to address this issue, the applicant revised the special exception site plan and amended the application. The revised plan limits vehicular circulation on site to one-way movements. The revised plan shows that the proposed medical/dental clinic will have ingress to the site from Sedgwick Lane and egress from the site to Old Georgetown Road. The revised plan does not show any improvements along Sedgwick Lane, except for a 5-foot wide sidewalk that extends from Old Georgetown Road to the subject property's driveway fronting on Sedgwick Lane. This proposal would also necessitate the removal of the existing cherry trees along Sedgwick Lane.

Under the revised plan, the applicant argues that since the subject property now provides direct access to Old Georgetown Road (egress only), the upgrading of Sedgwick Lane to a primary street is not required for access purposes, and therefore, is now in compliance with specific standard 59-G-2.14(b) of the Zoning Ordinance. However, staff is not persuaded by this argument and concludes that the revised plan does not comply with this specific standard. The Zoning Ordinance defines access as "a means of approach or admission". The Ordinance clearly states the property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction such as Old Georgetown Road. Staff does not believe that the revised plan, by having only egress from the subject property onto Old Georgetown, complies with the code definition of access nor does it meet the intent or spirit of 59-G-2.14(b).

The proposed medical/dental clinic will operate Monday through Friday between the hours of 8:00 a.m. to 6:00 p.m., and Saturday from 9:00 a.m. to 6:00 p.m. The proposed parking facility located in the side and rear yard of the property provides the required eighteen (18) total spaces. As part of this application, the applicant is requesting a parking waiver to reduce the parking setback along the southern property line. The reduction in the setback would allow the applicant to maintain the required 18 parking spaces for the proposed use and accommodate the proposed exit drive aisle and parallel parking spaces. Without the parking waiver, approximately four (4) parking spaces would be eliminated from the proposed parking layout, thus reducing the total number of spaces to fourteen (14). A 14-space parking facility would result in a smaller building consisting of approximately 2,800 square feet.

Originally, the applicants proposed to occasionally hold conferences and educational classes at the subject property. In addition, the applicants proposed to host the University of Pennsylvania graduates club two times per year. The amended special exception application specifies that the applicants are no longer proposing to hold "mini conferences", educational classes, nor host the graduate club at the proposed medical/dental clinic site.

Site Description

The subject property is a corner lot located at the southwestern intersection of Old Georgetown Road and Sedgwick Lane with vehicular access to the property from Sedgwick Lane. The property is 23,642 square feet in size, and is in the R-200 zone. The legal description is Lot P1, Block B, located in the

Luxmanor Subdivision. The rectangular shaped corner lot has a street frontage of approximately 170 feet along Sedgwick Lane and approximately 119 feet along Old Georgetown Road. The property slopes moderately from east to west away from Old Georgetown Road. The property is improved with an unoccupied one-family dwelling that was constructed in 1934.

The subject property contains several large trees and areas of overgrown vegetation. There are approximately three cherry trees located along the Sedgwick Lane frontage within the right-of-way. The street trees are consistent with other trees along Sedgwick Lane. There are no environmentally sensitive areas such as streams, floodplains, or wetlands areas on or near the subject property.

Neighborhood Description

The neighborhood in which the subject property is located is generally defined by Tilden Lane to the north, Old Georgetown Road to the east, Luxmanor Road to the west, and Poindexter Lane to the south. The immediate neighborhood is predominantly residential, in the R-200 zone. The subject property abuts a single-family dwelling to the west located at 4 Sedgwick Lane. The adjacent property to the south is developed with a medical office building (Manar Medical Clinic). This is a special exception use (CBA-2923) that was approved by the Board of Appeals (BOA) in 1971. This medical building is served by a parking facility that provides parking for approximately 50 vehicles. Ingress and egress for that parking facility is via Old Georgetown Road.

The majority of the existing single-family residences located in the defined neighborhood consist of a mixture of older homes constructed in the early 1930's and newer homes. Across Sedgwick Lane to the north, an older home was recently demolished and replaced with a new single-family dwelling that is currently under construction. A townhouse subdivision developed under the PD-9 zoning is located immediately east of the subject property across Old Georgetown Road.

The neighborhood properties that are non-residential uses include: the Aish Jewish Learning Center located at the corner of Old Georgetown Road and Tilden Lane, a historic property (Josiah Henson Site) owned by the County located just north of Sedgwick Lane, and the Jewish Rockville Outreach Center located south of the subject property and north of Poindexter Lane. In addition to the Manar Medical office building, existing medical clinics are located at 11502 Old Georgetown Road across Tilden Lane to the north, and at 11210 Old Georgetown Road across Poindexter Lane to the south.

The Proposal

The first floor of the proposed medical/dental clinic will accommodate Dr. Ak's dental practice. The proposed hours of operation are 8:00 a.m. to 6:00 p.m. Monday thru Friday and 9:00 a.m. to 6:00 p.m. on Saturday. This includes six (6) emergency visits per year, after hours or on Sunday. The proposed use (medical/dental clinic) will accommodate no more than 4 medical/dental practitioners plus staff. Specifically, the first floor office space will include two (2) dental practitioners and four (4) staff as follows: one (1) dental practitioner (Dr. Aks); one (1) part-time general dental practitioner and four (4) staff persons, which include two (2) dental hygienists; one (1) dental assistant; and one (1) receptionist. The total number of parking spaces required for the practitioners and staff on the first floor is six (6).

The applicant proposes to schedule no more than thirty (30) patients a day during the week and twenty-four (24) patients per Saturday. The applicant does not specify a maximum number of

patients for the medical practitioners on the second floor, primarily because the second floor is not yet leased. Instead the applicant states that the second floor will be leasable space limited to not more than two (2) medical practitioners and staff. The number of medical practitioners and staff will be limited by the number of available parking spaces attributed to the second floor after taking into account the number of patient visits per day and parking spaces utilized by the first floor and the two (2) lab technicians.

The clinic will be located in a new three-level building and off-street parking will be provided by an 18-space parking facility. The parking facility is located primarily to the west of the building and includes fifteen (15) perpendicular spaces and three (3) parallel spaces. The proposed building has been designed to fit into the sloping topography of the site with a walkout cellar on the lower level, along the building's west side adjacent to the parking facility. The total gross floor area (GFA) of the proposed building (upper two floors) consists of 3,589 square feet (2,095 square feet on 1st floor and 1,494 square feet on 2nd floor). According to the applicant, the lower level is a "cellar" and is not part of the GFA. The cellar will consist of laboratory space available for two (2) lab technicians, and will require two (2) parking spaces.

The medical/dental clinic will be accessed from the parking facility into the cellar entry hall where an elevator will be provided to take patients and staff to the first and second floors. The proposed residential style building will be set back 40.7 feet from the front property line along Sedgwick Lane and 40 feet from the property line along Old Georgetown Road. In addition to the required setbacks from the two roadways, the building will be set back 86.2 feet from the adjoining residential property to the west and 41.2 feet from the adjoining medical building to the south.

The revised plan illustrates that vehicular access to the site will be provided by a one-way driveway from Sedgwick Lane. The drive aisle will be twelve (12) feet wide and vehicular circulation on site will be limited to one-way movements. As previously noted, vehicles will exit the site onto Old Georgetown Road via the ten (10) foot wide one-way drive aisle situated along the southern boundary of the site. Vehicles exiting the site will be restricted to a right turn onto Old Georgetown Road. The new building's main entrance will face Sedgwick Lane with a walkway and steps up to the first floor of the building. A secondary entrance along the east side of the building, facing Old Georgetown Road, will also provide a walkway and steps from the existing public sidewalk to the first floor of the building.

Medical/dental supply deliveries will occur approximately one (1) time per month via an overnight courier service and dental prostheses will be delivered no more than two (2) times per day, in addition to regular mail pick-up and delivery.

According to the applicant, medical waste will be stored within the facility in biohazard containers and picked up approximately two (2) times per week. Garbage collections and recycled office materials will be on a regular basis, in keeping with the residential area. Trash and recycling will be handled internally with typical residential receptacles. No deliveries or pick-ups will generate noxious odors or loud noises.

The applicant has prepared a revised landscape plan that provides for the planting of thirty-five (35) trees and fifty-five (55) shrubs to provide a landscape buffer to shield the proposed structure and associated parking from the adjoining properties and Sedgwick Lane. The applicant also proposes to

replace the existing fence along the common boundary line of the subject property and 4 Sedgwick Lane.

Parking and Parking Waiver

The revised parking plan illustrates that the proposed parking facility will be located in the side and rear yards of the subject property. The number of parking spaces required for the proposed facility is calculated on the gross square footage of the building which totals 3,589 square feet.

Section 59-E-3.7 requires that a medical or dental clinic office provides five spaces per 1,000 square feet. Based on the square footage of the building, the applicant is required to provide 18 parking spaces.

Under Section 59-E-2.83, the required parking facility setbacks for special exception uses within residential neighborhoods require the parking facility to be set back 24 feet from the property line on the side yard adjoining the residential home (4 Sedgwick Lane) and 30 feet from the subject property's rear property line that abuts the side yard of the existing Manar Medical Building.

The applicant is requesting an 18-foot parking setback waiver to reduce the parking facility setback along a portion of the south property line that abuts the side yard of the existing medical building. The requested waiver will result in a 12-foot setback from the property line. The 18-foot waiver accommodates the exit drive aisle and three (3) parallel parking spaces proposed along the southern side of the proposed building. As part of the parking facility revision, two (2) of the three (3) parallel parking spaces were relocated from the southern end of the original row of parking spaces abutting the proposed clinic. Those two (2) parking spaces will be replaced with green space, a curb and retaining wall for the drive aisle. The third parallel parking space, which was relocated from the southern end of the row of parking spaces along the common boundary of the adjacent residential property, at 4 Sedgwick Lane, will be replaced with green space. The applicant believes that the requested parking waiver is justified because the use abutting the subject property to the south is a non-residential use in a commercial office building, the Manar Medical Clinic. Furthermore, the applicant believes that the 12-foot setback from its common boundary line with the adjoining medical office building and the proposed landscaping will provide adequate screening for the parking facility.

Staff does not recommend a waiver of the parking setback. The setback provisions of Section 59-E-2.83 provide for greater setbacks for parking of special exception uses in a residential zone. The intent is to mitigate the potential impacts of a parking facility on adjacent and surrounding uses and to provide screening from adjacent properties and roads. Since the proposed parking facility would be adjacent to an existing larger parking facility for the Manar Medical building, staff is concerned that the proposal would create a bigger cluster of parking that would be visible from residences and from Old Georgetown Road. Staff is also concerned that the revised parking facility, including the new circulation plan, could potentially degrade roadway safety and capacity by creating too many access points and conflicting turning movements onto Old Georgetown Road. Furthermore, there is no on-street parking available along the Sedgwick Lane or Old Georgetown Road frontage.

Master Plan

Area 2 planning staff finds that the proposed special exception is not consistent with the recommendations of the Approved and Adopted (1992) North Bethesda/Garrett Park Master Plan and does not meet Section 59-G- 1.21(3) and Section 59-G-1.21(7) of the Zoning Ordinance.

The proposed dental clinic is located within the 1992 North Bethesda/Garrett Park Master Plan. The Master Plan confirmed the R-200 (Single-family residential zone) for properties west of Old Georgetown Road, between Tilden Lane and Poindexter Lane. An objective of the Master Plan is to “protect and reinforce the integrity of existing residential neighborhoods” (p.33).

No specific recommendations are made in the Plan for the subject property. The Master Plan, however, highlights the property at the southwest quadrant at Poindexter Lane and Old Georgetown Road (Lots 4 and 5, Block D). It states that the property was subject to a rezoning request to the Office Moderate Intensity (OM) zone in 1988. The Master Plan confirmed the R-200 zone for this property (p.79).

Riley House/Uncle Tom’s Cabin, now called Josiah Henson Special Park, is located at 11420 Old Georgetown Road. The Master Plan highlights this historic property and notes that it is listed on the County’s Master Plan for Historic Preservation.

The Master Plan supports special exception “..uses that contribute to the housing objectives of this Plan. In general, the Plan endorses meeting special population needs through provision of elderly housing and group homes that are compatible with nearby land uses” (p.38). Special exceptions that contribute to service objectives of the Plan are supported, such child daycare facilities and nursing homes (p.38).

The Master Plan establishes several recommendations for special exceptions; identifies issues with large medical facilities; and creates green corridors for major corridors in the Plan area.

Medical Clinic

The Master Plan identifies large medical facilities as an issue in North Bethesda. It states that “recent actions by the Montgomery County Council would now prohibit large medical complexes such as those previously allowed in North Bethesda-Garrett Park. Current regulations now limit medical clinics in residential zones to four doctors, while the cumulative effect provision allows consideration of whether there would be a negative impact from allowing an additional provider in a particular use category that already has several existing providers” (p.37). Since the adoption of the Plan, the standards for a medical and dental clinic have been furthered modified. The proposed special exception is limited to four medical practitioners.

Special Exceptions

The Master Plan establishes several standards when reviewing special exceptions in North Bethesda with the goal to “protect residential areas, while also attempting to meet important social needs” (p.37-38). The special exception standards are the following:

1. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors.

Because sites along these corridors have better visibility for business uses, they are more vulnerable to over-concentration of such uses. Of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning. It is also important to minimize uses that degrade roadway safety and capacity by creating too many access points and conflicting turning movements (p. 38).

2. Avoid over-concentration of commercial service or office-type special exception uses in residential communities.

These include funeral parlors, horticultural nurseries, veterinary clinics, medical or dental clinics, medical or professional offices, and philanthropic organizations. The Plan does not discourage home occupations that meet Zoning Ordinance criteria. The most vulnerable areas for over-concentration are near employment centers and along major highways. (p.38)

3. Protect major highway corridors and residential communities from incompatible design of special exception uses.

In the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance.

Any modification or addition to an existing building to accommodate a special exception should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures. Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear parking is not available, front yard parking should be allowed only if it can be comprehensively landscaped and screened (p.38).

The proposed dental clinic is located along Old Georgetown Road (MD 187), which is classified as a major highway with a minimum right-of-way of 120 feet. There are several other approved special exceptions in the neighborhood, especially along Old Georgetown Road between Poindexter Lane and Tilden Lane.

There are 11 properties that front the western portion of Old Georgetown Road between Poindexter Lane and Tilden Lane. Three properties have approved special exceptions; two properties have special exceptions that are no longer in use; two properties have a public use, and two properties are religious/institutional uses.

The proposed dental clinic would add a fourth special exception along this segment of Old Georgetown Road. This is contrary to the direction established in the Master Plan. The Master Plan states that “of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning. It is also important to minimize uses that degrade roadway safety and capacity by creating too many access points and conflicting turning movements” (p.38). Locating another special

exception within this area, with three other approved special exceptions, does begin to change the character of the neighborhood along Old Georgetown Road. Furthermore, the Master Plan specifically identifies medical/dental clinics in the list of special exceptions that should be discouraged to avoid an over-concentration of such uses in residential communities.

Existing Special Exceptions

At the southwestern intersection of Poindexter Lane and Old Georgetown Road is an approved medical and dental clinic (S-1887). Approved in 1992, the special exception is limited to 18 employees, including four practitioners, and 50 parking spaces. The property is 58, 932 square feet property, consisting of two parcels. There are two buildings associated with this special exception, each at 5,000 square feet.

Adjacent to the proposed special exception is another medical and dental clinic special exception (CBA-2923). Approved in 1970, this 1.37 acres special exception is limited to 15 doctors with 60 parking spaces in a 12,030 square foot building.

At the northwestern intersection of Old Georgetown Road and Tilden Lane is another special exception medical clinic (S-606). Approved in 1978, this use is limited to a maximum of nine physicians, and it is 1.57 acres in size.

Prior Special Exceptions

Between Tilden Lane and Poindexter Lane, there are two properties with prior special exceptions. The property located at the southwestern intersection of Tilden Lane and Old Georgetown Road was subject to a special exception (S-1189). Special exception (BAS-301) was located at the northwestern intersection of Poindexter Lane and Old Georgetown Road. Both have been terminated.

Public and Institutional Use

Josiah Henson Special Park, a facility owned by Montgomery County Parks Department, consists of two properties located at 11420 and 11410 Old Georgetown Road. Aish Hatorah of Washington, a religious institution with Alef Bet Montessori School, is located at the southwest intersection of Tilden Lane and Old Georgetown Road. The Jewish Rockville Outreach Center at 11304 Old Georgetown Road is located between Roseland Drive and Poindexter Lane. This Center is south of the proposed special exception. These are permitted uses in the R-200 zone.

The Master Plan recommends that the Board of Appeals adhere to the following guidelines for special exceptions:

- Require screening for parking, even when less than six parking spaces are involved.
- Retain green space, particularly when it provides trees that screen buildings.
- Screen existing buildings with plant material (p. 251).

The applicant's landscape plan illustrates several trees along the western and southern portion of the parking area as well as street trees along Sedgwick Lane.

Special Exception Findings

Section 59-G.1.21 (3) of the Zoning Ordinance establishes the master plan finding for a special exception. This finding states:

[The special exception] 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 first land use objective of the North Bethesda/Garrett Park Master Plan is to "protect and reinforce the integrity of existing residential neighborhoods" (p.33). Further, the Master Plan recommends that along major corridors, such as Old Georgetown Road, concentrations of special exceptions uses should be avoided, especially those that are office or commercial in nature. There are three approved special exception medical clinics, within close proximity to the proposed use including one that is adjacent to the proposed site. Adding another use that is specifically discouraged in the Master Plan will contribute towards concentrating medical special exceptions in the Old Georgetown Road corridor.

Section 59-G.1.21 (7) of the Ordinance establishes the criteria for evaluating how a proposed special exception will alter a one-family residential area. It states:

[The special exception] 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 plan do not alter the nature of an area.

The proposed special exception will increase the number and intensity of special exceptions in the area between Poindexter Lane and Tilden Lane within the residential neighborhood. Two medical special exceptions that are adjacent to each other, with all the elements that are inherent with the use, will alter the residential nature of the area.

Transportation

Area 2 transportation planning staff reviewed the revised plan submitted for the Adequate Public Facilities (APF) review of the subject Special Exception case for a proposed medical/dental clinic at the corner of Old Georgetown Road (MD 187) and Sedgwick Lane in North Bethesda. Staff recommends that, based on the revised plan, the site ingress from Sedgwick Lane does not satisfy the Zoning Ordinance section 59 G 2.14 (b) that requires Sedgwick Lane to be at least a primary residential street.

Staff recommends that in order to satisfy the APF transportation-related requirements, the applicant must satisfy the following:

1. The applicant must satisfy the Zoning Ordinance section 59 G 2.14 (b) by upgrading Sedgwick Lane to a “primary residential road” standard No. 2003.10 along its property frontage as follows:
 - a. Dedicate an additional 10 feet of right-of-way along the Sedgwick Lane property frontage to provide for 35 feet from the centerline for the entire distance along the property frontage.
 - b. Widen the paved travelway from the existing 18 feet to 26 feet.
 - c. Work with the Montgomery County Department of Transportation (MCDOT) to install traffic control measures (signs, pavement markings, channelized, etc.) to discourage motorists from exiting the site onto Sedgwick Lane.
 - d. Work with MCDOT to consider if parking can be safely accommodated. If parking is permitted, implement and install the necessary signs to control or prohibit parking on one or both sides of Sedgwick Lane along the property frontage.
 - e. Provide a 5-foot wide sidewalk along the entire property frontage of Sedgwick Lane.
2. The applicant must obtain Maryland State Highway Administration’s (SHA) final approval for site egress onto southbound Old Georgetown Road prior to release of any building permit. This proposed egress point must have and be shown on the plan with an angled curb cut to preclude right turns from northbound Old Georgetown Road into the site.
3. The applicant must satisfy the Policy Area Mobility Review (PAMR) test by mitigating four peak-hour trips prior to release of any building permit. The applicant has the option to satisfy the PAMR requirement by either paying MCDOT \$11,700 per PAMR trip (25% of 15 trips is 4 new trips) for a total of \$46,800 or upgrade missing or substandard segments of sidewalks and/or bikeways off-site within the North Bethesda Policy Area in accordance with the *Local Area Transportation Review (LATR) and PAMR Guidelines*.
4. The applicant must enter into a Traffic Mitigation Agreement to implement an Employee Management Plan to assure that the number of vehicles arriving to and departing the site do not exceed 12 during any hour of the weekday morning peak period and 13 during any hour of the evening peak period. This Traffic Mitigation Agreement would be enforced by the Montgomery County Department of Permitting Services.
5. The applicant must provide a 6-foot wide sidewalk along its frontage on Old Georgetown Road. The sidewalk must be located behind a 6-foot wide tree panel in accordance with the Road Code’s standard for major highways and tie the relocated sidewalk into the existing adjacent sidewalk.
6. The applicant must provide at least one inverted-U bike rack near the main entrance of the clinic in a weather-protected area, if possible, and add more details about the bike racks on the revised plan.

DISCUSSION

Vehicular Access and On-Site Circulation

The revised plan shows on-site circulation and vehicular access via a one-way counter-clockwise circulation pattern. The site's ingress is proposed from Sedgwick Lane that is currently a substandard tertiary residential street with a paved travelway of 18 feet wide instead of the 20 feet required by the Road Code, with no sidewalks. In addition, the applicant must work with MCDOT to install the appropriate traffic control measures (signs, pavement markings, channelized, etc.) to discourage motorists from exiting the site onto Sedgwick Lane.

The applicant must upgrade the vehicular ingress from Sedgwick Lane to a primary residential road standard No. 2003.10 to comply with Zoning Ordinance section 59 G 2.14 (b):

"The Property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds the access to be appropriate and not detrimental to the existing residential uses on the primary street."

In the Montgomery County Zoning Ordinance section 59 A 2.1, access is defined as:

"A means of approach or admission."

In the Montgomery County Code Chapter 49, "STREETS AND ROADS, ARTICLE III, ROAD DESIGN AND CONSTRUCTION CODE", Subsection 49-28-01, "STANDARDS AND SPECIFICATIONS — REGULATIONS", "Context Sensitive Road Design Standards", a primary residential street is defined as follows:

"A road meant primarily for circulation in residential zones, although some through traffic is expected."

In comparison, a tertiary residential street is defined as follows:

"A road meant (exclusively for access to abutting property in residential zones) to provide direct access to a residential development with 75 or fewer dwelling units. A Tertiary Residential Street must not be built unless the Planning Board allows its use when the Board approves a preliminary subdivision plan or site plan."

As a minimum, the applicant must upgrade Sedgwick Lane to a primary residential street along the property frontage as described in Recommendation No. 1. However, upgrading Sedgwick Lane to a primary residential street cross-section along the property frontage does not change the recommendation in the 1992 *North Bethesda/Garrett Park Master Plan*. Sedgwick Lane is a substandard tertiary residential street that is not listed in the Master Plan. Reclassification of Sedgwick Lane can only be done by County Council action through a master plan amendment.

The site's egress is proposed as a new curb cut onto southbound Old Georgetown Road that is pending the Maryland State Highway Administration's (SHA) final approval. SHA indicated on January 9, 2012, that:

“SHA has been shown the revised proposal for a right out to SB MD 187. This was presented at a meeting held with Dr. Aks, Mr. Orens, and the developer's engineer/traffic consultant. At that time, SHA stated that we would consider a right out, however, no further comment could be provided until SHA received an engineered plan submitted through the Park and Planning process. I assume that all zoning issues need to be worked out prior to an official submittal from the engineer.”

Master Plan Roadways and Bikeway

According to the 1992 *North Bethesda/Garrett Park Master Plan*, Old Georgetown Road is designated as a six-lane divided major highway, M-4, with a 120-foot right-of-way and no bikeway.

Two other master/sector-planned roadways are in the vicinity of the site. Tilden Lane is designated as a primary residential street, P-7, with a 70-foot right-of-way in the *North Bethesda/Garrett Park Master Plan*. Nicholson Lane is designated as an arterial, A-69, with a 90-foot right-of-way in the 2010 *White Flint Sector Plan*. A Class III bikeway is designated along both Tilden Lane and Nicholson Lane according to the *North Bethesda/Garrett Park Master Plan*.

Vehicular Circulation to and from the Site

Employees and patients traveling southbound on Old Georgetown Road can simply turn right onto Sedgwick Lane to ingress the site. Those traveling to the site from northbound Old Georgetown Road are prohibited from turning left onto Sedgwick Lane via a “No Left Turn” sign. Due to this left turn prohibition, the employees and patients traveling northbound on Old Georgetown Road must pass Sedgwick Lane, make a U-turn at the next signalized intersection at Tilden Lane-Nicholson Lane, and then make a right turn onto Sedgwick Lane to reach the site.

The proposed clinic’s employees and patients may find other routes through the neighborhood on the west side of the Old Georgetown Road to reach their destination. Staff is not able to quantify how many trips will travel through the neighborhood streets to reach the site at the corner of Sedgwick Lane and Old Georgetown Road. However, it is possible that some of the traffic generated by the site will take the neighborhood streets on the west side of Old Georgetown Road to reach their destination.

The nearby local residential streets on the west side of Old Georgetown Road within the Luxmanor neighborhood are substandard tertiary residential streets. The local tertiary residential streets have less than the required 20-feet of paved roadway and no sidewalks. With no sidewalks and the narrow paved roadways, students walking to the three nearby schools or biking on these streets have no safe path to separate them from vehicles. MCDOT has installed speed humps and small traffic circles to slow down motorists along Luxmanor Road.

Available Transit Service and Pedestrian and Bicycle Facilities

Transit service is available via Ride-On route 26 that operates along Old Georgetown Road between the White Flint Metrorail Station and Montgomery Mall. Transit service is not available on Sedgwick Lane.

The applicant is providing a five-foot wide sidewalk with a green panel along Sedgwick Lane between Old Georgetown Road and the site vehicular ingress point and a four-foot wide lead-in sidewalk from

Old Georgetown Road. As noted above, the proposed sidewalk along Sedgwick Lane must be along the entire property frontage.

A five-foot wide sidewalk with no green panel buffer exists along Old Georgetown Road. The applicant must upgrade the Old Georgetown Road frontage by widening the sidewalk to six feet and relocating the sidewalk behind a six-foot green panel in accordance with the Road Code’s standard for the master-planned major highways.

The applicant proposed at least one inverted-U bike rack near the main entrance of the clinic, but more details are needed.

Adequate Public Facilities Transportation Test

The applicant maintains that an APF transportation test does not apply to this special exception because the property does not require subdivision. However, the APF test is required under County Code Section 8-31, “Requirements for timely adequate public facilities determination” as a future building permit under County Code Section 8.31. This Section directly references Section 50-35(k) that requires the APF procedures applied to subdivision cases and site plans. As a special exception use on a recorded lot, the feasibility of satisfying the APF test is determined during the special exception review in advance of issuance of a building permit. The APF test includes both the LATR test and PAMR test.

Local Area Transportation Review and Related On-Site Parking

The subject medical/dental clinic of 3,589 square feet is proposed to replace the existing single-family detached unit and have hours of operation from 8 a.m. to 6 p.m. The net number of new peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) is as follows:

Type of Land Use	Square Feet or No. of Units	Weekday Peak-Hour	
		Morning	Evening
Medical/Dental Clinic	3,589	8	15
Single-Family Detached Unit	One	1	1
Net Number of New Vehicular Trips		7	14

Trip-generation rates from the Institute of Transportation Engineers (ITE) *Trip Generation Manual* were used to determine the number of peak-hour trips generated by the proposed medical/dental clinic. However, the resultant number of site-generated trips above is lower than the potential number based on the proposed specific medical/dental practices on the site as specified below. From the operational perspective, the applicant proposes for the medical/dental clinic to operate with the following specific uses:

Floor	Type of Trips	Number of Persons	Weekday Peak-Hour Trips					
			Morning			Evening		
			In	Out	Total	In	Out	Total
Second	Two Other Practitioners & Staff & Patients	6	6	0	6	0	6	6
First	Dental Practitioners & Staff	6	6	0	6	0	6	6
	Patients	3	3	0	3	0	3	3
Cellar	Lab Technicians	2	2	0	2	0	2	2
Total Peak-Hour Trips		17	17	0	17	0	17	17

The applicant’s proposed operation is highly controlled to minimize the number of patients waiting to just one on the first floor and to restrict the second floor practitioners, their staff, and patients to six trips per hour. With a highly controlled operation, the applicant’s projection of 17 peak-hour trips is one less than the 18 parking spaces required by the County Code. This operational control is needed with the proposed staffing on the first floor of a full-time dentist, a part-time dentist, two hygienists, a dental assistant, and an office manager/receptionist; the second-floor would be occupied by two practitioners, four support staff, and their patients.

Alternatively, the applicant proposed that the number of parking spaces may be lower if based on the ITE *Parking Generation Manual*. The ITE Manual projects a lower average of 3.9 vehicles per 1,000 square feet where a medical/dental clinic of 3,589 square feet would need 12 parking spaces. However, the ITE projections do not reflect the applicant’s intended on-site usage that is more intensive than a typical medical/dental office of equivalent square footage.

Using the ITE trip-generation rates or the specifically proposed medical/dental practices, the applicant is not required to prepare a traffic study to satisfy the LATR test because the proposed clinic generates less than 30 peak-hour trips within the weekday morning and evening peak periods.

Policy Area Mobility Review

The site is subject to PAMR mitigation requirement because the site is located within the North Bethesda Policy Area where new developments must mitigate 25% of its new peak-hour trips. Four new trips (25% of a net 14 new trips) must be mitigated prior to release of any building permit. According to the *LATR and PAMR Guidelines*, the applicant has the option of paying MCDOT \$11,700 per PAMR trip for a total of \$46,800 towards their PAMR mitigation or constructing missing or substandard segments of sidewalks and/or bikeways off-site within the North Bethesda Policy Area. Such off-site pedestrian improvements could include those associated with the nearby Josiah Henson Special Park.

Traffic and Parking Mitigation via an Employee Management Plan

The applicant proposed to enter into a Traffic Mitigation Agreement to implement an Employee Management Plan that would proactively control the number of persons entering and leaving the site to limit the maximum number of employees’ trips to/from the site to 12 peak-hour trips during the weekday morning peak period and 13 peak-hour trips during the evening peak period.

These reduced vehicular trips would be one fewer than the 14 evening peak-hour trips projected using the applicant's projections from the ITE trip-generation rates. Implementing the proposed Traffic Mitigation Agreement would assist in assuring that all motorists arriving and leaving the site could park on the site without overflowing onto the adjacent local street. However, the Employee Management Plan would not be credited with PAMR mitigation of the four new peak-hour trips because the applicant's PAMR calculations were based on the lower ITE trip-generation rates.

Environment

There are no significant environmental concerns associated with this Special Exception request. Area 2 staff has offered the following comments:

The Forest Conservation Law does not apply to this site because the size of the lot is less than 40,000 square feet and no champion trees are being affected. The site does not contain any forest, wetlands, stream buffers, steep slopes, 100 year floodplains or significant habitats that would be regulated under the Environmental Guidelines. The site does not lie within a Special Protection Area.

There is no evidence that this use will generate noise in excess of levels permitted under the noise ordinance. The site is served by WSSC with public water and sewer connections. Removal of the existing cherry trees along Sedgwick Lane is a significant aesthetic concern. If the Special Exception is approved, the landscape plan for this site should address appropriate replacement of these trees.

Community Concerns

Extensive written correspondence has been received in opposition to the proposed medical/dental clinic special exception request. Attached are numerous letters requesting that the Board recommend denial of the proposal. (See Attachment Letters)

On May 11, 2011, staff met with representatives from the Luxmanor Citizens Association and their attorney. The community is generally concerned that the proposed medical/dental clinic special exception is inconsistent with the Master Plan; that the proposed clinic creates an over-concentration of similar special exceptions that will adversely affect the area; that suitable office space is available in the adjacent special exception clinic and in the nearest commercial zone; that the road access requirement is not met; that the proposed clinic reduces the safety of vehicular and pedestrian traffic in the neighborhood; and that the number of parking spaces is insufficient and that there is no basis for a setback waiver.

Following the resubmission of the revised plans, staff met with representatives from the Luxmanor Citizens Association and their attorney on January 6, 2012 to discuss the revised plans. The community expressed similar concerns about the amended application. They generally believe that the proposal continues to be contrary to County policies; that the proposal remains inconsistent with Master Plan objectives; that there is no valid basis for a parking waiver; that there is an availability of suitable office space in the area; and that the new parking facility and additional landscaping will not mitigate adverse impacts.

For these reasons, the residents generally believe that approval of the application and non-residential development of the site would destroy the character and peaceful enjoyment of the neighborhood.

A letter in support of the application was submitted by Delegate Kirill Reznick of the Maryland House of Delegates.

Inherent and Non-Inherent Adverse Effects

Standard for Evaluation: Section 59-G-1.2.1 of the Zoning Ordinance specifies that 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 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.

Any analysis of inherent and non-inherent adverse effects must first establish what physical and operational characteristics are associated with a particular special exception. As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, light, noise, traffic and environment. Applying the above analysis to this case, staff finds:

The inherent, generic physical and operational characteristics necessarily associated with a medical/dental clinic include: (1) a physical building, (2) the parking facility, (3) lighting, (4) vehicular trips to and from the site by staff and patients, (5) hours of operation, (6) delivery of supplies and trash pick-ups.

In this case, staff finds that the proposed use, if established at the proposed location, would exhibit non-inherent characteristics that would result in non-inherent effects on the surrounding neighborhood sufficient to recommend denial of this application. Staff identifies the following non-inherent effects in the instant case: physical size of the proposed building, the scope and intensity of the proposed use, the parking facility, and traffic on and around the site.

The applicant proposes to establish a three level medical clinic that will provide office space for up to four practitioners. The proposed building consists of 3,589 square feet and will include a walk-out cellar. Although the front and left side elevations of the building will appear as two-stories, the right elevation of the building will show three stories and a parking lot for a clinic. This side of the proposed building will face the adjacent neighbor located at 4 Sedgwick Lane. Although the new building will be a residential style, its primary use is office. Any medical clinic special exception located on the subject property will inherently have a building for the care of patients, and a parking area for clients and staff. However, it is possible to establish a clinic on this site that does not have a building that is larger than the typical residential home in the surrounding neighborhood. Because the parking requirement is based on square footage of the building, a smaller building in size and scale would provide for a reconfigured parking lot that would not need parking waivers setbacks and would allow for vehicles to maneuver in and out of parking spaces safely.

Under the original application, in addition to the operational hours of the clinic, the applicant proposed to hold on-site conferences, meetings and classes that would not occur daily, but would have resulted in more trips to the site. Although the amended application proposes to no longer hold such activities on the site, staff believes that the proposed operations of the use do not provide clarity with regards to the proposed use of the second floor and how parking is to be accommodated for the employees and patients on-site for both the first and second floors. Staff finds that the scope and intensity of the proposed use is not characteristic of a medical/dental clinic at this location and would constitute a non-inherent adverse effect on the neighborhood.

Staff's review of the original application found that the proposed use did not front on and have direct access to a primary street as defined by the Zoning Ordinance. Sedgwick Lane is 18-feet wide and is not a primary street. The applicant proposed to widen Sedgwick Lane to 26 feet between Old Georgetown Road and its driveway to meet primary road standards. Staff found that widening the street along only the frontage of the subject property would not make Sedgwick Lane a primary street.

In order to upgrade Sedgwick Lane to a primary residential street, the applicant must also dedicate an additional 10 feet of right-of-way along the Sedgwick Lane property frontage in order to meet the primary residential street standard of 35 feet from the centerline. The application of this standard would negatively impact the application, as proposed. The building and parking facility would not be in compliance with setback requirements.

Staff finds that the revised plan, by not providing access (ingress and egress) from Old Georgetown Road, is not in compliance with Section 59-G-2.14(b).

Generally, staff expects that the proposed use would produce an impact on the area residential streets that primarily consist of 18-foot wide pavements. Sedgwick Lane traffic generated to the site and traveling northbound on Old Georgetown Road is prohibited from turning left onto Sedgwick Lane (restricted by a No Left Turn Sign). Due to this left turn movement prohibition, the travelers coming from the south basically have two options. One is that they must pass the Sedgwick Lane and make a U-turn at the next signalized intersection of Tilden Lane and Nicholson Lane and then making a right turn movement onto Sedgwick Lane to reach the site or; take Luxmanor Road from Tuckerman Lane near the I-270 spur and travel through the neighborhood on the west side of the Old Georgetown Road to reach Sedgwick Lane. This would represent a non-inherent adverse impact of the proposed use.

General and Specific Special Exception Provisions

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 subject property is zoned R-200. A medical/dental clinic is an allowed special exception in the R-200 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.

Staff finds the proposed use meets some, but not all, of the applicable specific standards and requirements in Section 59-G-2.14, and that the use as proposed is not presumptively compatible with existing neighboring residential development and does not require the Board to recommend approval of the application.

- (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.

As previously discussed, staff finds that the use will be not be consistent with the recommendations of the 1992 North Bethesda/Garrett Park Master Plan. The Master Plan recommends that along major corridors, such as Old Georgetown Road, concentrations of special exception uses should be avoided. There are three approved special exception medical clinics, within close proximity to the proposed use. The Master Plan also discourages the over-concentration of special exceptions, including medical/dental clinics in residential communities. Adding another use that is specifically listed in the Master Plan as one of the uses where over-concentration should be avoided will contribute towards concentrating medical special exceptions in the subject area.

- (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 proposed new building and parking lot will not be in harmony with other buildings in the neighborhood and the use will not be in harmony with the general character of the surrounding neighborhood. Although the proposed two-story building will consist of a residential style, it will not be similar in size and character to the older existing single-family dwellings in the neighborhood. Additionally, the parking lot is not compatible and is not in conformance with parking setback requirements.

- (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.

Approval of the proposed medical clinic may present detrimental effects to the use and development of surrounding properties. The removal of existing cherry trees along

Sedgwick Lane would disrupt the peaceful enjoyment and general character of the neighborhood.

- (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.

Operation of the medical/dental clinic will not cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site. Although the proposed use would generate considerable vehicular and foot traffic in and out of the building, the activities necessary to the operation of the use would all occur indoors.

- (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 proposed special exception will increase the number and intensity of special exceptions in the area between Poindexter Lane and Tilden Lane within the residential neighborhood. Two medical special exceptions that are adjacent to each other, with the elements that are inherent with the use, will alter the residential nature of 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.

There is no such evidence to support a finding that the medical/dental office use would have such an adverse effect on residents, visitors or workers in the area. However, with 18-foot wide streets within the neighborhood and no sidewalks, the additional vehicular traffic entering and exiting the proposed medical/dental clinic could potentially create adverse effects on the neighborhood.

- (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 approval must be a condition of granting the special exception.

(B) If the special exception

- (i) does not require approval of a new preliminary plan of subdivision; and

- (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner 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.

Public water and sewer service and other common utilities are immediately available to the subject property along the frontage with Sedgwick Lane or Old Georgetown Road and already serve the existing residence on the subject property.

A preliminary plan of subdivision is not required for the proposed special exception use. Staff finds that the requested use will satisfy the transportation-related requirements of the APF test if all the conditions are met, as outlined in the attached transportation recommendation.

- (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.

Staff finds that the proposed development may ~~not~~ reduce the safety of vehicular and pedestrian traffic. Traffic destined to the site and traveling northbound on Old Georgetown Road is prohibited from turning left onto Sedgwick Lane (restricted by a No Left Turn sign). Due to this left turn movement prohibition, it is possible that some of the traffic generated by the site will take the neighborhood streets on the west side of Old Georgetown Road to reach their destination. The nearby local residential streets on the west side of Old Georgetown Road within the Luxmanor neighborhood are substandard tertiary residential streets. The local tertiary residential streets typically have 50-foot rights-of-way, but have less than 20-feet of paved roadway and no sidewalks. With no sidewalks and the narrow paved roadways, students walking to the three nearby public schools or biking on these streets have no safe path to separate them from vehicles.

59-G-1.23 General Development Standards

- (a) Development Standards. The special exception is 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.

The proposed new building has been designed to comply with the standards of the R-200 Zone and to comply with the requirements of Sections G-1.23 and G-2. Staff finds that the proposed modification would comply with all development standards as shown in the following table:

Remainder for use by 2nd Floor: 7 spaces

(c) **Minimum Frontage.**

The minimum frontage required by Section 59-G-2.14 (100 feet) is met as the subject property has a total of approximately 289 feet of frontage along two streets.

- (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.

The proposed special exception is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code. The Forest Conservation Law is not applicable because the subject property is less than 40,000 square feet in size and no champion trees are affected.

(e) **Water quality plan.**

A water quality plan is not required for the proposed special exception. The subject property is not located within a designated Special Protection Area (SPA). A stormwater management concept plan was approved by Montgomery County. Staff has received a SWM concept approval letter from the Department of Permitting Services (DPS).

(f) **Signs.**

The applicant is proposing one (1) free-standing sign that does not exceed two (2) square feet in area and three (3) square feet in height to identify the location of the applicant's dental clinic. The proposed sign will not be illuminated. Additionally, a non-illuminated wall sign that will not exceed two (2) square feet in area will be placed on the Old Georgetown Road facade no higher than five (5) feet above the ground.

(g) **Building compatibility in residential zones.**

The site in a residential zone and the proposed new building has been designed to be residential in appearance, scale, bulk, and height. Staff finds that the proposal is not compatible with the character of the neighborhood. Although the building is residential in appearance, it is an office use that includes an eighteen space parking lot adjacent to an existing residential use.

- (h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into adjacent residential properties.

The site is in a residential zone, and the lighting plan adequately and efficiently covers the main vehicular access to the site, as well as the parking, areas in order to create a safe vehicular and pedestrian environment. There is a residential property adjacent to the proposed special exception. The proposed lighting will consist of four (4) pole lights no higher than twelve (12) feet. The lighting from the subject property will be buffered by light

standards on full cutoff fixtures to prevent light spillage onto the neighboring property and to minimize glare from the fixtures. The pole lights will be on a timer that will automatically turn them off at 9:00 p.m. The limited pole height, a timer and landscaping along the western property boundary will also limit any spillage of light onto the adjacent property. A photometric plan prepared for the project demonstrates that light levels along the side and rear lot lines will not exceed 0.1 footcandles.

Sec. 59-G-2.14. Clinic.

A special exception may be approved for a medical or dental clinic in which no more than 4 medical practitioners are present at any one time, subject to the following standards:

- (a) Development standards as specified in the applicable zone and in Section G-1.23 except:
 - (1) Minimum frontage: 100 feet.

According to the site plan, the subject property has a total of approximately 289 feet of frontage exceeding the minimum requirement of 100 feet of frontage.

- (2) Minimum setback from adjoining lot: 40 feet.

The proposed building will be setback approximately 41 feet from the adjoining lot to the south and 86.2 feet from the adjoining lot to the west, thereby, exceeding the minimum setback requirement of 40 feet from the adjoining lots.

- (b) The property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction of travel; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds the access to be appropriate and not detrimental to existing residential uses on the primary street.

The subject property is a corner lot that physically fronts onto Old Georgetown Road. Old Georgetown Road consists of three travel lanes in each direction; however, direct access from the subject property to Old Georgetown Road is not proposed. Since the subject property is a corner lot, direct access to Sedgwick Lane is proposed. As part of the original special exception, Sedgwick Lane was proposed to be improved to primary road standards between Old Georgetown Road and the point of access to the subject property, with pavement widening from the existing 18 feet to 26 feet, new curb and gutter, and a new public sidewalk.

Staff believes that the Sedgwick Lane access to be inappropriate and detrimental to existing residential uses located on Sedgwick Lane, which is not a primary street. Staff finds that the proposed widening of a portion of Sedgwick Lane to 26 feet, alone, does not satisfy the requirement that access to a corner lot may be from a primary street. Furthermore, in order to comply with the standard, the applicant must dedicate an additional 10 feet of right-of-way along the Sedgwick Lane property frontage, thus providing a 35-foot centerline which is a primary road standard. Establishment of a 35-foot centerline would negatively impact the proposal as the building and parking lot would no longer be in compliance with setback requirements.

Staff finds that the revised parking layout, with one-way vehicular circulation within the site, does not satisfy this specific standard. This is a corner lot and the standard states that if access cannot be provided on Old Georgetown Road, access (ingress) may be provided from a primary street constructed to primary street standards. The revised application does show access (ingress) into the site but does not show any upgrades to Sedgwick Lane, except to add a 5-foot wide sidewalk.

- (c) Office space suitable for the practice of the profession is unavailable in either the nearest commercial zone or the nearest medical clinic office building constructed according to a special exception grant.

According to the applicant, suitable office space to accommodate the applicant's practice is unavailable in the nearest medical clinic established by a special exception grant, the adjacent Manar Medical Building, or in the nearest commercial zone. The applicant argues that the Zoning Ordinance does not require an analysis of available office space that extends beyond the nearest commercial area or special exception medical/dental clinic. The applicant also believes that the Zoning Ordinance requirements are limited to a determination of the availability of suitable office space. The applicant states that there is no suitable office space available to meet the needs of the applicant's practice.

The Planning Department's research staff examined the availability of medical office space within a one-mile radius of the subject property located at 11406 Old Georgetown Road. Staff found 12 office buildings with medical uses representing 710,167 square feet within the one-mile radius. Three of the 12 medical office buildings are located along Old Georgetown Road. The Manar Medical Building is adjacent to the subject property. The attached table provides space and information on each of the 12 buildings. Staff finds that there are suitable alternatives in the general area for the practice of the dental and medical professions.

- (d) Additional medical practitioners, no more than four, may be present at any one time only if the presence of these additional practitioners will not generate additional patient related traffic. The additional practitioners are only allowed to:

- (1) assist a practitioner in a specific surgical or diagnostic procedure; or
- (2) perform administrative work related to the treatment of patients on site the same day.

A written record must be kept for inspection by County enforcement staff identifying the physicians on site, and their schedules of seeing patients and performing administrative work.

The applicant will employ one part time general dentist to assist in her practice. Two dental hygienists, one dental assistant and an office manager/receptionist will assist in specific dental procedures and perform administrative duties. No more than two additional medical practitioners and associated staff will occupy leased space on the building's second floor. The number of medical practitioners and staff will be limited by

the number of available parking spaces attributed to the second floor after taking into account the number of patient visits per day and parking spaces utilized by the first floor and two (2) lab technicians. In terms of parking spaces, the first floor and lab will use a maximum of 11 parking spaces for the 3 patients per hour, the 2 medical practitioners that may be on site at any one time, the 4 staff and 2 lab technicians. Therefore, 7 parking spaces remain available for use by no more than 2 medical practitioners and associated staff who would lease the second floor. To date, the applicant has not determined who the medical practitioners would be on the second floor.

A written record identifying the physicians on site, and their schedules of seeing patients and performing administrative work will be maintained by the office managers.

- (e) The Board may limit hours of operation, number of practitioners and employees, and the number, character and extent of accessory services.

The applicant states that the occupancy of the proposed dental clinic, by not more than four practitioners, is appropriate for the location of the proposed clinic. The accessory services proposed are limited to the laboratory services that will not increase the number of patients being treated at the proposed facility.

- (f) Hours of operation for any accessory service that is part of the clinic, including a laboratory or pharmacy for use by patients of medical practitioners in the clinic, must be no earlier and no later than those of medical practitioners in the clinic.

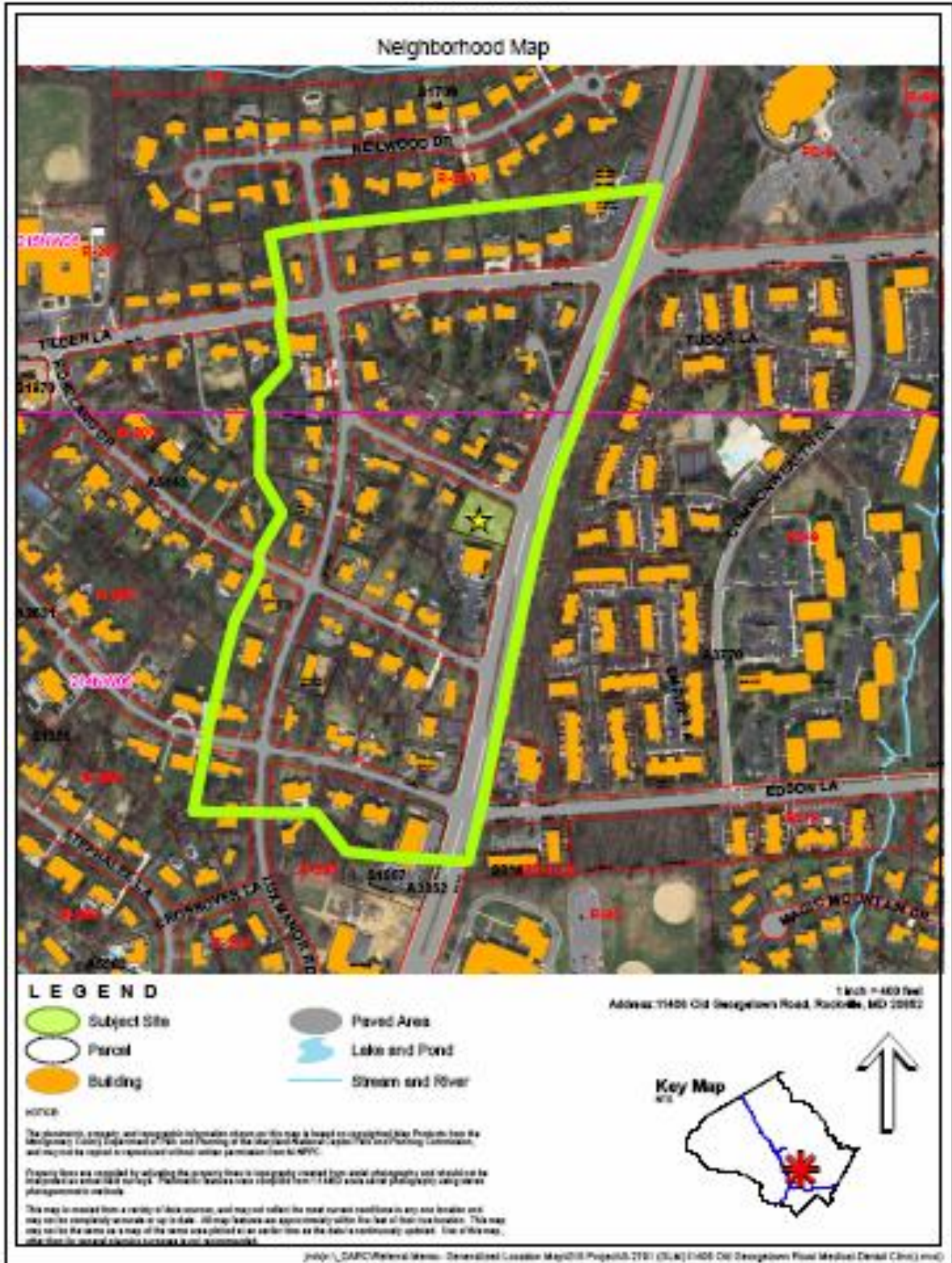
If approved, the laboratory will only operate during the same hours as the proposed dental clinic, Monday through Friday from 8:00 a.m. to 6:00 p.m. and Saturday from 9:00 a.m. to 6:00 p.m.

CONCLUSION

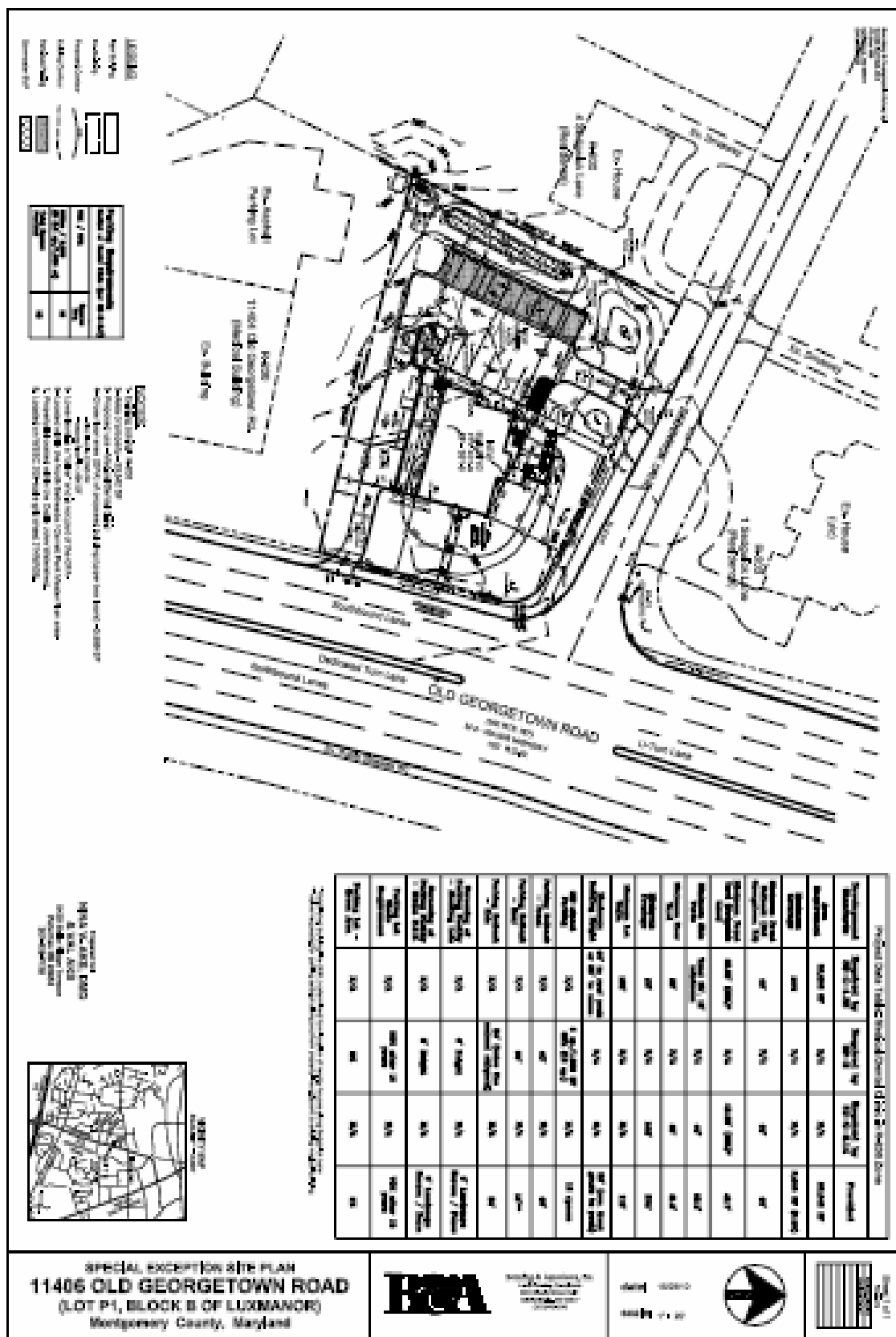
Based on the foregoing analysis, staff recommends denial of the application.

Attachments

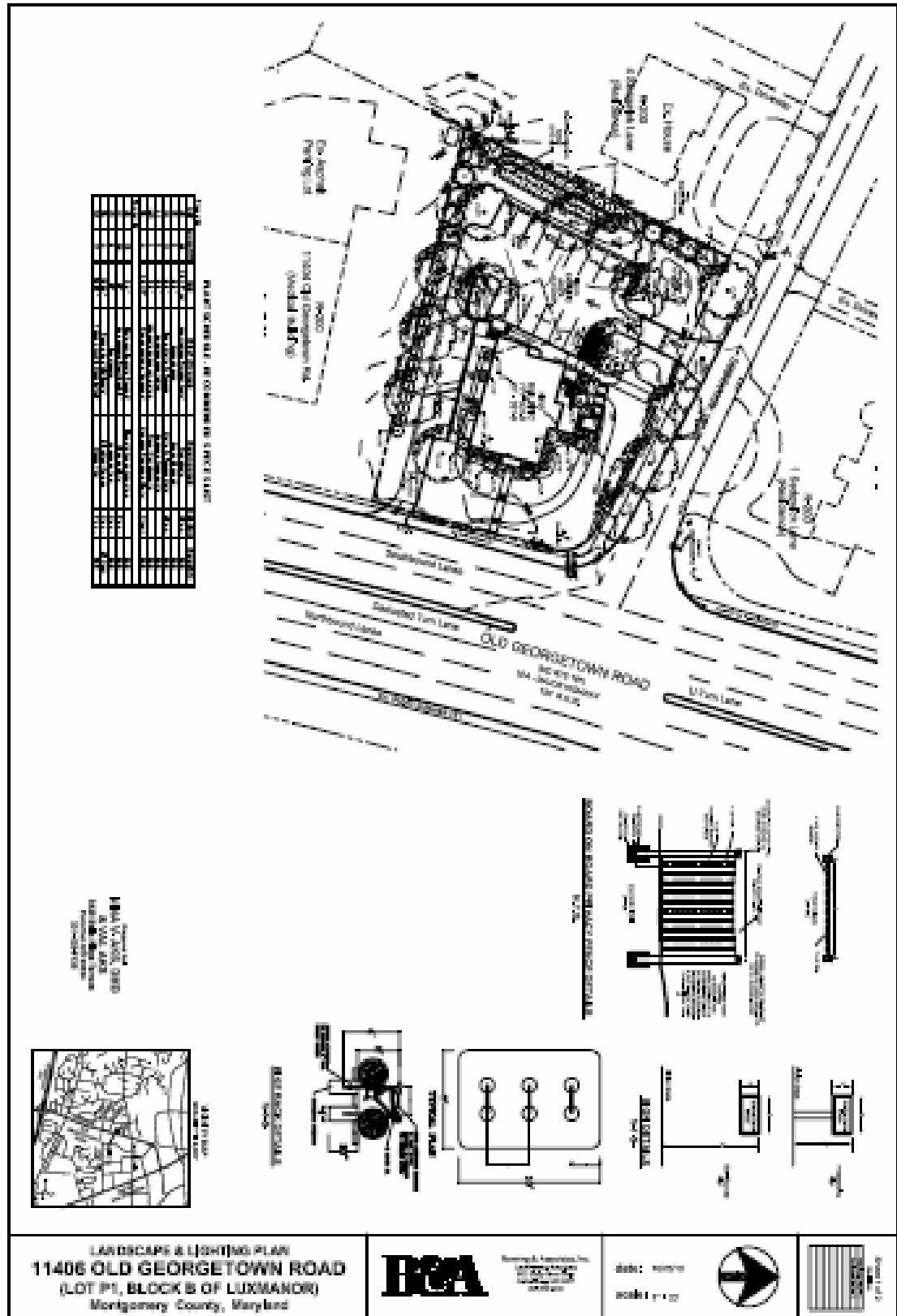
1. Neighborhood map
2. Revised Site plan for special exception
3. Revised Landscape and lighting plan
4. Building elevations
5. Table of information for medical office buildings
6. Master Plan memo
7. Master Plan p. 37-38, and p. 250-251
8. Transportation planning memo
9. Environmental planning memo
10. Subdivision memo
11. Letters in opposition
12. Letter of approval



ATTACHMENT 2



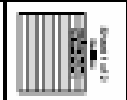
ATTACHMENT 3



LANDSCAPE & LIGHTING PLAN
 11406 OLD GEORGETOWN ROAD
 (LOT P1, BLOCK 5 OF LUXMANSOR)
 Montgomery County, Maryland

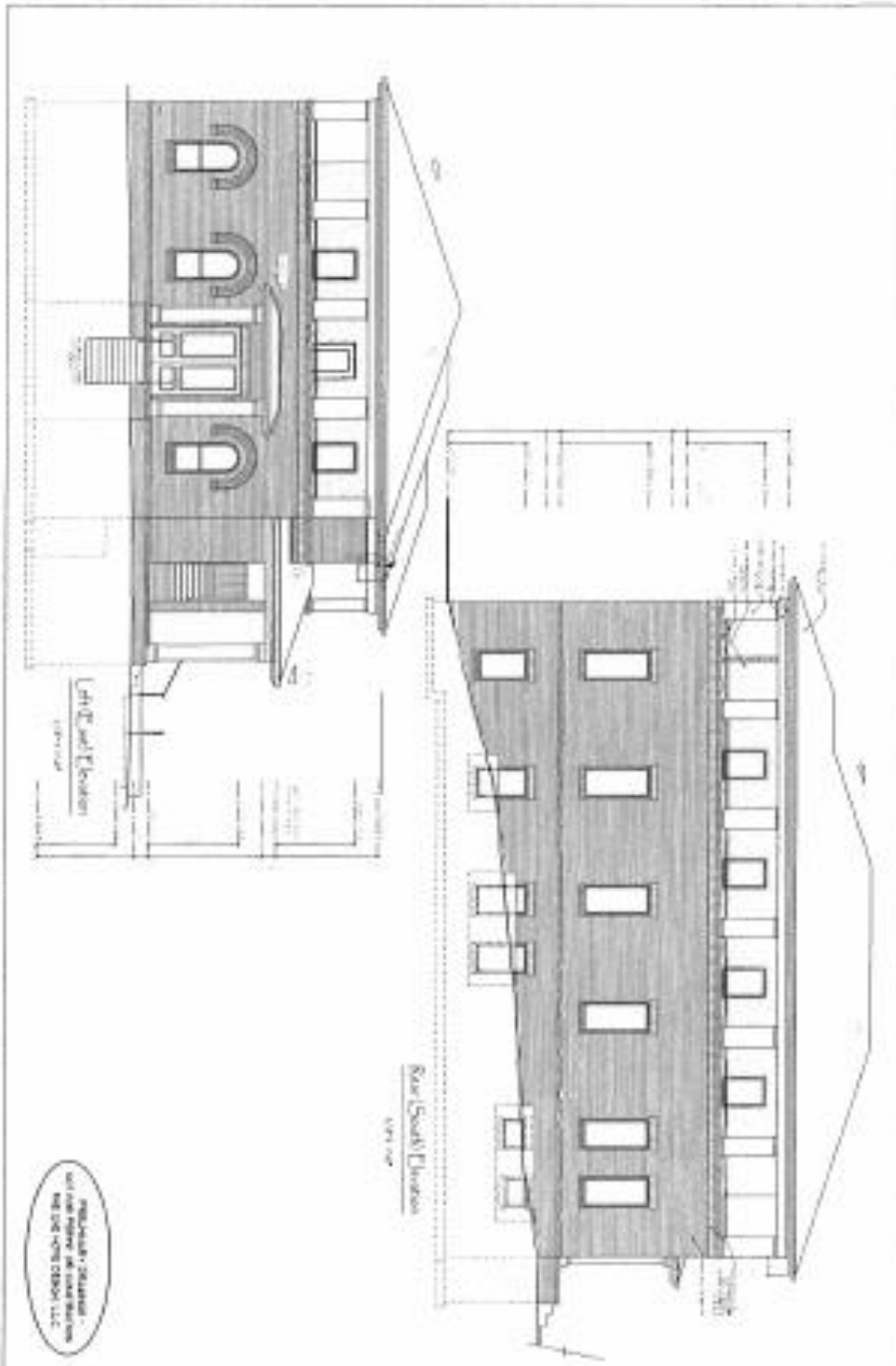


date: 10/10/18
 scale: 1" = 10'



ATTACHMENT 4





Architect - Designer
 and/or Engineer or Land Surveyor
 Not Valid Without Professional Seal

A-2	Prepared and submitted for Nina and Val Aka 1700 Oakwood Drive, Suite 400 Lakewood, CO 80401	Rear & Left Elevations	NYMA <small>ARCHITECTURAL</small> <small>1000 14th Street, Suite 1000 Denver, CO 80202</small>
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ATTACHMENT 5

MEDICAL OFFICE BUILDINGS WITHIN 1-MILE RADIUS OF 11406 OLD GEORGETOWN RD

Building Address	Building Name	Building Class	City	Zip	Remainable Building Area
11210 Old Georgetown Rd	Old Georgetown Medical Bldg	B	Rockville	20852	17,700
11404 Old Georgetown Rd	Man-Ar Medical Center	C	Rockville	20852	11,861
11510 Old Georgetown Rd	Tilden Lane Medical Bldg	B	Rockville	20852	2,762
6000 Executive Blvd	Washington Science Center	A	Rockville	20852	124,388
6111 Executive Blvd	Kaiser Permanente	C	Rockville	20852	31,893
5800-5952 Hubbard Dr	Georgetowne Park	B	Rockville	20852	67,000
6200-6288 Monroese Rd	Monroese Professional Park	B	Rockville	20852	31,600
5525 Randolph Rd	-	C	Rockville	20852	4,000
11119 Rockville Pike	White Flint Professional Bldg	C	Rockville	20852	46,800
11125 Rockville Pike	North Bethesda Medical Park	C	North Bethesda	20885	24,000
11200 Rockville Pike	CR Bldg	A	Rockville	20852	125,000
11400 Rockville Pike	Rockwall 1	B	Rockville	20852	161,164
Total					730,167

Source: CoStar Real Property Database; ReferenceUSA Business Listing Database; Maryland Department of Assessment & Taxation

January 9, 2012

Memorandum

To: Carlton Gilbert
Montgomery County Planning Department

From: N’kosi Yearwood
Montgomery County Planning Department

Re: Special Exception
S-2791-Dental Clinic
11406 Old Georgetown Road

Staff Recommendation: Denial

The proposed special exception is not consistent with the recommendations of the Approved and Adopted (1992) North Bethesda Garrett Park Master Plan and does not meet Section 59-G- 1.21 (3) and Section 59-G-1.21 (7) of the Zoning Ordinance.

Background

Dr. Nina Aks and Val Aks propose to operate a dental clinic at 11406 Old Georgetown Road in North Bethesda. The property is located at the southwestern intersection of Old Georgetown Road and Sedgwick Lane with access to the property from Sedgwick Lane. The property is 23, 642 square feet in size, and is in the R-200 zone. The existing single-family residential dwelling will be replaced with a new building, approximately 3,589 square feet, which will accommodate the proposed clinic with 18 parking spaces.

Master Plan Recommendations

The proposed dental clinic is located within the 1992 North Bethesda/Garrett Park Master Plan. The Master Plan confirmed the R-200 (Single-family residential zone) for properties west of Old Georgetown Road, between Tilden Lane and Poindexter Lane. An objective of the Master Plan is to “protect and reinforce the integrity of existing residential neighborhoods” (p.33).

No specific recommendations are made in the Plan for the subject property. The Master Plan, however, highlights the property at the southwest quadrant at Poindexter Lane and Old Georgetown Road (Lots 4 and 5, Block D). It states that the property was subject to a rezoning request to the Office Moderate Intensity (OM) zone in 1988. The Master Plan confirmed the R-200 zone for this property (p.79).

Riley House/Uncle Tom's Cabin, now called Josiah Henson Special Park, is located at 11420 Old Georgetown Road. The Master Plan highlights this historic property and notes that it is listed on the County's Master Plan for Historic Preservation.

The Master Plan supports special exception "...uses that contribute to the housing objectives of this Plan. In general, the Plan endorses meeting special population needs through provision of elderly housing and group homes that are compatible with nearby land uses" (p.38). Special exceptions that contribute to service objectives of the Plan are supported, such child daycare facilities and nursing homes (p.38).

The Master Plan establishes several recommendations for special exceptions; identifies issues with large medical facilities; and creates green corridors for major corridors in the Plan area.

Medical Clinic

The Master Plan identifies large medical facilities as an issue in North Bethesda. It states that "recent actions by the Montgomery County Council would now prohibit large medical complexes such as those previously allowed in North Bethesda-Garrett Park. Current regulations now limit medical clinics in residential zones to four doctors, while the cumulative effect provision allows consideration of whether there would be a negative impact from allowing an additional provider in a particular use category that already has several existing providers" (p.37). Since the adoption of the Plan, the standards for a medical and dental clinic have been furthered modified. The proposed special exception is limited to four medical practitioners.

Special Exceptions

The Master Plan establishes several standards when reviewing special exceptions in North Bethesda with the goal to "protect residential areas, while also attempting to meet important social needs" (p.37-38). The special exception standards are the following:

1. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors.

Because sites along these corridors have better visibility for business uses, they are more vulnerable to over-concentration of such uses. Of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning. It is also important to minimize uses that degrade roadway safety and capacity by creating too many access points and conflicting turning movements (p.38).

2. Avoid over-concentration of commercial service or office-type special exception uses in residential communities.

These include funeral parlors, horticultural nurseries, veterinary clinics, medical or dental clinics, medical or professional offices, and philanthropic organizations. The Plan does

not discourage home occupations that meet Zoning Ordinance criteria. The most vulnerable areas for over-concentration are near employment centers and along major highways.

3. Protect major highway corridors and residential communities from incompatible design of special exception uses.

In the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance.

Any modification or addition to an existing building to accommodate a special exception should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures. Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear parking is not available, front yard parking should be allowed only if it can be comprehensively landscaped and screened (p.38).

The proposed dental clinic is located along Old Georgetown Road (MD 187), which is a classified as a major highway with a minimum right-of-way of 120 feet. There are several other approved special exceptions in the neighborhood, especially along Old Georgetown Road between Poindexter Lane and Tilden Lane.

There are 11 properties that front the western portion of Old Georgetown Road between Poindexter Lane and Tilden Lane. Three properties have approved special exceptions; two properties have special exceptions that are no longer in use; two properties have a public use, and two properties are religious/institutional uses.

The proposed dental clinic would add a fourth special exception along this segment of Old Georgetown Road. This is contrary to the direction established in the Master Plan. A dental clinic is specifically identified in the Master Plan as a use that is not appropriate for a major corridor in the Plan area.

The Master Plan states that “of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning. It is also important to minimize uses that degrade roadway safety and capacity by creating too many access points and conflicting turning movements” (p.38). Further, locating another special exception within this area, with three other approved special exceptions, does begin to change the character of the neighborhood along Old Georgetown Road.

Existing Special Exceptions

At the south-western intersection of Poindexter Lane and Old Georgetown Road is an approved medical and dental clinic (S-1887). Approved in 1992, the special exception is limited to 18 employees, including four practitioners, and 50 parking spaces. The property is 58, 932 square

feet property, consisting of two parcels. There are two buildings associated with this special exception, each at 5,000 square feet.

Adjacent to the proposed special exception is another medical and dental clinic special exception (CBA-2923). Approved in 1970, this 1.37 acres special exception is limited to 15 doctors with 60 parking spaces in a 12,030 square foot building.

At the northwestern intersection of Old Georgetown Road and Tilden Lane is another special exception medical clinic (S-606). Approved in 1978, this use is limited to a maximum of nine physicians, and it is 1.57 acres in size.

Prior Special Exceptions

Between Tilden Lane and Poindexter Lane, there are two properties with prior special exceptions. The property located at the southwestern intersection of Tilden Lane and Old Georgetown Road was subject to a special exceptions (S-1189) and (BAS 301), located at northwestern intersection of Poindexter Lane and Old Georgetown Road, have been terminated.

Public and Institutional Use

Josiah Henson Special Park, a facility owned by Montgomery County Parks Department, consists of two properties located at 11420 and 11410 Old Georgetown Road. Aish Hatorah of Washington, a religious institution with Alef Bet Montessori School, is located at the southwest intersection of Tilden Lane and Old Georgetown Road. The Jewish Rockville Outreach Center at 11304 Old Georgetown Road is located between Roseland Drive and Poindexter Lane. This Center is south of the proposed special exception. These are permitted use in the R-200 zone.

Green Corridors

Old Georgetown Road is identified in the Master Plan as a Green Corridor. The Green Corridors policy is intended to address “the visual effects of roadways and abutting properties. The Green Corridors policy is recommended to protect and enhance the residential character of the Planning Area” (p.250).

The Master Plan recommends that the Board of Appeals adhere to the following guidelines for special exceptions:

- Require screening for parking, even when less than six parking spaces are involved.
- Retain green space, particularly when it provides trees that screen buildings.
- Screen existing buildings with plant material (p.251).

The applicant’s landscape plan illustrates several trees along the western and southern portion of the parking area as well as street trees along Sedwick Lane.

Special Exception Findings

Section 59-G.1.21 (3) of the Zoning Ordinance establishes the master plan findings for a special exception. This finding state:

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 first land use objective of the Master Plan is to "protect and reinforce the integrity of existing residential neighborhoods" (p.33). Further, the Master Plan recommends that along major corridors, such as Old Georgetown Road, concentrations of special exceptions uses should be avoided, especially those that are office or commercial in nature. There are three approved special exception medical clinics, within close proximity to the proposed use including one that is adjacent to the proposed site. Adding another use that is specifically noted in the Master Plan will contribute towards concentrating medical special exceptions in the subject area.

Section 59-G.1.21 (7) of the Ordinance establishes the criteria for evaluating how a proposed special exception will alter a one-family residential area. It states:

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 plan do not alter the nature of an area.

The proposed special exception will increase the number and intensity of special exceptions in the area between Poindexter Lane and Tilden Lane within the residential neighborhood. Two medical special exceptions that are adjacent to each other, with all the elements that are inherent with the use, will alter the residential nature of the area.

ATTACHMENT 7

D. MODERATELY PRICED DWELLING UNITS

When consulting this Plan, it is important to note that on any given property, the residential densities and allowable types of dwelling units shown may be modified by the requirements of the Montgomery County Moderately Priced Dwelling Unit (MPDU) Ordinance. This ordinance is designed to ensure that new development includes some housing that is affordable by households of modest means. It applies to any residential development of fifty or more dwelling units that is constructed in any residential zone with a minimum lot size of a half-acre or less or in any planned development, mixed-use zone.

A portion of the units in any such development must be MPDUs. The prices of such units are controlled, and buyers or renters are subject to limitations on maximum income. The required number of MPDUs is based on the total number of dwelling units approved for the development. Effective in early 1989, the percentage ranges from 12.5 percent to 15 percent of the total number of dwelling units and is dependent on the level of density increase achieved on the site in question.

This density increase, or "MPDU bonus," is allowed as compensation for requiring some below-market-rate housing. The bonus may be no more than 22 percent above the normal density of the zone, according to the optional MPDU development standards in the zoning ordinance. In some zones, these standards also provide for smaller lot sizes and dwelling types than would be allowed otherwise. For example, the density of a subdivision in the R-200 Zone is normally 2 units per acre, the minimum lot size is 20,000 square feet, and only one-family, detached houses are permitted. In a subdivision developed according to MPDU standards, the maximum density may be as much as 2.44 units per acre, the lot size for a detached house may be as small as 6,000 square feet, and some units may be townhouses or other types of attached dwelling units.

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E. SPECIAL EXCEPTIONS

This Plan endorses guidelines for the location of special exception land uses in residential areas. Special exception uses, as identified in the Montgomery County Zoning Ordinance, may be approved by the Board of Appeals for single-family zones if they are found to meet the compatibility standards and general conditions set forth in the Ordinance. The Ordinance provides that special exceptions may be denied by the Board of Appeals where an excessive concentration exists in a particular residential area or where they are inconsistent with Master Plan recommendations.

Recent actions by the Montgomery County Council would now prohibit large medical complexes such as those previously allowed in North Bethesda-Garrett Park. Current regulations now limit medical clinics in residential zones to four doctors, while the cumulative effect provision allows consideration of whether there would be a negative impact from allowing an additional provider in a particular use category that already has several existing providers. Home occupations with no more than one employee are a permitted use in residential neighborhoods; more than one employee requires a special exception.

This Plan provides the following guidelines to protect residential areas, while also



attempting to meet important social needs.

1. *Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors.*

Because sites along these corridors have better visibility for business uses, they are more vulnerable to over-concentration of such uses. Of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning. It is also important to minimize uses that degrade roadway safety and capacity by creating too many access points and conflicting turning movements.

2. *Avoid over-concentration of commercial service or office-type special exception uses in residential communities.*

These include funeral parlors, horticultural nurseries, veterinary clinics, medical or dental clinics, medical or professional offices, and philanthropic organizations. The Plan does not discourage home occupations that meet Zoning Ordinance criteria. The most vulnerable areas for over-concentration are near employment centers and along major highways.

3. *Protect major highway corridors and residential communities from incompatible design of special exception uses.*

In the design and review of special exceptions, the following guidelines should be followed, in addition to those stated for special exception uses in the Zoning Ordinance.

- a. *Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures.*
- b. *Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be comprehensively landscaped and screened.*

4. *Support special exception uses that contribute to the housing objectives of this Plan.*

In general, the Plan endorses meeting special population needs through provision of elderly housing and group homes that are compatible with nearby land uses.

5. *Support special exception uses that contribute to the service objectives of the Plan.*

The needs and objectives related to child day care and the elderly are discussed in the Community Facilities Chapter. In general, the Plan endorses provision of child day care, group homes, elder day care, and nursing homes.



8.3 GREENWAYS

Greenways are corridors of open space that link people, parks, and natural areas. The opportunity exists in North Bethesda-Garrett Park to delineate a network of such corridors. The proposed system includes bikeways and sidewalks and links natural areas, residential areas, commercial and employment centers, and public facilities. The system builds upon the stream valley park system, the recommendations of the 1978 Master Plan of Bikeways, existing streets, and existing right-of-way to provide an interconnected system of greenways and trails within the planning area and connecting to a regional system.

The Rock Creek hiker-biker trail winds through the Rock Creek Regional Park on the eastern side of the planning area, and portions of the trail are within the planning area boundaries. The Waverly-Schulykill connector was recently completed, providing a trail access from the Town of Garrett Park and the Rock Creek hiker-biker trail. The Waverly-Schulykill connector also provides access to the MARC train station in Garrett Park.

The Montrose Parkway right-of-way is a linear greenway that connects a number of County parks, namely the Cabin John, Old Farm and Rock Creek stream valleys parks, as well as Matthew Henson State Park. This linear greenway would be a substantial addition to the County's open space. This Plan recommends that a significant portion of the right-of-way be preserved as a greenway.

The greenways system proposed by this Plan, which includes both bikeway and sidewalk recommendations, can be found in the Transportation chapter.

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8.4 GREEN CORRIDORS

To ensure the identity and integrity of residential areas along major roadways, and to strengthen community identity by creating attractive transportation corridors, the Plan proposes a Green Corridors policy that addresses the visual effects of roadways and adjoining properties. The Green Corridors policy is recommended to protect and enhance the residential character of the Planned Area. The policy applies to the following roadways, which differ widely from one another in character:

Old Georgetown Road	Twinbrook Parkway
Rockville Pike	Parklawn Road
Randolph Road	Executive Boulevard
Montrose Road	Strathmore Avenue
Democracy Boulevard	Edson Lane
Tuckerman Lane	Greenvenor Lane

The following is the Green Corridors policy for the North Bethesda-Garrett Park Planning Area.

1. Maintain and enhance planting of vegetation along roadsides and in medians of major highway corridors.

Design guidelines include: placing a landscaped buffer between the curb and relocated sidewalks, placing trees in medians and along curbs, screening of front yard parking, and relocating utility poles to allow for optimum tree planting and sidewalks. Visibility for highway safety must also be considered. Protection and enhancement projects will require coordination between the Maryland State Highway Administration and the Montgomery County Department of Transportation, as well as local property owners and civic associations.
2. The Board of Appeals should require full adherence to the following guidelines for special exceptions in Green Corridors.
 - Require screening for parking, even when less than six parking spaces are involved.
 - Retain green space, particularly when it provides trees that screen buildings.
 - Screen existing buildings with plant material.
 - Additions to existing buildings should be compatible with the existing residential architecture and adjoining neighborhoods. Visibility of buildings to residents of nearby communities should be taken into account. Additions should be as unobtrusive as possible, and should be landscaped to provide screening.

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3.5 BILLBOARDS

In 1986 the District Council enacted legislation that prohibits off-site commercial advertising within the County Zoning Ordinance. Text Amendment 86007 was enacted by the District Council on July 29, 1986.

Existing billboards in the planning area—for example, on Randolph Road—as well as in the rest of the County, are all illegal under the present Zoning Ordinance. These billboards pose significant urban design and enforcement problems. They violate Master Plan and Sector Plan objectives for attractive design and appropriate signage to identify businesses or to provide necessary directions for motorists. Billboards are a form of visual pollution; they are incompatible with the existing or planned character of development in Montgomery County, especially within highly developed down-County areas such as North Bethesda-Garrett Park. This Plan recommends enforcement of the 1986 billboard law to have existing billboards removed or phased out expeditiously.



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

January 13, 2012

MEMORANDUM

TO: Carlton Gilbert, Planner Coordinator
Area 2 Planning Division

VIA: Steve Findley, Acting I-270 Corridor Supervisor
Area 2 Planning Division

FROM: Ed Axler, Transportation Planner Coordinator
Area 2 Planning Division

SUBJECT: Board of Appeals Case S-2791
Nina and Val Aks' Medical/Dental Clinic
11406 Old Georgetown Road, Rockville
North Bethesda Policy Area

This memorandum is Area 2 transportation planning staff's Adequate Public Facilities (APF) review of the subject Special Exception case for a proposed medical/dental clinic at the corner of Old Georgetown Road (MD 187) and Sedgwick Lane in North Bethesda.

TRANSPORTATION-RELATED RECOMMENDATIONS

Based on the revised plan, the site ingress from Sedgwick Lane does not satisfy the Zoning Ordinance section 59 G 2.14 (b) that requires Sedgwick Lane to be at least a primary residential street.

To satisfy the APF transportation-related requirements, the applicant must satisfy the following:

1. The applicant must satisfy the Zoning Ordinance section 59 G 2.14 (b) by upgrading Sedgwick Lane to a "primary residential road" standard No. 2003.10 along its property frontage as follows:
 - a. Dedicate additional 10 feet of right-of-way along the Sedgwick Lane property frontage to provide for 35 feet from the centerline for the entire distance along the property frontage.
 - b. Widen the paved travelway from existing 18 to 26 feet.
 - c. Work with the Montgomery County Department of Transportation (MCDOT) to install traffic control measures (signs, pavement markings, channelized, etc.) to discourage motorists from exiting the site onto Sedgwick Lane.

- d. Work with MCDOT to consider if parking can be safely accommodated. If parking is permitted, implement and install the necessary signs to control or prohibit parking on one or both sides of Sedgwick Lane along the property frontage.
 - e. Provide a 5-foot wide sidewalk along the entire property frontage of Sedgwick Lane.
2. The applicant must obtain Maryland State Highway Administration's (SHA) final approval for site egress onto southbound Old Georgetown Road prior to release of any building permit. This proposed egress point must have and be shown on the plan with an angled curb cut to preclude right turns from northbound Old Georgetown Road into the site.
 3. The applicant must satisfy the Policy Area Mobility Review (PAMR) test by mitigating four peak-hour trips prior to release of any building permit. The applicant has the option to satisfy the PAMR requirement by either paying MCDOT \$11,700 per PAMR trip (25% of 15 trips is 4 new trips) for a total of \$46,800 or upgrade missing or substandard segments of sidewalks and/or bikeways off-site within the North Bethesda Policy Area in accordance with the *Local Area Transportation Review (LATR) and PAMR Guidelines*.
 4. The applicant must enter into a Traffic Mitigation Agreement to implement an Employee Management Plan to assure that the number of vehicles arriving to and departing the site do not exceed 12 during any hour of the weekday morning peak period and 13 any hour of the evening peak period. This Traffic Mitigation Agreement would be enforced by the Montgomery County Department of Permitting Services.
 5. The applicant must provide a 6-foot wide sidewalk along its frontage on Old Georgetown Road. The sidewalk must be located behind a 6-foot wide tree panel in accordance with the Road Code's standard for major highways and tie the relocated sidewalk into the existing adjacent sidewalk.
 6. The applicant must provide at least one inverted-U bike rack near the main entrance of the clinic in a weather-protected area, if possible, and add more details about the bike racks on the revised plan.

DISCUSSION

Vehicular Access and On-Site Circulation

The revised plan shows on-site circulation and vehicular access via a one-way counter-clockwise circulation pattern. The site's ingress is proposed from Sedgwick Lane that is currently a substandard tertiary residential street with a paved travelway of 18 feet wide instead of the required 20 feet and no sidewalks. In addition, the applicant must work with MCDOT to install the appropriate traffic control measures (signs, pavement markings, channelized, etc.) to discourage motorists from exiting the site onto Sedgwick Lane.

The applicant must upgrade the vehicular ingress from Sedgwick Lane to a primary residential road standard No. 2003.10 to comply with Zoning Ordinance section 59 G 2.14 (b):

“The Property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds the access to be appropriate and not detrimental to the existing residential uses on the primary street.”

In the Montgomery County Zoning Ordinance section 59 A 2.1, access is defined as:

“A means of approach or admission.”

In the Montgomery County Code Chapter 49, “STREETS AND ROADS, ARTICLE III, ROAD DESIGN AND CONSTRUCTION CODE”, Subsection 49-28-01, “STANDARDS AND SPECIFICATIONS — REGULATIONS”, “Context Sensitive Road Design Standards”, a primary residential street is defined as follows:

“A road meant primarily for circulation in residential zones, although some through traffic is expected.”

In comparison, a tertiary residential street is defined as follows:

“A road meant (exclusively for access to abutting property in residential zones) to provide direct access to a residential development with 75 or fewer dwelling units. A Tertiary Residential Street must not be built unless the Planning Board allows its use when the Board approves a preliminary subdivision plan or site plan.”

As a minimum, the applicant must upgrade Sedgwick Lane to a primary residential street along the property frontage as described in Recommendation No. 1. However, upgrading Sedgwick Lane to a primary residential street cross-section along the property frontage does not change the recommendation in the 1992 *North Bethesda/Garrett Park Master Plan* to designate it as a primary residential street. Reclassification of roadways can only be done by County Council action through a master plan amendment.

The site’s egress is proposed as a new curb cut onto southbound Old Georgetown Road that is pending the Maryland State Highway Administration’s (SHA) final approval. SHA indicated on January 9, 2012, that:

“SHA has been shown a proposal for a right out to SB MD 187. This was presented at a meeting held with Dr. Aks, Mr. Orens, and the developer's engineer/traffic consultant. At that time, SHA stated that we would consider a right out, however, no further comment could be provided until SHA received an engineered plan submitted through the Park and Planning process. I assume that all zoning issues need to be worked out prior to an official submittal from the engineer.”

Master Plan Roadways and Bikeway

According to the 1992 *North Bethesda/Garrett Park Master Plan*, Old Georgetown Road is designated as a six-lane divided major highway, M-4, with a 120-foot right-of-way and no bikeway.

Two other master/sector-planned roadways are in the vicinity of the site. Tilden Lane is designated as a primary residential street, P-7, with 70-foot right-of-way in the *North Bethesda/Garrett Park Master Plan*. Nicholson Lane is designated as an arterial, A-69, with a 90-foot right-of-way in the 2010 *White*

Flint Sector Plan. A Class III bikeway is designated along both Tilden Lane and Nicholson Lane according to the *North Bethesda/Garrett Park Master Plan*.

Sedgwick Lane is not listed in the Master Plan. As discussed above, Sedgwick Lane is a substandard tertiary residential street with 50-foot wide of right-of-way.

Vehicular Circulation to and from the Site

Employees and patients traveling southbound on Old Georgetown Road can simply turn right onto Sedgwick Lane to ingress the site. Those traveling to the site from northbound Old Georgetown Road are prohibited from turning left onto Sedgwick Lane via a “No Left Turn” sign. Due to this left turn prohibition, the employees and patients traveling northbound on Old Georgetown Road must pass the Sedgwick Lane, make a U-turn at the next signalized intersection at Tilden Lane-Nicholson Lane, and then make a right turn onto Sedgwick Lane to reach the site.

The proposed clinic’s employees and patients may find other routes through the neighborhood on the west side of the Old Georgetown Road to reach their destination. Staff is not able to quantify how many trips will travel through the neighborhood streets to reach the site at the corner of Sedgwick Lane and Old Georgetown Road. However, it is possible that some of the traffic generated by the site will take the neighborhood streets on the west side of Old Georgetown Road to reach their destination.

The nearby local residential streets on the west side of Old Georgetown Road within the Luxmanor neighborhood are substandard tertiary residential streets. The local tertiary residential streets have less than the required 20-feet of paved roadway and no sidewalks. With no sidewalks and the narrow paved roadways, students walking to the three nearby schools or biking on these streets have no safe path to separate them from vehicles. MCDOT has installed speed humps and small traffic circles to slow down motorists along Luxmanor Road.

Available Transit Service and Pedestrian and Bicycle Facilities

Transit service is available via Ride-On route 26 that operates along Old Georgetown Road between the White Flint Metrorail Station and Montgomery Mall. Transit service is not available on Sedgwick Lane.

The applicant is providing a five-foot wide sidewalk with a green panel along Sedgwick Lane between Old Georgetown Road and the site vehicular ingress point and a four-foot wide lead-in sidewalk from Old Georgetown Road. The proposed sidewalk along Sedgwick Lane must be along the entire property frontage.

A five-foot wide sidewalk with no green panel buffer exists along Old Georgetown Road. The applicant must upgrade the Old Georgetown Road frontage by widening the sidewalk to six feet and relocating the sidewalk behind a six-foot green panel in accordance with the Road Code’s standard for the master-planned major highways.

The applicant proposed at least one inverted-U bike rack near the main entrance of the clinic, but more details are needed.

Adequate Public Facilities Transportation Test

The applicant maintains that an APF transportation test does not apply to this special exception because the property does not require subdivision. However, the APF test is required under County Code Section 8-31, “Requirements for timely adequate public facilities determination” as a future building permit under County Code Section 8.31. This Section directly references Section 50-35(k) that requires the APF procedures applied to subdivision cases and site plans. As a special exception use on a recorded lot, the feasibility of satisfying the APF test is determined during the special exception review in advance of issuance of a building permit. The APF test includes both the LATR test and PAMR test.

Local Area Transportation Review and Related On-Site Parking

The subject medical/dental clinic of 3,589 square feet is proposed to replace the existing single-family detached unit and have hours of operation from 8 a.m. to 6 p.m. The net number of new peak-hour trips within the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) is as follows:

Type of Land Use	Square Feet or No. of Units	Weekday Peak-Hour	
		Morning	Evening
Medical/Dental Clinic	3,589	8	15
Single-Family Detached Unit	One	1	1
Net Number of New Vehicular Trips		7	14

Trip-generation rates from the Institute of Transportation Engineers (ITE) *Trip Generation Manual* were used to determine the number of peak-hour trips generated by the proposed medical/dental clinic. However, the resultant number of site-generated trips above is lower than the potential number based on the proposed specific medical/dental practices on the site as specified below. From the operational perspective, the applicant proposed to the medical/dental clinic to operate with the following specific uses:

Floor	Type of Trips	Number of Persons	Weekday Peak-Hour Trips					
			Morning			Evening		
			In	Out	Total	In	Out	Total
Second	Two Other Practitioners & Staff & Patients	6	6	0	6	0	6	6
First	Dental Practitioners & Staff	6	6	0	6	0	6	6
	Patients	3	3	0	3	0	3	3
Cellar	Lab Technicians	2	2	0	2	0	2	2
Total Peak-Hour Trips		17	17	0	17	0	17	17

The applicant’s proposed operation is highly controlled to minimize the number of patients waiting to just one on the first floor and to restrict the second floor practitioners, their staff, and patients to six trips per hour. With a highly controlled operation, the applicant’s projection of 17 peak-hour trips is one less than 18 parking spaces required by the County Code. This operational control is needed with the proposed staffing on the first floor of a full-time dentist, a part-time dentist, two hygienists, a dental

assistant, and an office manager/receptionist, while on the two second-floor of two practitioners, four support staff, and their patients.

Alternatively, the applicant proposed that the number of parking spaces may be lower if based on the ITE *Parking Generation Manual*. The ITE Manual projects a lower average of 3.9 vehicles per 1,000 square feet where a medical/dental clinic of 3,589 square feet would need 12 parking spaces. However, the ITE projections do not reflect the applicant's intended on-site usage that is more intensive than a typical medical/dental office of equivalent square footage.

Using the ITE trip-generation rates or the specifically proposed medical/dental practices, the applicant is not required to prepare a traffic study to satisfy the LATR test because the proposed clinic generates less than 30 peak-hour trips within the weekday morning and evening peak periods.

Policy Area Mobility Review

The site is subject to PAMR mitigation requirement because the site is located within the North Bethesda Policy Area where new developments must mitigate 25% of its new peak-hour trips. Four new trips (25% of a net 14 new trips) must be mitigated prior to release of any building permit. According to the *LATR and PAMR Guidelines*, the applicant has the option of paying MCDOT \$11,700 per PAMR trip for a total of \$46,800 towards their PAMR mitigation or constructing missing or substandard segments of sidewalks and/or bikeways off-site within the North Bethesda Policy Area. Such off-site pedestrian improvements could include those associated with the nearby Josiah Henson Special Park.

Traffic and Parking Mitigation via an Employee Management Plan

The applicant proposed to enter into a Traffic Mitigation Agreement to implement an Employee Management Plan that would proactively control the number of persons entering and leaving the site to limit the maximum number of employees' trips to/from the site to 12 peak-hour trips during the weekday morning peak period and 13 peak-hour trips during the evening peak period.

These reduced vehicular trips would be one fewer than the 14 evening peak-hour trips projected using applicant's projections from the ITE trip-generation rates. Implementing the proposed Traffic Mitigation Agreement would assist in assuring that all motorists arriving and leaving the site could park on the site without overflowing onto the adjacent local street. However, the Employee Management Plan would not be credited with PAMR mitigation of the four new peak-hour trips because the applicant's PAMR calculations were based on the lower ITE trip-generation rates.

Conclusion

Based on the revised plan, the site ingress at Sedgwick Lane does not satisfy the Zoning Ordinance section 59 G 2.14 (b) that requires Sedgwick Lane to be at least a primary residential street unless the applicant satisfies the recommended conditions stated above.



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

MEMORANDUM

Date: January 6, 2012

To: Carlton Gilbert, Planner Coordinator
Area 2 Planning Division

From: Steve Findley, Planner Coordinator
Area 2 Planning Division

Subject: Board of Appeals Petition No. S-2791 (Medical Clinic)

No significant environmental concerns are associated with this Special Exception request.

Comments

- Because the size of the lot is less than 40,000 square feet and no champion trees are being affected, the Forest Conservation Law does not apply to this site.
- The site does not contain any forest, wetlands, stream buffers, steep slopes, 100-year floodplains or significant habitats that would be regulated under the Environmental Guidelines. It does not lie within a Special Protection Area.
- There is no evidence that this use will generate noise in excess of levels permitted under the noise ordinance.
- The site is served by WSSC with public water and sewer connections.
- Removal of the existing cherry trees along Sedgwick Lane is a significant aesthetic concern. If the Special Exception is approved, the landscape plan for this site should address appropriate replacement of these trees.



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

(REVISED)
MEMORANDUM

Date: May 25, 2011

To: Carlton Gilbert
Team 2 Division

From: Patrick Butler *P.B.*
Team 2 Division

Subject: Board of Appeals Petition No. S-2791 (Medical Clinic)

This is a revision of the memo dated January 31, 2011. The Applicant has provided sufficient evidence to prove the Subject Property qualifies for an exception to platting in accordance with Section 50-9(c) *Public Taking* (see revised Applicant Justification Statement). Therefore, a preliminary plan and subsequent plat will not be required.

Original comments below:

The Subject Property was recorded as Lot 1, Block B, of the Luxmanor Subdivision in January of 1935 according to record plat 520 (attached). Lot 1 is listed as 23,712 square feet in size on plat 520. According to drawings submitted as part of S-2791, the Subject Property is listed as 23,642 square feet in size, and tax maps confirm that Lot 1 is now Part of Lot 1.

Please explain the small difference in size, and provide justification for not having to re-plat the Subject Property.



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WRITER'S DIRECT DIAL

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NORMAN G. KNOPF

January 4, 2012

Via Email and Regular Mail

Carlton.Gilbert@mncppc-mc.org

Carlton Gilbert, Planner Coordinator
1-270 Coordination Team, Area 2 Planning Division
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: **Petition of Nina V. Aks, D.M.D., LLC and Nina and Val Aks
11406 Old Georgetown Road
Medical/Dental Clinic Special Exception Application S-2791**

Dear Carlton Gilbert:

Luxmanor Citizens Association and Luxmanor Is For Homes Not Clinics, an association comprised of adjacent, confronting and other nearby residents to the site, submit these comments on the **amended** Aks Application. The changes proposed by the amendments are relatively minor and do not mitigate the problems which have led the residents to rigorously oppose the clinic and the Planning Board Staff to recommend denial. In fact, as noted below, the changes make matters worse.

In our letter to the Planning Board of June 6, 2011 we set forth in detail the reasons for the residents' opposition. Our letter was submitted by the Staff as Attachment No. 13 to the Staff's June 16, 2011 staff report. The reasons set forth in that letter remain applicable to the amended application. Attached to this letter as Attachment A is a copy of our June 6, 2011 letter for your convenience.

1. Contrary to County Policies. The amended application is contrary to two important County public policies:

First, it is planning policy of the County to concentrate commercial activities within high density sector plan areas and not permit such activities to "leach" into neighboring residential communities by persons seeking lower land costs. The proposed clinic is located extremely close to the White Flint Sector Plan area. The proposed clinic is one block away from Tilden Lane. Tilden Lane is located diagonally across Old Georgetown Road from the White Flint Sector Plan area.

Second, approval is sought for 3 separate medical/dental offices, two of which are in the abstract, essentially “special exceptions in waiting”. Only the Aks office sets forth the details of its operations – dental clinic use, number of employees and patients, hours of operation, etc. The other two offices to be rented are silent as to even the specific use – e.g., dental versus some other medical specialty – as well as no information as to operations. This is inconsistent with the County policy and law, set forth in the ordinance governing special exceptions, that the specific use and all details of the operation of that use must be made known to the Board of Appeals so that the Board can properly evaluate the impact on the community, whether all conditions for approval have been satisfied and what conditions, if any, may need to be imposed.

2. Inconsistent with Master Plan. As discussed in detail in our prior letter, the North Bethesda Garrett Master Plan states – “Avoid excessive concentration of special exceptions and other non-residential land uses along major corridors.” Dental or medical clinics are expressly cited to be avoided for such overconcentration in “the most vulnerable areas,” those “near employment centers and along major highways”. (p.35).

The proposed clinic would be the 4th special exception clinic, and the 8th non-residential use on “consecutive properties situated the west side of Old Georgetown Road between the northwest corner of Tilden Lane and the southwest corner of Poindexter Lane:

- i. Special exception medical clinic (northwest corner of Tilden Lane)
- ii. Religious facility
- iii. Henson Historical site
- iv. Former residence purchased by the County and torn down to provide a bus turnaround for Henson historical site
- v. Residence
- vi. Special Exception medical clinic
- vii. Residence
- viii. Religious facility
- ix. Residence
- x. Special Exception medical clinic (southwest corner Tilden Lane)

3. No access from a primary street. The requirement of §59-G-2.14(b) of access from a primary street remains unmet by the amended application.

Applicants have thus dropped their plan to widen the portion of Sedgwick Lane that abuts their property and in so doing dropped its claim that such widening converted Sedgwick into a primary Road. Sedgwick Lane is 18 feet wide, making it the narrowest street in the Luxmanor community. The applicants do propose constructing a sidewalk on their property. This will not connect with any other sidewalk on Sedgwick and will result in destruction of three existing cherry trees, which the Montgomery County

arborist has inspected and concluded only one is in a condition that warrants removal. Both the State and the County have made it clear that Sedgwick is intended to be used solely to service the residences on that street. The State has prohibited left-hand turns from Old Georgetown Road onto Sedgwick specifically to prevent Sedgwick from being used as a through street. The County has placed an island at the west end of Sedgwick to reduce cut-through traffic and has posted a sign prohibiting a right turn onto Luxmanor Road from Tilden Lane during rush-hour to prevent cars from avoiding the light of Tilden and Old Georgetown by taking a right on Luxmanor and then a left on Sedgwick. Thus it is clear that the County and State view Sedgwick Lane as a road intended for the use of the residents on it and residents on Luxmanor Road, and not as a primary street for circulation.

The fact that the amended application proposed an exit only onto Old Georgetown Road does not provide “direct access” for ingress purposes as required by §59-G-2.14(b). (This assumes SHA would grant such an exit, which is far from certain. We understand SHA has agreed to consider this if and when an application is filed.)

Although an exit only to Old Georgetown Road is proposed, there is nothing in the applicant’s design that would effectively prevent patients also using the exit as an entrance. We note that the special exception medical clinic at the corner of Old Georgetown Road and Tilden Lane has an arrangement identical to the one the Applicants are proposing; that is, an exit on Old Georgetown Road and an entrance on Tilden, but in practice cars enter and exit from whichever one is most convenient to them, ignoring the exit and entrance only signs.

Whether the Applicants’ new proposal for access on Old Georgetown Road, is exit only or also used improperly for ingress, it will create new traffic safety problems on Old Georgetown Road. The exiting onto (or entrance from) Old Georgetown Road will occur just a short distance from where cars exit Sedgwick Lane and turn right (southbound). The Sedgwick Lane cars will thus be confronted with slower turning cars in that lane using the clinic driveway – a safety hazard.

The possibility of ingress from Old Georgetown will provide additional incentive for cars going northbound on Old Georgetown passing Sedgwick Lane (where a left hand turn is not permitted) to make an unsafe u-turn at the next intersection to head southbound and access the clinic either through Sedgwick Lane or the Old Georgetown access driveway. Even with the possible access from Old Georgetown, we believe most cars traveling from the south will seek to avoid making a u-turn on Old Georgetown but will cut through the Luxmanor community’s narrow roads with no sidewalks, such as Luxmanor Road, to reach Sedgwick Lane and enter from there.

Finally, creating an exit onto Old Georgetown Road exacerbates the adverse aesthetic impacts as it requires a driveway opening that cannot effectively be screened, allowing cars traveling on Old Georgetown Road to view the parked cars along the

clinic's driveway as well as view the adjacent existing special exception clinic's 60-car parking lot.

4. The dental laboratory is not a lawful special exception. The dental laboratory presumably is to be considered appropriate as a incidental or accessory use to the dental clinic. However, there is only 1 dental office that is proposed, with 2 more offices to be rented for uses that may be medical, not dental. It is unrealistic to assume that the Aks dental office alone will have sufficient work to keep 2 dental laboratory employees fully occupied. Obviously, that laboratory will be doing work for the dental clinics off-site, so that it no longer meets the code requirement for an accessory or incidental use. §59-A-2.1 ("use, accessory").

5. The number of parking spaces is insufficient. The amended application provides 17 regular parking spaces and 1 handicapped space. It is claimed this is all that is required based on the code requirement of 5 parking spaces per 1,000 sq. ft. Applicants fail to realize this is the minimum necessary and the Board of Appeals is charged with requiring more spaces where the minimum is insufficient and could result in overflow parking on narrow residential streets. §59-G-1.22. Parking spaces needed (conservatively estimated):

Dental Laboratory

2 Total – Dental Lab

Aks Dental Clinic

2	Dental Practitioners
2	Dental hygienists
1	Dental Assistant
1	Office Manager
2	Patients (1 for each dentist)
2	Patients (1 for each hygienist)
<u>2-4</u>	Patients (waiting for next appointment with dentist or hygienist)
12-14	Total Aks Clinic

Aks claims 30 patients a day over a 9 hour period (open from 8:00 a.m. to 6:00 p.m.) which comes to 3.3 patients per hour (assuming a one hour lunch). Statement of Operations, pp. 10-11. This will require four parking spaces for those patients. Ordinarily, there is a need for two spaces for each patient slot because one patient is in the waiting room while the previous patient is finishing up. As a result, the first floor alone will need 8 spaces for patients. The Applicants claim that this will not be the case here since there will be no overlap of patients because "Dr. Aks does not like to have

patients in the waiting room”. This implies that each patient will be finished with his or her dental work, out the door and out of the parking lot before the next hour’s patient arrives. This is contrary to the normal way medical practitioners schedule their patients.

Total: 14-16 spaces Aks clinic and dental lab.

Remaining spaces – 1-3 non-handicapped for 2 more offices. At least 8 spaces needed for those uses.

2	Medical practitioners (1 per office)
2	Staff (1 per practice)
<u>4</u>	Patients (1 with each practitioner, 1 waiting for each practitioner)
8	Total in addition to the 14-16 required by Aks and the dental lab

Minimum total spaces needed – 22-24 plus 1 handicapped.

Further, the above does not provide for space for delivery vehicles.

6. There is no valid basis for a setback waiver. Applicants seeks a setback waiver not because of any peculiarity of the property but merely because they seek to construct too large a medical office building on the property too small to accommodate the necessary parking. Further, it must be demonstrated that any waiver will not be inconsistent with accomplishing the objectives of a parking facility plan. §59-E-4.2, 4.3 and 4.5. A principal objective of requirements for parking facilities is to screen adjacent properties, and to provide screening from public roads. The parking setback waiver sought here results in exacerbating the already unaesthetic conditions caused by placing parking for the proposed clinic next to the 60-car parking lot of the existing adjacent special exception clinic which parking cannot be screened effectively from view from Old Georgetown Road due to the driveway opening.

7. Availability of suitable office space. The Staff Report of June 16, 2011 identified 12 office buildings with medical uses representing over 700,000 square feet of space within a one-mile radius. We had previously submitted to staff information regarding medical offices available for leasing in the existing Manor special exception building adjacent to the Aks site to the south. With this letter, we submit, as Attachment B, a document showing space available in the special exception medical office building one block to the north of the Aks site at 11510 Old Georgetown Road, and Attachment C, a notice of medical office space available for lease at 6000 Executive Boulevard, which is about 1/3 of a mile from the Aks site. Applicants failed to provide any meritorious explanation as to why this plethora of office space is not “suitable.”

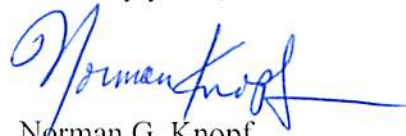
Françoise M. Carrier, Chair
Montgomery County Planning Board
June 6, 2011
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At one point, the applicants told community members that spaces were not suitable because they were too expensive. This gets to the heart of the reason applicants are seeking to build a clinic in a residential community. Land in a residential community is much cheaper than land in a commercial zone. This is not a valid grounds for granting a special exception. In fact, it defeats the goal of the Master Plan, which is to concentrate nonresidential uses in commercial areas and would give the applicants an unfair competitive advantage over other dentists who rent spaces in commercial areas. Nor do the applicants have any right under the Code to be an owner rather than a lessee of space since that is not a valid grounds for finding rental space to be "unsuitable."

8. Adverse impacts not mitigated by new design. Under the new design, the Applicants will plant some trees along the border with 4 Sedgwick Lane. This adjacent property is downhill from the Aks clinic. However, these trees will be no more than 6-8 feet high and will take 20-30 years before they are tall enough to screen the view of the special exception and its parking lot for the residents at 4 Sedgwick Lane, including from their second story bedroom. As a result, for the foreseeable future, they will be looking directly into a parking lot and at a large clinic building, thereby having a major negative effect on their property. The confronting residents at 1 and 3 Sedgwick Lane will also suffer substantially. With the approval of the parking area for the Josiah Henson site adjacent to their homes, they will look out their rear windows at a parking lot, and since there will be nothing but small trees and bushes along the Sedgwick Lane border of the Applicants' lot, they will be looking out their front windows at a parking lot as well.

For the above reasons, as well as those set forth in our June 6, 2011 letter, we urge the staff to re-affirm its recommendation of **DENIAL**.

Sincerely yours,



Norman G. Knopf

cc: Dan Press

NORMAN G. KNOPF

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June 6, 2011

Via Email and Regular Mail
MCP-Chair@mnccppc-mc.org

Françoise M. Carrier, Chair
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Petition of Nina V. Aks, D.M.D., LLC and Nina and Val Aks
11406 Old Georgetown Road
Medical/Dental Clinic Special Exception Application S-2791

Dear Chair Carrier and Members of the Board:

Luxmanor Citizens Association and Luxmanor Is For Homes Not Clinics, an association comprised of adjacent, confronting and other nearby residents to the site, request that the Board recommend **DENIAL**. The reasons are summarized below and will be addressed in more detail at the public hearing.

I. THE MEDICAL CLINIC SPECIAL EXCEPTION IS INCONSISTENT WITH THE MASTER PLAN. §59-G-1.21(a)(3).

1. Seven of the eleven lots on the west side of Old Georgetown Road, from Tilden Lane to Poindexter Lane, are currently occupied by non-residential uses, including three medical/dental clinics. This will make it 8 out of 11.

2. The North Bethesda Garrett Park Master Plan states:

p.38 – “Avoid excessive concentration of special exceptions and other non-residential land uses along major corridors.”

p.38 – “Of particular concern are office uses, which should be discouraged because they are better located in areas with commercial zoning.”

p.38 – “Avoid overconcentration of...office-type special exception uses in residential communities. These include...medical or dental clinics.... The most vulnerable areas for over-concentration are near employment centers and along major highways.”

ATTACHMENT A

3. This area of Old Georgetown Road is extremely close to the White Flint Sector Plan area, literally diagonally across Old Georgetown Road from Tilden Lane. As a matter of good planning and public policy, such use should be in the Sector Plan area and not permitted to "leach" into neighboring residential communities.

II. OVERCONCENTRATION OF CLINIC SPECIAL EXCEPTIONS AFFECTING THE AREA ADVERSELY §59-G-1.21(a)(7).

1. The clinic will be located adjacent to an existing clinic special exception with 15 practitioners and 60 parking spaces; one block north there is another clinic special exception, with 8 separate professional suites, and 50 parking spaces; and one block to the south, there is another clinic special exception with 4 offices and 63 parking spaces. Aesthetically yet another clinic special exception would adversely affect the character of the area as well as the aesthetics and traffic. (See also, §59-G-1.21(a)(4)).

III. SUITABLE OFFICE SPACE IS AVAILABLE PRECLUDING THE SPECIAL EXCEPTION. §59-G-2.14(c).

1. The requirement that suitable office space is "unavailable in either the nearest commercial zone or nearest special exception medical clinic office building..." is not met.

2. Suitable space is available, for example, in the special exception adjacent clinic and the nearest commercial zone (White Flint Sector Plan area).

IV. ROAD ACCESS REQUIREMENT IS NOT MET §59-G-2.14(b).

1. A clinic is required to have direct access from a street having more than one through travel lane in each direction. Where the property is located on the corner lot, access may be from such a wide street, via an adjoining primary street. The Aks site is on the corner of Old Georgetown Road and Sedgwick Lane.

2. Sedgwick Lane is not a primary street, but merely 18' wide. The applicant proposes to widen Sedgwick between Old Georgetown and its driveway to meet primary street standards. This does not make Sedgwick a primary street, as it remains substandard from the applicant's driveway to the next cross street, Luxmanor. Local streets within this area, with the exception of Tilden Lane, are below primary-street standards.

3. Making a segment of Sedgwick Lane a primary road requires the removal of cherry trees aligning the street.

4. The rest of Sedgwick Lane remains a substandard street, much like the other streets in the area. The streets have no sidewalks, are so narrow that when one car is parked there is no room for two-lane traffic.

V. THE CLINIC REDUCES THE SAFETY OF VEHICULAR AND PEDESTRIAN TRAFFIC IN VIOLATION OF §59-G-1.21(a)(9)(C)

1. The requirement that the clinic "will not reduce the safety of vehicular or pedestrian traffic" is not met.

2. There is no left turn from Old Georgetown Road into Sedgwick Lane for cars traveling north. Cars will travel further north to make a u-turn on Old Georgetown (an unsafe maneuver) or will cut through the Luxmanor community, such as on Luxmanor Road, to turn onto Sedgwick. As noted, Luxmanor streets are narrow and have no sidewalks. Children bike and walk in the streets to the nearby Luxmanor Elementary School; Orthodox Jews walk in the streets on Friday evening and Saturday to the Aish Center for religious services. As noted, one parked car prevents two-way traffic.

VI. THE NUMBER OF PARKING SPACES IS INSUFFICIENT AND NO ROOM FOR ADDITIONAL SPACES

1. The applicant proposes 18 parking spaces, 17 + 1 handicapped, requiring a setback waiver for 4 of those spaces. There is no basis for the setback waiver, other than too much development on the site.

2. Even assuming the waiver, the 18 spaces are woefully insufficient and will result in parking on the neighboring narrow streets creating safety and traffic activity concerns (§59-G-1.21(a)(4) & (5); §59-G-1.21(a)(9)(C).

Spaces	18 total (including 1 handicapped)
<u>First Floor</u>	
2 (cellar)	Laboratory Employees
2	First Floor Dentists
4	Patients in 4 operating rooms
4	Patients waiting
2	Dental hygienists
<u>2</u>	Additional Employees
14	Total First Floor and Lab – 14 of 18 spaces

Second Floor

2	Medical practitioners
<u>2</u>	Staff
18	

All Spaces Used; But:

- Insufficient parking for additional staff
- No parking for 2nd floor patients
- No parking spaces for emergency patients
- No parking spaces for deliveries
- Insufficient parking for approximately 20 person conferences proposed in application

3. Note: the clinic special exception at 11210 Old Georgetown (at the corner of Poindexter) provides for 4 practitioners and requires 50 parking spaces.

VII. THE CLINIC WILL BE DETRIMENTAL TO THE USE AND PEACEFUL ENJOYMENT OF SURROUNDING PROPERTIES. §59-G-1.21(a)(5)

1. The residents of the house on the opposite side of Sedgwick Lane, confronting this site, will no longer look at the single family house which will be torn down, but at the large building containing the clinic, its driveway and parking lot as well as will experience the noise of traffic and lights from the headlights.

2. The property adjoining the clinic, the Sedgwick Lane home behind the site, will similarly no longer look at the single family house which will be torn down, but at a large building containing the clinic with a view of its 18 parking spaces, adding to the existing view of the parking lot of the clinic adjacent to the Aks site. Although the Aks parking is to be "screened" by a fence and plantings, this does not screen the view from the second story of that home. Similarly, noise from the driveway and parking lot will be heard by the homeowner.

We respectfully request that the Board urge **DENIAL** in as strong terms as possible.

Sincerely yours,

Norman G. Knopf

cc: Dan Press
Carlton Gilbert, MNCPPC-MC

11510 Old Georgetown Road

Rockville, MD 20852 - North Bethesda/Potomac Submarket

Property Type:	Office	Smallest Space:	1,250 SF
Sub Type:	-	Largest Space:	2,500 SF
Status:	Existing	Total Space Avail:	2,500 SF
Year Built:	-	Rent/SF/Yr:	\$25.00

Stories: 1
Typical Floor: 2,762 SF
Building Size: 2,762 SF

Parking: Free Surface spaces are available

Space Available:

Floor	SF Avail	Rent	Occupancy	Lease Term	Space Use
1st	1,250 SF-2,500 SF	\$25.00/SF/Yr	Vacant	Negotiable	Medical
Available: 2,500 SF of Medical, will divide					
Largest Space: 2,500 SF					
Rent/SF/Yr: \$25.00 / +e&c					
Rent/Yr: \$62,500					
Exec Suite: No					
Occupancy: Vacant					
Type: Direct					
Term: Negotiable					
Space Notes: Built out medical space, free parking					

6000 Executive Boulevard

Rockville, MD 20852-3803 - North Bethesda/Potomac Submarket

Property Type: Office
Sub Type: -
Status: Existing , Renov
September 2007
Year Built: 1972
Smallest Space: 2,378 SF
Largest Space: 4,227 SF
Total Space Avail: 9,389 SF
Rent/SF/Yr: \$30.00
Stories: 6
Typical Floor: 20,666 SF
Building Size: 124,388 SF
Parking: 389 Surface spaces @ \$70.00/mo; Ratio of 3.1/1,000 SF

Space Available:

Floor	SF Avail	Rent	Occupancy	Lease Term	Space Use
<input checked="" type="checkbox"/> 5th	4,227 SF	\$30.00/SF/Yr	Vacant	5-10 yrs	Office/Medical
<input checked="" type="checkbox"/> 6th	2,784 SF	\$30.00/SF/Yr	Vacant	5-10 yrs	Office/Medical
<input checked="" type="checkbox"/> 6th	2,378 SF	\$30.00/SF/Yr	Vacant	5-10 yrs	Office/Medical

AMENITIES

- * Conveniently located at the corner of Executive Boulevard and Old Georgetown Road
- * High ratio of parking: 3.1 spaces per 1,000 RSF leased at \$70.00/month
- * Two blocks from White Flint Metro Station (Red Line)
- * Easy access to North Bethesda and Rockville amenities

ATTACHMENT 11

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NORMAN G. KNOPF

June 6, 2011

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

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Medical/Dental Clinic Special Exception Application S-2791**

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Françoise M. Carrier, Chair
Montgomery County Planning Board
June 6, 2011
Page 2

3. This area of Old Georgetown Road is extremely close to the White Flint Sector Plan area, literally diagonally across Old Georgetown Road from Tilden Lane. As a matter of good planning and public policy, such use should be in the Sector Plan area and not permitted to "leach" into neighboring residential communities.

II. OVERCONCENTRATION OF CLINIC SPECIAL EXCEPTIONS AFFECTING THE AREA ADVERSELY §59-G-1.21(a)(7).

1. The clinic will be located adjacent to an existing clinic special exception with 15 practitioners and 60 parking spaces; one block north there is another clinic special exception, with 8 separate professional suites, and 50 parking spaces; and one block to the south, there is another clinic special exception with 4 offices and 63 parking spaces. Aesthetically yet another clinic special exception would adversely affect the character of the area as well as the aesthetics and traffic. (See also, §59-G-1.21(a)(4)).

III. SUITABLE OFFICE SPACE IS AVAILABLE PRECLUDING THE SPECIAL EXCEPTION. §59-G-2.14(c).

1. The requirement that suitable office space is "unavailable in either the nearest commercial zone or nearest special exception medical clinic office building..." is not met.

2. Suitable space is available, for example, in the special exception adjacent clinic and the nearest commercial zone (White Flint Sector Plan area).

IV. ROAD ACCESS REQUIREMENT IS NOT MET §59-G-2.14(b).

1. A clinic is required to have direct access from a street having more than one through travel lane in each direction. Where the property is located on the corner lot, access may be from such a wide street, via an adjoining primary street. The Aks site is on the corner of Old Georgetown Road and Sedgwick Lane.

2. Sedgwick Lane is not a primary street, but merely 18' wide. The applicant proposes to widen Sedgwick between Old Georgetown and its driveway to meet primary street standards. This does not make Sedgwick a primary street, as it remains substandard from the applicant's driveway to the next cross street, Luxmanor. Local streets within this area, with the exception of Tilden Lane, are below primary-street standards.

3. Making a segment of Sedgwick Lane a primary road requires the removal of cherry trees aligning the street.

Françoise M. Carrier, Chair
Montgomery County Planning Board
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4. The rest of Sedgwick Lane remains a substandard street, much like the other streets in the area. The streets have no sidewalks, are so narrow that when one car is parked there is no room for two-lane traffic.

V. THE CLINIC REDUCES THE SAFETY OF VEHICULAR AND PEDESTRIAN TRAFFIC IN VIOLATION OF §59-G-1.21(a)(9)(C)

1. The requirement that the clinic “will not reduce the safety of vehicular or pedestrian traffic” is not met.

2. There is no left turn from Old Georgetown Road into Sedgwick Lane for cars traveling north. Cars will travel further north to make a u-turn on Old Georgetown (an unsafe maneuver) or will cut through the Luxmanor community, such as on Luxmanor Road, to turn onto Sedgwick. As noted, Luxmanor streets are narrow and have no sidewalks. Children bike and walk in the streets to the nearby Luxmanor Elementary School; Orthodox Jews walk in the streets on Friday evening and Saturday to the Aish Center for religious services. As noted, one parked car prevents two-way traffic.

VI. THE NUMBER OF PARKING SPACES IS INSUFFICIENT AND NO ROOM FOR ADDITIONAL SPACES

1. The applicant proposes 18 parking spaces, 17 + 1 handicapped, requiring a setback waiver for 4 of those spaces. There is no basis for the setback waiver, other than too much development on the site.

2. Even assuming the waiver, the 18 spaces are woefully insufficient and will result in parking on the neighboring narrow streets creating safety and traffic activity concerns (§59-G-1.21(a)(4) & (5); §59-G-1.21(a)(9)(C).

Spaces	18 total (including 1 handicapped)
<u>First Floor</u>	
2 (cellar)	Laboratory Employees
2	First Floor Dentists
4	Patients in 4 operating rooms
4	Patients waiting
2	Dental hygienists
<u>2</u>	Additional Employees
14	Total First Floor and Lab – 14 of 18 spaces

Françoise M. Carrier, Chair
Montgomery County Planning Board
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Second Floor

2	Medical practitioners
<u>2</u>	Staff
18	

All Spaces Used; But:

- Insufficient parking for additional staff
- No parking for 2nd floor patients
- No parking spaces for emergency patients
- No parking spaces for deliveries
- Insufficient parking for approximately 20 person conferences proposed in application

3. Note: the clinic special exception at 11210 Old Georgetown (at the corner of Poindexter) provides for 4 practitioners and requires 50 parking spaces.

VII. THE CLINIC WILL BE DETRIMENTAL TO THE USE AND PEACEFUL ENJOYMENT OF SURROUNDING PROPERTIES. §59-G-1.21(a)(5)

1. The residents of the house on the opposite side of Sedgwick Lane, confronting this site, will no longer look at the single family house which will be torn down, but at the large building containing the clinic, its driveway and parking lot as well as will experience the noise of traffic and lights from the headlights.

2. The property adjoining the clinic, the Sedgwick Lane home behind the site, will similarly no longer look at the single family house which will be torn down, but at a large building containing the clinic with a view of its 18 parking spaces, adding to the existing view of the parking lot of the clinic adjacent to the Aks site. Although the Aks parking is to be "screened" by a fence and plantings, this does not screen the view from the second story of that home. Similarly, noise from the driveway and parking lot will be heard by the homeowner.

We respectfully request that the Board urge **DENIAL** in as strong terms as possible.

Sincerely yours,

Norman G. Knopf

cc: Dan Press
Carlton Gilbert, MNCPPC-MC

June 8, 2011

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Petition of Nina V. Aks, D.M.D., LLC and Nina and Val Aks
11406 Old Georgetown Road (aka 2 Sedgwick Lane)
Medical/Dental Clinic Special Exception Application S-2791

Dear Madam Chair and Members of the Board:

I am writing to express my strong opposition to the subject application and respectfully request, indeed urge, that the Board deny the application. I join my neighbors, the Luxmanor Citizens Association (LCA) which represents our community of 850 families, and the Luxmanor Is For Homes Not Clinics association – all of whom are unanimous in opposing the commercialization of the subject residential property, which is opposite my home of forty years at 3 Sedgwick Lane.

Only through the devious contrivance of the former owner to misrepresent residential property as commercially viable is the subject site – established and recorded for three quarters of a century as 2 Sedgwick Lane – now identified as 11406 Old Georgetown Road. The applicant should not be afforded any exceptional rights to use the site in a non-residential (commercial) manner, whether as a real estate asset leased to others or for contracting out dental lab services.

Upon learning of her plans two years ago in June 2009 and continuously since, Dr. Aks has been well informed of the neighborhood opposition to non-residential development of the site. I participated in three such meetings with her, and she was advised in writing of the unanimous vote of our community in opposing her plan, reference *Luxmanor Greensheet* February 2011. I visited her current office and appreciate her desire to move to larger facilities, but appropriate commercial space is plentiful nearby if she would like to relocate close to our community.

I am not a NIMBY. I did not oppose the Trinity church expansion nearby on Old Georgetown Road, and I supported, indeed participated in planning, the development and expansion of the Josiah Henson Special Park site which adjoins the rear and side of my property. However, I am strongly opposed to approving a precedent-setting application for non-residential development and use of the subject site with sole access on our narrow (18' wide) non-primary street within the interior of our neighborhood. I selected Luxmanor in 1972 as a tranquil residential refuge, convenient to commercial services as needed outside the neighborhood; we don't need or want a medical clinic or other commercial venture in our front yard. I guess this makes me a NIMFY.

Françoise M. Carrier, Chair
Montgomery County Planning Board
June 8, 2011

There exists a proliferation of non-residential uses in the neighborhood. Eleven of fifteen current (and resubdivided) lots on the west side of Old Georgetown Road, from Poindexter Lane to Tilden Lane, are currently occupied by non-residential uses, including three medical/dental clinics. Approval of the application will make it 12 of 15. Another view indicates clinics on the corners of three of four of these residential streets at Old Georgetown Road; approval will make it four of four. Approval of the application will exacerbate the already existing "overconcentration" by anyone's definition. (See table below.) This area of Old Georgetown Road is extremely close to the White Flint Sector Plan area, literally diagonally across Old Georgetown Road from Tilden Lane. As a matter of good planning and public policy, such use should be confined to the Sector Plan area and not permitted to "bleed" into neighboring residential communities such as Luxmanor.

Careful reading of the application indicates that the planned sea of 18 parking spaces will be insufficient to support the clinic's operations, and the applicants' assertions notwithstanding, it reasonably can be deduced that employees and/or patients will invariably park on Sedgwick Lane, which is only 18' wide without curbs. This will create a property and life safety hazard. Children ride bikes and walk in the streets to the nearby Luxmanor Elementary School; Orthodox Jews walk in the streets on Friday evening and Saturday to the nearby Aish Center for religious services, and adult health walkers use the streets daily. (See pix 1.) Parking on even one side of the street (at least partially on residents' lawns) impedes required two-way traffic flow and blocks drivers' view of pedestrians and bikers. Parking on both sides amplifies the danger to pedestrians and bikers and makes access by emergency vehicles impossible. (See pix 2.) The application selfishly illustrates fire truck parking on Old Georgetown Road to serve the clinic but ignores the requirement for fire and medical emergency vehicle access to the middle of the block of Sedgwick Lane.

Employee and patient traffic to/from the clinic will add to the existing risk to pedestrians and bikers on Sedgwick Lane, Luxmanor Road, Roseland Drive, and Poindexter Lane – all of which are narrow and have no sidewalks or curbs. Access to the site will, by traffic regulation, safety, and personal convenience, lead to additional traffic through our neighborhood. No left turn onto Sedgwick Lane from northbound Old Georgetown Road is permitted, and a "U" turn at Tilden Lane a bit farther north is extremely dangerous and the site of frequent accidents. The application proposes a "mountable island" to encourage drivers exiting the site to turn right toward Old Georgetown Road, but it would seem no more a deterrent to traffic turning left and flowing through our neighborhood than the "NO EXIT" sign at the clinic on Old Georgetown Road at Tilden Lane which is typically ignored. (See pix 3.)

The application asserts that the cherry trees, in the County's right-of-way adjoining the site, are "hazardous" and require removal. Pardon the pun, but that strikes me as "overkill" and, further, requires County approval for their destruction. It seems the deadwood could be trimmed from the otherwise healthy trees to mitigate the hazard of falling limbs. The application initially claimed the trees were "unhealthy," but maybe that didn't present as dramatic a "justification" for their removal to suit the applicants' purposes. Other cherry trees on Sedgwick Lane have been significantly trimmed, and they continue to survive quite well – blooming beautifully every spring – as those on the applicants' site are expected to do for decades. Sedgwick's cherry trees rival (or surpass) those in Kenwood and are a treasured community asset that must be preserved, not squandered!

Françoise M. Carrier, Chair
Montgomery County Planning Board
June 8, 2011

Along with my neighbor next door at 1 Sedgwick Lane we would no longer have a view of the lovely cherry trees and single family house, which would be torn down, but of the large building containing the clinic and its driveway and parking lot. We would experience (suffer) the loss of beautiful, healthy trees, noise of additional traffic and lights from the headlights of vehicles entering and leaving the site, and traffic and parking on our narrow street creating a hazardous environment for us and our neighbors.

Approval of the application and non-residential development of the site certainly would destroy the character of our quiet, peaceful neighborhood and diminish our enjoyment of the oasis we sought in Luxmanor. When turning into our narrow lane from the race track of Old Georgetown Road it's like entering another world, and we do not want that world shattered for commercial purposes. The application represents purely commercial exploitation of the residential site; Dr. Aks would be well served to utilize readily available commercial space or build an office in her home in Potomac.

Based on the foregoing and other reasons we strongly feel what is proposed for the site is abhorrent. We plead with the Board to exercise effective stewardship of this residential property and respectfully urge that the application be denied.

It would be appreciated if this letter could be read into the record of the subject application.

Sincerely,

Elery J. Caskey, Jr.
3 Sedgwick Lane
Rockville, MD 20852-3636

cc: Della Stolsworth, LCA
Dan Press, LHNC
Carlton Gilbert, MNCPPC-MC

Old Georgetown Road (West side) Development Between Poindexter Lane and Tilden Lane

11210 OGR – Clinic at Poindexter Lane	11406 OGR (formerly 2 Sedgwick Lane)
11212 OGR – Clinic at Poindexter Lane	1 Sedgwick Lane – Residence
11214 OGR – Clinic at Poindexter Lane	11410 OGR – Henson Special Park Expansion
6001 Poindexter Lane – Residence	11420 OGR – Henson Special Park
11304 OGR – Jewish ROC	11418 OGR – Aish Center
6000 Roseland Drive – Residence	11500 OGR – Clinic at Tilden Lane
11379 OGR – Manar Medical Clinic*	11510 OGR – Clinic at Tilden Lane
11404 OGR – Manar Medical Clinic*	

* "Lot 14 Block B located at 11379 and 11404 OGR..." resubdivided as condition of SE-2923 in 1971.
Note: Manar Medical Clinic is, by extension, at the corner of OGR and Roseland Drive.

Françoise M. Carrier, Chair
Montgomery County Planning Board
June 8, 2011

Attachments:

Pix 1: Walkers and Bikers on Luxmanor Road at Sedgwick Lane



Pix 2: Parking in front of 3 and 4 Sedgwick Lane



Pix 3: OGR-Tilden Lane Clinic "No Exit" (Note sign on right)



MCP-CTRACK

From: Hal Quayle [hquayle@gmail.com]
Sent: Thursday, June 09, 2011 12:02 PM
To: MCP-Chair
Cc: Gilbert, Carlton; Dan Press; Della Stolsworth
Subject: Medical/Dental Clinic Special Exception Application S-2791
Attachments: letter to board.doc



Dear Madam Chair,

Please find attached a letter from my wife, Martha Z. Quayle and myself, Harold Quayle, Jr., giving reasons for our strong opposition to the granting of this Special Exception. We, at 4 Sedgwick Lane, are the adjacent property owners to the Application. That property, now called 11406 Old Georgetown Road, was 2 Sedgwick Lane from 1934 until several years into the 21st century.

We are also represented by statements that you will receive from Daniel S. Press, president of Luxmanor is for Homes Not Clinics (LHNC), to which we belong, Norman Knopf, Esq, the attorney for LHNC, and Della Stollsworth, president of Luxmanor Citizens Association (LCA), to which we also belong.

Thank you for your attention to this matter. I look forward to testifying before you at the hearing scheduled for June 30th on this Special Exception.

Harold Quayle, Jr.
4 Sedgwick Lane
Rockville, MD 20852

Via Email and Regular Mail
MCP-Chair@mncppc-mc.org

Françoise M. Carrier, Chair
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RE: **Petition of Nina V. Aks, D.M.D., LLC and Nina and Val Aks
11406 Old Georgetown Road (aka #2 Sedgwick Lane)
Medical/Dental Clinic Special Exception Application S-2791**

Dear Madam Chair and Members of the Board:

We write to you as the adjoining property owners to the land parcel for which S-2791 is being sought. We wish to express in the strongest terms possible our vehement opposition to the Special Exception which, if granted, will transform a seventy-five year old quiet block of nine homes, numbered 1 through 9, into something never envisioned, we are quite certain, by anyone who ever called Sedgwick Lane home. We pray that our plea will not fall on deaf ears.

Everyone who has ever taken ownership of one of these nine houses has done so with the intent to make a home for themselves and their families. That is, until now. The applicant in S-2791 has purchased the property, not to create a home but to create financial gain for herself. She will destroy the house that has been a home for three-quarters of a century and replace it with a commercial structure in which she will be not only a dental practitioner but a landlord. She will be one-fourth dentist and three-fourths landlord. Her home will be elsewhere. Sedgwick Lane, indeed all of Luxmanor, will serve her only as a means of income.

For anyone to claim that this overwhelmingly unwelcome intrusion into our residential community does not change its residential character is to create a fantasy of the highest order.

Can this be called residential when we will see dozens of cars entering and leaving the property six days a week, from early morning until well after dark?

Can this be called residential when, even before the building is begun, the cacophony of chain saws will be heard removing two or three of the beautiful cherry trees that have lined this historic street since the years between the two World Wars?

Can this be called residential when hundreds of square feet of lawn are replaced with asphalt?

Can this be called residential when we will see traffic on our local streets far in excess of current volume?

The answer, of course, to all of these questions is a resounding NO.

The applicant claims that we, sharing their property line, will be shielded from the near constant moving about of cars and delivery vehicles by fencing and newly planted trees and bushes. We feel quite certain that no amount of fencing and planting will make us unaware of a busy commercial establishment just feet away from our dining room and kitchen windows, a commercial establishment that will house more than a dozen workers all day and receive several dozen patients during a normal work day. The dining room and kitchen are, of course, on our first floor. The applicant will not be building a fence that even pretends to block what we will be constantly aware of when we are on our second floor.

You, Madam Chair and Board Members, are a critical part of our defense against this great threat to the residential character of the beautiful neighborhood where we have made our home for forty-three years. The mission statement of the Maryland-National Capital Park and Planning Commission, as found on the Commission's website, begins with the following sentence:

Throughout 80 plus years of service, The Maryland-National Capital Park and Planning Commission has endeavored to improve the quality of life for all of the citizens of the bi-county area it serves and of the communities in which these citizens live, work and raise their families.

If Special Exception S-2791 is allowed we feel that our quality of life on Sedgwick Lane will be greatly diminished and we earnestly entreat you to recommend denial.

Sincerely yours

Harold Quayle, Jr.

Martha Z. Quayle

cc: Della Stolsworth, LCA
Dan Press, LHNC
Carlton Gilbert, MNCPPC-MC

NORMAN G. KNOPF

LAW OFFICES OF
KNOPF & BROWN
401 EAST JEFFERSON STREET
SUITE 206
ROCKVILLE, MARYLAND 20850
(301) 545-6100

FAX: (301) 545-6103
E-MAIL KNOPF@KNOPF-BROWN.COM
WRITER'S DIRECT DIAL
(301) 545-6104

MEMORANDUM

TO: Carlton Gilbert (via email – carlton.gilbert@mncppc-mc.org)
Montgomery County Planning Board

FROM: Norman G. Knopf

DATE: May 31, 2011

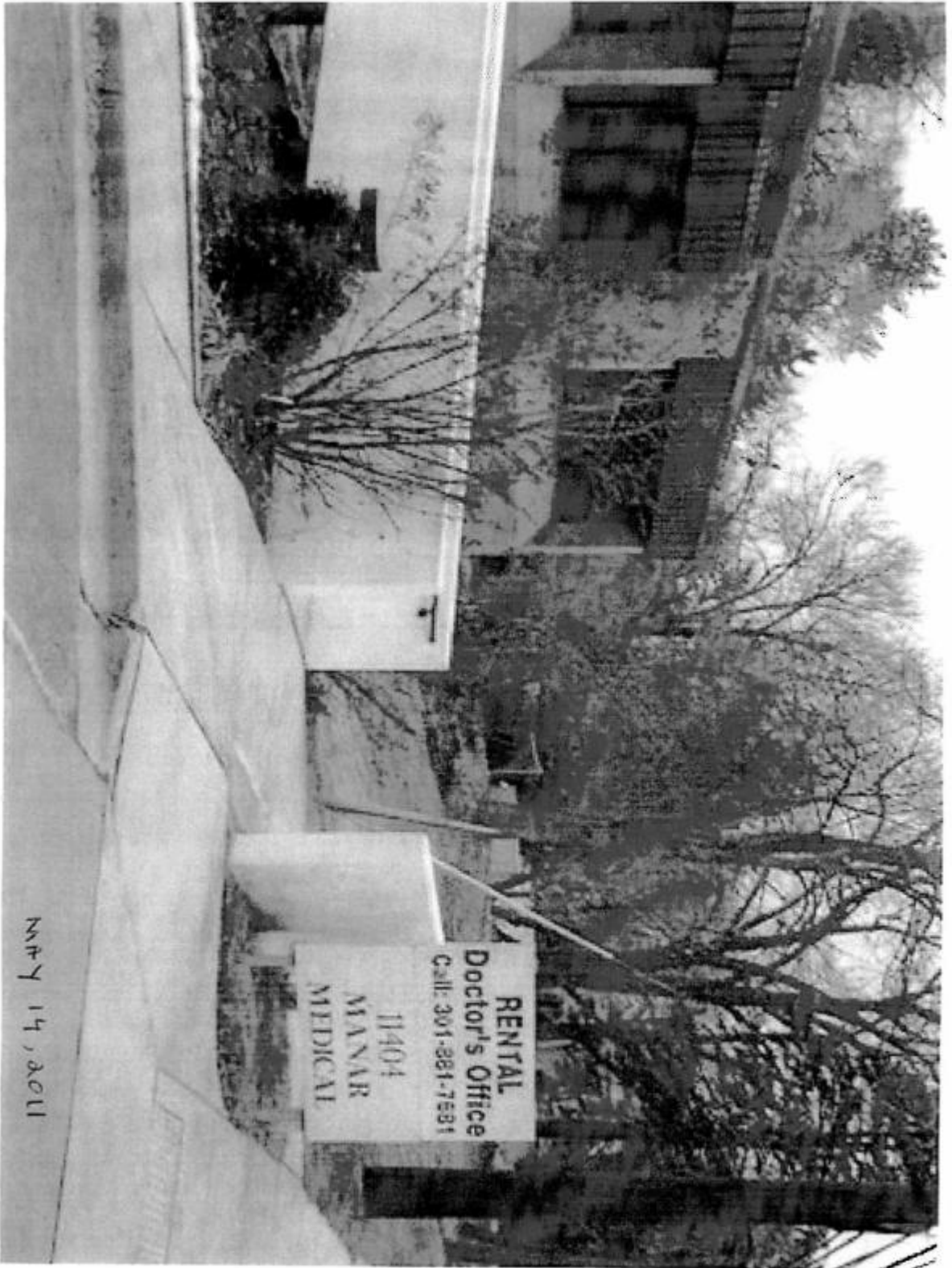
RE: **Dental Clinic – Old Georgetown Road
Special Exception Number S-2791
Dr. Nina Aks**

At our meeting on May 11, 2011, the community representatives noted the numerous medical office buildings in the immediate vicinity with space available for dental offices for Dr. Aks. One of buildings mentioned was 11404 Old Georgetown Road, the Manar Medical Office Building. This building is adjacent to the proposed Aks special exception site.

Attached is a photo showing the "For Rent" sign for doctor's offices in the Manar Building at that location. Also attached is a photo of the directory in the Manar Building showing at least two empty doctors' offices and also showing many other offices are occupied by dentists. These photos were taken on May 14, 2011. We would appreciate your taking this information into consideration when preparing your report.

If you have any questions, please do not hesitate to call.

cc: Dan Press



MANAR MEDICAL

THIS LEVEL

201 POTOMAC DENTAL CENTER
ELENIR BERNARDES DDS + ASSOC

203 MARC HERTZMAN MD PSYCHIATRIST
DANA O'BRIEN PH.D PSYCHOLOGIST

204 MARTIN G ABEL DDS
SHANNON E ABEL DDS

206 JOHN S ENG MD PLASTIC SURGERY
JOSEPH MICHAELS MD PLASTIC SURG

LOWER LEVEL

101

102

103 DAVID EDDY PH.D

104 BEHRENS & KISHTER PC ORAL SURG

105 DR SHERRY GOLDMAN PSYCHIATRY

106 MANAR MANAGEMENT 301.881.7681
A PM AND DRIVAS

MAY 14, 2011

KIRILL REZNIK
39th Legislative District
Montgomery County

Health and Government
Operations Committee



RECEIVED
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MAY 26 2011

OFFICE OF THE CHAIRMAN
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

COMMUNICATIONS SECTION
The Maryland House of Delegates
6 Bladen Street, Room 225
Annapolis, Maryland 21401
301-848-3039 • 410-841-3039
800-492-7122 Ext. 3039
Fax 301-848-3126 • 410-841-3126
Kirill.Reznik@house.state.md.us

District Office
301-540-0054 • Fax 301-540-0988

THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

May 25, 2011

Françoise Carrier
Chair of the Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Ave.
Silver Spring, MD 20910

Dear Ms. Carrier,

As an elected official in Montgomery County, it is important for me to promote development in our county that is to the benefit of our community. It is with this in mind that I would like to express my support for Special Exception Application S-2791 submitted by proposed property owners Dr. Nina V. Aks and Val Aks and lessee Dr. Nina V. Aks D.M.D. LLC. This Special Exception will allow the building and operating of a Medical/Dental Clinic for not more than four medical practitioners on land located at 11406 Old Georgetown Road, Rockville, Maryland 20852 in the R-200 Zone.

Dr. Aks currently operates a dental office in Germantown, which serves many of my constituents. The dental services provided by Dr. Aks are valued by my constituents and I believe a larger office space for Dr. Aks to work and train future dentists will only serve to provide additional benefit to our community. The applicants have shown their dedication to this project's success by working now for two years to gain approval for their clinic plans. In addition to the added excellent dental services that this facility will bring to the area, the proposal has the extra benefit of improving the gender equity of our business community. Currently all Special Exceptions along Old Georgetown Road are owned by men. If approved, this Special Exception will be the first one provided to a woman, especially one who has such an accomplished professional career.

I am proud to support Dr. Nina V. Aks in her effort to open a new dental/medical clinic and look forward to this Special Exception's approval.

Sincerely,

Del. Kirill Reznik