

MCPB  
Item # 5  
11/08/04**MEMORANDUM**

**DATE:** 11/04/04  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor, Development Review *CG*  
**FROM:** Joel A. Gallihue, AICP Zoning Analyst, 301-495-2119 *JAG*  
**SUBJECT:** **Special Exception and Case Number: S-2621**  
Chesapeake Psychological Services. MD, LLC

**FILING DATE:** June 24, 2004  
**PUBLIC HEARING:** December 6, 2004

**RECOMMENDATION: Approval with conditions**

1. The applicant is bound by all submitted plans and statements.
2. Hours of operation for the clinic are limited to 7:30 a.m. to 9:00 p.m., Monday through Friday and Saturday from 9:00 a.m. to 5:00 PM.
3. Petitioners shall participate in the Silver Spring Parking Lot District Program and pay the ad valorem tax in lieu of satisfying the number of parking spaces required on the site.

**PROJECT SUMMARY**

The applicants, Chesapeake Psychological Services. MD, LLC & Kathleen Nadeau, PhD, are requesting a special exception to establish a professional non-residential office at 8607 Cedar Street in Silver Spring. The property is approximately 5,000 square feet in area and more particularly known as Lot 4 of Section One of the Evanswood subdivision. The applicant proposes to operate the use within the existing 1,248 square foot home located on the property. The proposal indicates activities would include individual and group sessions or testing with psychologists. A practice of psychologists would perform counseling and testing on site in a clinic that would operate from 7:30 a.m. to 9:00 p.m.,

Monday through Friday. The clinic would also open on Saturday from 9:00 a.m. to 5:00 PM.

The Dr. Nadeau would practice with other part-time psychologists, totaling five full-time equivalent staff members. One other part-time clerical staff person is also proposed.

**Site Description** - The subject site is zoned R-60 and is 5,000 square feet in area. The property is improved with a two story brick home built approximately 75 years ago. A concrete driveway accesses Cedar Drive and has space to park four vehicles.

**Neighborhood Description** - The site is located on the edge of North Silver Spring, across Cedar Street from the Silver Spring Central Business District. For many years, master plans policies have planned for a transition of uses from the properties at the edge of the neighborhood to those of the interior. The homes on Cedar Street, between Ellsworth Drive and Pershing Drive are somewhat isolated from other single-family homes in the neighborhood by the Chelsea School, a private school located behind these homes. Across the street in the CBD there is structured parking and high-rise residential development. The surrounding properties on the east side of Cedar are zoned R-60. The property across the street in the CBD is zoned CBD R-1.

## **Project Description and Elements of Proposal**

### **ANALYSIS**

**Master Plan** – The subject use conforms to the August 2000 Approved and Adopted North and West Silver Spring Master Plan that covers this site. As noted above, the plan specifically examines this section of Cedar Street and determines that these properties are suitable to apply for the non-resident professional office special exception. This recommendation takes the isolated context into consideration and a goal of providing a transition of appropriate uses at the interface between the CBD and the residential neighborhood.

**Transportation** - The Transportation Planning staff has reviewed the subject special exception application for the required adequate public facilities (APF). Staff does not recommend any transportation related conditions for this special exception application. Based upon the proposed operations, with respect to staffing, timing and caseload, staff estimates weekday peak hour trips will not exceed thirty. For this reason no traffic study is required to satisfy local area review requirements. No policy area review is required.

According to the *North and West Silver Spring Master Plan*, the master plan roadways and bikeways are as follows:

1. Cedar Street – Arterial with 48’ of pavement in 80’ right-of-way.
2. Colesville Road – six-lane divided Major Highway in 120’ right-of-way.
3. Wayne Avenue is a four-lane Arterial street within in 80’ right-of-way.

Vehicular access is to Cedar Street with four off-street parking spaces. Cedar Street has metered parking in front of the property and a public parking garage is located across the street. The subject site is within the Silver Spring Parking Lot District.

Pedestrian access to the site is via sidewalks on Cedar Street. The applicant anticipates some clients using metro to access the site. Located approximately 3,000 feet from the Silver Spring Metro Station, the site does not qualify for a parking reduction, but is not an unreasonable walk. Site visits confirm that many residents are walking further distances past this site to metro.

**Development Standards** - The following table summarizes the conformance with applicable standards.

Comparison of Development Standards (includes addition):

Item	Required	Proposed
Lot Area	6,000 ft.	5000 ft. <sup>1</sup>
Minimum lot width at front building line	60 ft.	50 ft. <sup>2</sup>
Minimum Building Setback from Street	30 ft. <sup>3</sup>	30 ft.
Minimum Building Setback from Side of lot.	8 ft. one side. 18 ft. sum of both sides.	8 ft. one side. 18 ft. sum of both sides.
Minimum Building Setback from Rear of Site	20 ft.	41 ft.
Maximum Coverage	35 percent	15 percent
Maximum Building Height	35 ft.	34 ft.

**Parking-**

The current area would require five parking spaces. The proposed addition would require approximately two more spaces. The additional spaces required beyond the four on-site would be provided in the parking district, per condition number three.

<sup>1</sup> Building is conforming per Sec. 59-B-3 as lot was legally recorded by subdivision plat before June 1, 1958. “Evanswood” Sec. 1 (Plat # 439) was recorded on Feb. 11, 1932.

<sup>2</sup> See note # 1.

<sup>3</sup> Minimum setback from street for zone is 25 ft. per 59-C1.323, however lot is subject to applicable established building line of 30 ft. per footnote six and 59-A-5.33.

**Environmental** - On April 20, 2004 the applicant received a forest conservation recommendation from Environmental Planning staff, which confirmed that the property is not subject to a tree save plan and is not in a special protection area. The Environmental Planning staff makes no recommendation on this application having considered the very minor nature of the addition and the proposed use and the fact that the proposal will not result in any clearing of existing forest or trees.

**Landscaping and Lighting** –The submitted landscaping exhibit indicates that in the front yard a mixture of bushes (evergreen, azaleas and spreading yews) will be planted in the front yard with a maple tree to be located in front the proposed addition. The terraced rear yard with gazebo will be improved with additional landscaping. The proposed landscaping serves to enhance the residential appearance of the building although the proposed use is not a detriment to this attribute of the property. In the side yards where landscaping will not be as effective, existing picket fencing will be replaced with new picket fencing or 6' tall wooden privacy fencing. On the side of the proposed addition, a 6' tall privacy fence will extend from the front of the property to the rear property line. On the opposite side the privacy fence will only be installed on the side of the back yard. The plans for privacy fencing were made to screen the new addition and the use and in consultation with adjacent property owners. Neighbor input accounts for the different lengths of privacy fence on either side.

Wall and ceiling mounted residential fixtures are proposed using standard 75-watt bulbs. Path lighting along the sidewalk consisting of directed 11-watt ground lanterns is proposed. The proposed lighting will provide safe access for clients to the use during hours of lower daylight, particularly in winter. The lighting is typical of any residential use.

**Inherent and Non-Inherent Effects-** Section 59-G-1.21 of the Zoning Ordinance (Standard for Evaluation) states the following with respect to Inherent and Non-Inherent Effects.

A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not

necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception

*The inherent characteristics associated with the proposed use, are daily arrival and departure of staff and hourly entry and exit of clients. Inside the building intake evaluations and ongoing psychological sessions would occur. Occasional group sessions would be scheduled as proposed. Non-inherent characteristics of a psychology clinic may include expanded group sessions or workshops, outdoor events, special deliveries or loading. None of which are proposed for the use. There are no non-inherent effects sufficient to require a denial.*

**Additional Review Process** –The property is a legally subdivided lot so no further subdivision is necessary for this proposal. A building permit will be required for the addition.

**Community Concerns** -Staff has not been contacted by anyone expressing concerns regarding this project. During the preparation of the North and West Silver Spring Master Plan the continued designation of this block as appropriate for non-residential professional offices was not controversial.

## **CONCLUSION**

Staff finds that the proposed exception meets all the general and specific requirements for this use found in Sections 59-G-1.21 and 59-G-2.43 of the Zoning Ordinance. Staff recommends approval of the requested special exception for a non-resident professional office.

### **Attachments:**

- General Special Exception Provisions
- Specific Special Exception Provisions
- Location Map/Vicinity Map
- Site Plan / Landscape Plan
- Zoning Map
- Elevations
- Transportation Staff Memo
- Community Based Planning Staff Memo

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

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

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

*The proposed use is allowed in the R-60 zone.*

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

*The proposed use complies with the specific standards for a non-resident professional office.*

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

*The proposed use is consistent with the North and West Silver Spring Master Plan, Approved and Adopted August 2000.*

- (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 surrounding neighborhood consists of similar uses and residents on the immediate block, given the governing land use policy. Behind the use is a school and across the street are CBD uses. The proposed use fits this context as recommended by the master plan.*

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

*The use will not be detrimental to these neighborhood factors.*

- (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.

*Operations will be indoors and will be of a quiet nature. No outdoor activities or events or loading are proposed.*

- (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.

*In the nearby vicinity there is S-1065, a law practice located at 8613 Cedar Drive. S-808, a doctor's office, is located at 717 Pershing drive. Given the policy and land use context*

*contemplated by the Master Plan and a recent site visit by staff, it is found that the proposed clinic will not increase these factors sufficiently to affect the area adversely.*

- (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 on any adverse effects the use might have if established elsewhere in the zone.

*The proposed use will not adversely affect these factors.*

- (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.

*Public water and sewer serve the site. The site will require no school services. A fire station and police station are both in close proximity. In fact, a new fire station is under construction on Georgia Avenue.*

- i. If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

*No subdivision is required and the Board of Appeals must determine Adequate Public Facilities. As noted in the Transportation Planning memorandum, public facilities are found to be adequate.*

With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or



pedestrian traffic.

*Public sidewalks and crosswalks are available in front of the site and throughout the central business district. The proposed use will not jeopardize such facilities in any way.*

### **Sec. 59-G-2.38 Offices, professional, non-residential**

An existing single-family structure may be used for professional office purposes by any member or members of a recognized profession, such as doctors, lawyers, architects, accountants, engineers, veterinarians, but not including the following:

- a) Medical, dental or veterinarian clinics
- b) In-patient treatment facilities
- c) General business offices, such as the offices of insurance companies, trade associations, manufacturing companies, investment concerns, banks or real estate companies.

*The proposed is consistent with the permitted professional office purposes. While a clinic is proposed, it will be for psychological counseling sessions not medical. These sessions are longer and the level of activity is much lower than a medical clinic. No psychiatrists (who are Medical Doctors) and only psychologists are in the practice.*

The property must be:

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

*Not applicable.*

- b) Designated as being suitable for nonresidential professional offices in the R-60 zone on an approved and adopted master or sector plan and is located along a major highway with an existing right-of-way width of no less than 90 feet or along a portion of an arterial road designated as a boundary of a central business district.

*Cedar Drive is an arterial road designated as a boundary of a central business district.*

The Board must find that the property meets the following criteria:

- a) Such use will not constitute a nuisance because of traffic or physical activity;

*The use will not constitute a traffic nuisance because activity will be by appointment only and will be of a low intensity. The use will occur primarily indoors and will not contribute noise or visual intrusion to the community. The appearance of the use will be residential.*

- b) Such use will not affect adversely the use and development of adjacent properties;

*No changes in access or abandonment of easements are proposed. An existing building will be modified for the use but no subdivision is necessary.*

- c) A minimum of 25 percent of the lot area will be devoted to green area.

*More than half of the property is landscaped yard or pathways, which qualify as green area.*

- d) The Board may allow the exterior of the premises to be changed, altered or modified provided the single-family character and the basic residential appearance of the building is retained.

*It is found when considering the scale and architectural appearance of the addition that the single-family character of the building will be retained through the proposed modification.*