



**MEMORANDUM: SPECIAL EXCEPTION**

**DATE:** July 10, 2006

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief, Development Review Division *RK*  
Carlton Gilbert, Zoning Supervisor, Development Review Division *CG*

**FROM:** Dan Janousek, Zoning Analyst *DJ*  
(301) 495-4564

**SUBJECT:** Board of Appeals case No. S-2673,  
**LOCATION:** 8603 Cedar Street, Silver Spring, MD  
**ZONE:** R-60 Zone  
**REQUEST:** 4,707 sq. ft. Non-Residential Professional Office

**PETITIONER:** Leizer Goldsmith, Esq.

**MASTER PLAN:** North and West Silver Spring Master Plan  
Approved and Adopted August 2000

**FILING DATE:** March 24, 2006  
**PUBLIC HEARING:** August 28, 2006

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**RECOMMENDATION**

APPROVAL with conditions:

1. The petitioner is bound by all submitted statements and plans as modified in this report and by these conditions.
2. Compliance with the general and specific conditions for the use in Section 59-G-1.2 and 59-G-2.38 of the Zoning Ordinance.

3. The petitioner to limit the use to sixteen (16) employees with up to a maximum of ten (10) client visits per day to the office.
4. The petitioner to limit the total interior square footage for the proposed use, including the existing building and the proposed improvements, to no more than 4,707 square feet.
5. The petitioner to limit hours of business operation from 7:30 a.m. to 9:00 p.m. daily, Monday through Friday, and from 9:00 a.m. to 5:00 p.m. daily, Saturday and Sunday.

## **PROJECT DESCRIPTION**

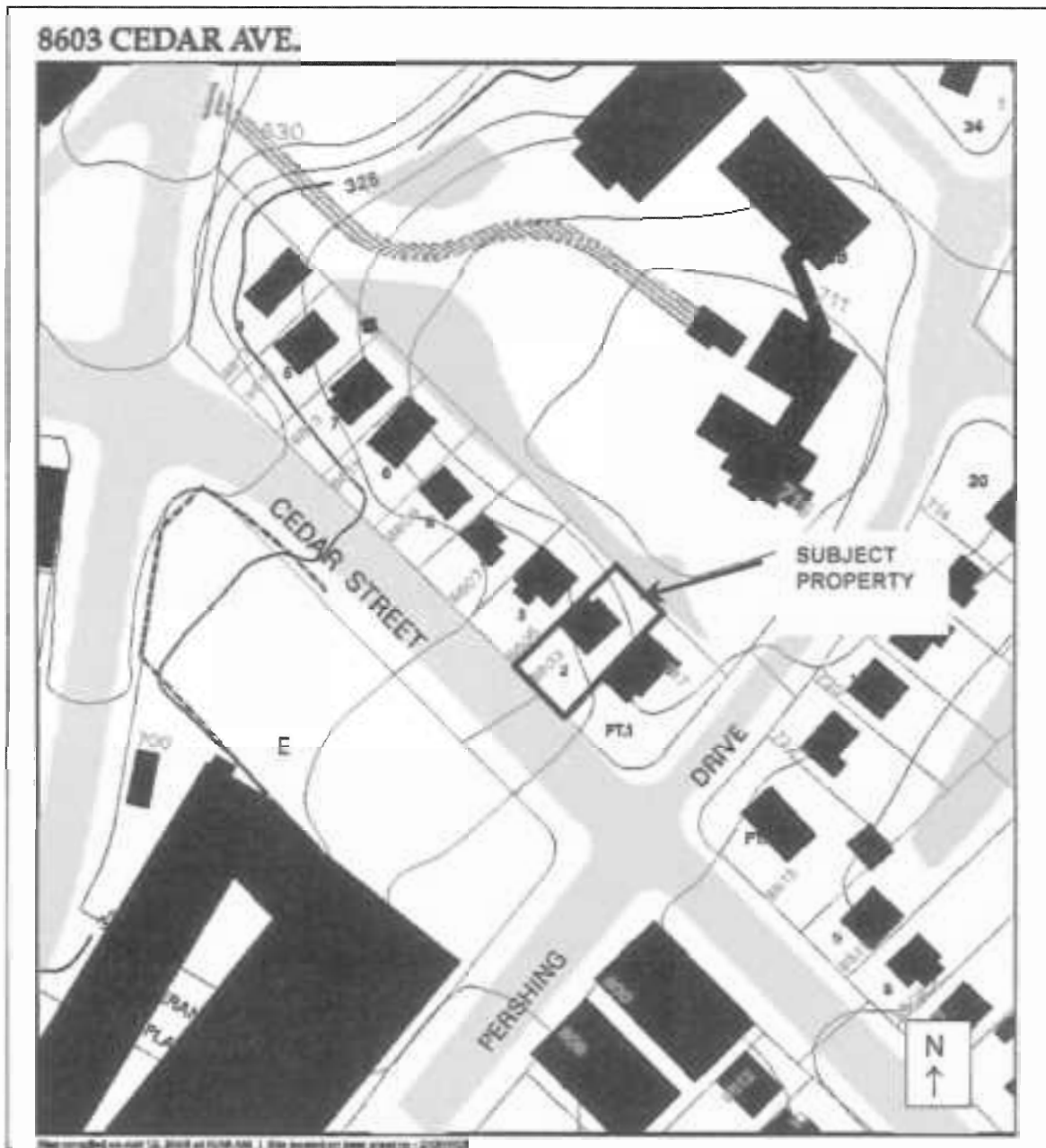
### **Summary and Property Description**

The Petitioner, Leizer Goldsmith, Esq., is requesting approval for a non-residential, professional office use located at 8603 Cedar Street, Silver Spring, MD. Mr. Goldsmith seeks approval to use the existing single-family structure, with modification, exclusively as a professional office for The Cedar Street Company, LLC, which owns the subject property. The petitioner has been practicing in the employment law field for 17 years.

The subject property at 8603 Cedar Street, Silver Spring, MD, is identified as Lot 2, Section 1, Evanswood Subdivision on the northeast side of Cedar Street, approximately sixty (60) feet northwest of the intersection of Cedar Street and Pershing Drive adjacent to the Silver Spring CBD. The property is within the R-60 Zone, which was reconfirmed in 2001 by the most recent comprehensive zoning that implemented the North and West Silver Spring Master Plan Approved and Adopted August 2000.

The property is 100 feet deep and is 50 feet wide along Cedar Street, containing 5000 square feet of land. The property is improved with a single family residential structure constructed in 1936. The property has access to Cedar Street via an existing narrow concrete driveway servicing a small basement level garage. The property slopes upward from Cedar Street to the back of the property and is approximately ten (10) feet below the Chelsea School property located to the northeast.

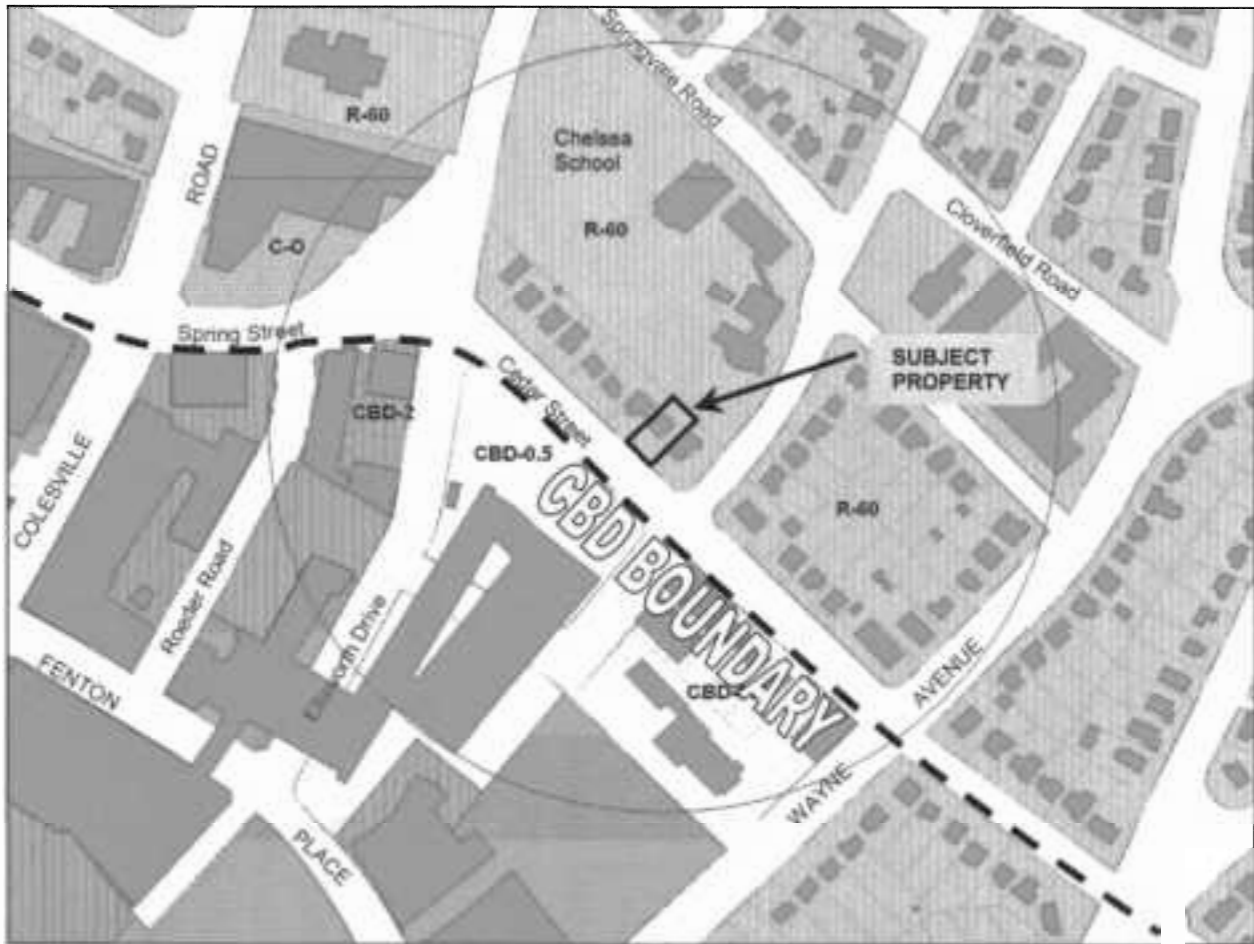
Figure 1. Subject Property and Neighborhood Area



### Neighborhood Description

The neighborhood is located in North Silver Spring and contains a mix of professional and commercial offices, and institutional and residential uses in the R-60, CBD-0.5, CBD-2 and C-O Zones. The subject property and the other adjoining lots bordering the north side of Cedar Street between Pershing Drive and Ellsworth Drive are recommended in the North and West Silver Spring Master Plan for non-residential professional office uses (Pages 42-46). The Silver Spring CBD is located across Cedar Street from the subject property. Behind the property to the northeast is the Chelsea School, which offers instructional programs that are Level V special educational programs accredited by the Maryland State Department of Education.

Figure 2. Subject Property and Surrounding Area (circled)



The property is across from the Downtown Silver Spring Central Business District (CBD). It is also across from a planned and approved 160-unit apartment project and 170 interior parking spaces on land that was a public parking lot and garage on CBD-0.5 Zoned land. This property is the subject of Site Plan #899002. Recently, an amendment was filed to increase the residential units from 170 to 222 units and parking spaces from 170 to 260 spaces. To the northwest across Ellsworth Drive is a 15 story apartment building on C-O Zoned land.

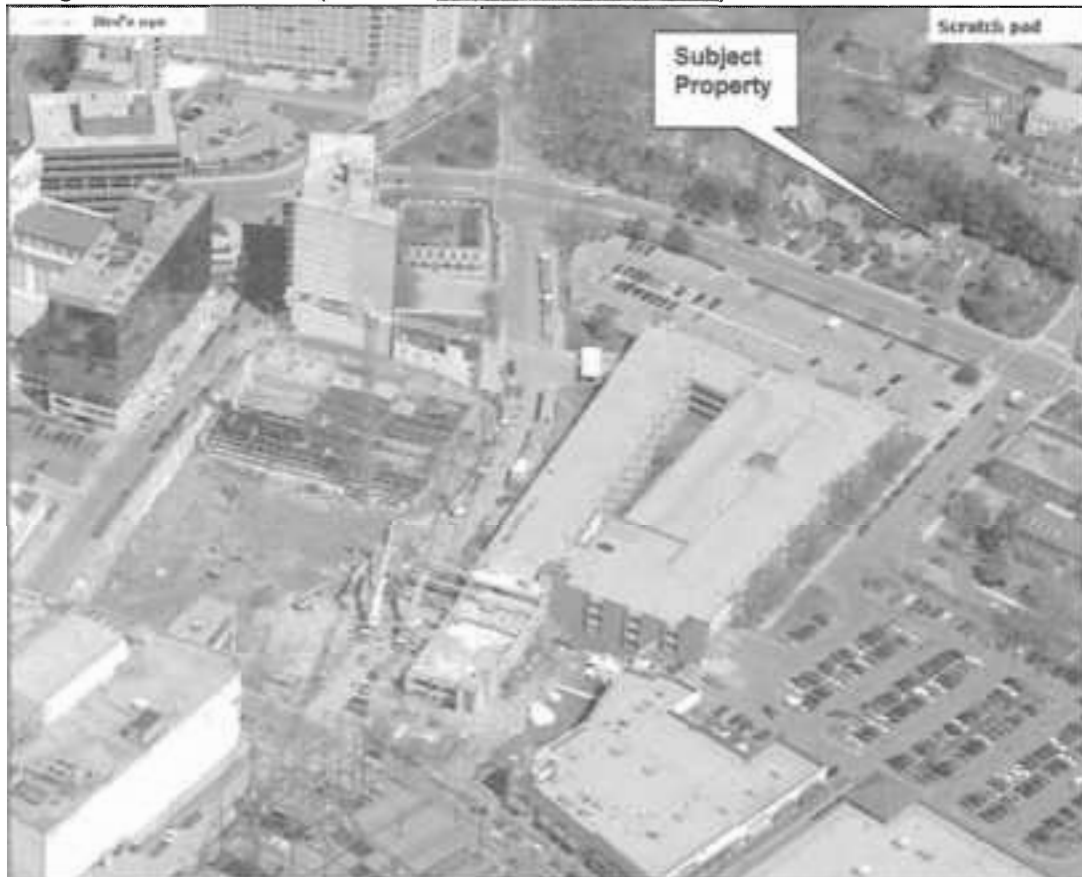
#### *Surrounding Special Exception Uses*

To the southeast across Pershing Drive is a two-story brick structure that contains an approved special exception for a medical office (BAS 565 and BAS 808). Another approved special exception is located on Lot 4 on the same block as the subject property (S-2621) for a non-residential professional office for the Chesapeake Psychological Services (approved January 20, 2005).

Image 1. Aerial View (Source <http://local.live.com/>)



Image 2. Aerial View (Source <http://local.live.com/>)



## Elements of the Proposal

The petitioner proposes to convert the existing residential structure to an office for the applicant who will re-locate from his present office in downtown Washington, DC. The petitioner maintains that the limited size of the building and the nature of the use are compatible with adjacent properties.

The following is a comprehensive list of the proposed structural and site improvements:

- Convert the interior garage to work space and reconfigure all three levels of the structure
- Provide parking spaces for two (2) standard vehicles on a re-graded driveway
- Provide building access for persons with disabilities
- Construct a 2-story, 32' x 10' addition on the existing structure (Total square footage including the addition will be 4,707 sq. ft.)
- Install new landscaping (hedge screening) and lighting
- Improve existing structure with new windows
- Construct new exterior stairs and a door egress on the east side of the structure
- Erect one building mounted sign

The petitioner proposes to limit the use to sixteen (16) employees with up to a maximum of ten (10) client visits per day to the office. The petitioner proposes to limit hours of business operation from 7:30 a.m. to 9:00 p.m. daily, Monday through Friday, and from 9:00 a.m. to 5:00 p.m. daily, Saturday and Sunday. Client visits will be generally limited to the weekday business hours. Clients will be able to park in the spaces provided on the subject property. There is additional parking in the form of metered parking spaces on the streets surrounding the proposed use and ample parking is available within the Silver Spring Parking Lot District (Map Attached). Some clients are expected to use the Silver Spring Metro Station.

## ADDITIONAL REVIEW REQUIREMENTS

The petitioner proposes construction improvements and will eventually have to apply for building permits through Montgomery County Department of Permitting Services. Given the amount of development proposed in the subject application, no further review requirements will be required of the Planning Board.

## COMMUNITY ISSUES

Planning staff is not aware of any opposition to the proposal.

## ANALYSIS

### Master Plan

The property is within the area governed by the North and West Silver Spring Master Plan Approved and Adopted August 2000. The proposed use is consistent with the Master Plan in terms of the nature and the appropriateness of the use, and it will be compatible with other nearby uses. The subject property is specifically designated for non-resident professional office use in the Master Plan (pages 45-46) along with the other lots bordering the north side of Cedar Street between Pershing Drive and Ellsworth Drive. The Master Plan recognizes that the subject property is one of several "properties" that are "somewhat isolated from the other single-family homes in the neighborhood by the Chelsea School, a private school located to the rear of these homes." (page 44).

ANALYSIS: The Master Plan recommends guidelines for the design of special exceptions to protect the *residential character of the neighborhood*.

*"This Plan strongly recommends that the existing residential structures be retained but that continued designation as suitable for non-residential professional offices is appropriate given the surrounding uses. Paving of front yards for parking is inconsistent with this Plan's overall goal of maintaining residential character and sustainable stable neighborhoods. The parking required for any approved special exception use should be met through the Parking Lot District to minimize the number of spaces on the property and help retain a residential appearance along Cedar Avenue."* (page 44).

ANALYSIS: This proposal will retain the existing residential structure as recommended in the Master Plan. By retaining the main structure, the petitioner has met the basic criteria of retaining the *existing residential structure*. The proposal also adheres to the recommended special exception policy in the Master Plan by maintaining the residential style of architecture with the addition proposed.

The petitioner does proposes to construct two parking spaces to replace the existing driveway, which is not consistent with the Master Plan recommendation to not pave front yards. Technical Staff believes that this improvement will not be detrimental to the residential character of the neighborhood because the proposed parking facility will be screened effectively by hedges and will utilize an existing driveway and curb cut. This space could be utilized for a van-accessible parking space for persons with disabilities.

Because of its small size (2 parking spaces), the proposed front yard parking will not create a commercial appearance in such a way that would create an adverse affect on the neighboring properties.

## Development Standards

ANALYSIS: The subject lot was recorded in 1932. Except for the northwest side-yard setback, the proposal meets all of the applicable development standards in the R-60 Zone and the applicable development standards for lots recorded prior to 1958. The minimum side yard setback requirement is 7 feet. The building is situated 5 feet from the northwest side property line. In this situation the building is not in conformance, but this condition already exists, and the applicant is not proposing to decrease the setback. Technical Staff is of the opinion that the proposal will be compatible with adjacent properties under this existing condition. The following table summarizes the property development standards:

Table 1. Comparison of Development Standards:

Item	Required/Allowed	Proposed for Approval
Lot Area	*5,000 sq. ft.	5,000 sq. ft.
Yard Requirements for Main Building: **Front- Cedar Street Side-NW Side-SE Rear-	28.41 ft. *7 ft. MIN. 20 ft. 20 ft.	34 feet +/- 5 ft. +/- (existing building) 10 ft. 23 ft. +/-
Building Height	35 ft. (2.5 stories)	35 ft. (2.5 stories) Measured from the average grade.
Building Coverage	35% (1,750 sq. ft. max)	35% (1,750 sq. ft. max)
Green Area	25%	46.1%

\*Development standards in effect when the record plat was recorded for the subject lot in 1932.

\*\* Field Surveyed established building line

### *Parking and Loading*

ANALYSIS: The proposed parking and loading will be adequate for the proposal. The petitioner proposes two parking spaces than could be reserved for van-access for persons with disabilities. Staff encourages the applicant to only provide one a van-accessible parking space in the front.

Normally, special exception uses in residential zones are required to provide parking facilities within each zone's normal front yard set back requirements for main dwellings



and twice the side yard requirements. Staff notes that the proposed parking is not considered a “parking facility” as defined in the Zoning Ordinance. The Ordinance defines a parking facility as “any lot or structure used for off-street parking of 6 or more motor vehicle”. The Zoning Ordinance also defines what a “parking facility” is for special exception uses in Section 59-E-2.83, “Parking and Loading Facilities for special exception uses in residential zones”. This Section “applies to an off-street parking facility for a special exception use that is located in a one-family residential zone if 3 or more parking spaces are provided. The petitioner requests that the Board of Appeals grant a waiver of the normal parking standards, pursuant to Section 59-E-4.5 of the Zoning Ordinance, for the parking area at the proposed location. Staff does not believe any waiver is required, and the proposed two parking spaces will be adequate for the use.

In any event, the proposed hedges to reduce any glare and noise that would emanate from the parking will screen the parking. The Master Plan recommends, “*The parking required for any approved special exception use should be met through the Parking Lot District to minimize the number of spaces on the property and help retain a residential appearance along Cedar Avenue.*” (page 44).

**Table 2. Parking Standards**

Item	Required by the Zoning Ordinance	Proposed for Approval
<u>Parking</u> <i>(2.5 spaces per 1000 gfa)</i> <i>(Per Section 59-G-2.42(e))</i>	12 spaces (4,707 square feet @ 2.5 spaces /1,000 sq. ft. gfa)	*2 automobile spaces

\*The Board of Appeals may waive any requirements in Article 59-E that are not necessary to accomplish the objectives of Section 59-E-4.2.

**Compatibility**

Visual and noise impacts from the use will be minimal. The petition is limited to the proposed use, and the proposed development plan and use will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses (Note: part of the General Conditions). The height and bulk of the proposed structure, and the manner in which it is situated, will be compatible with adjacent properties and uses.

**Transportation**

*Adequate public facilities test and Local Area Transportation Review*  
 (Source: Transportation Planning Division staff --COPY ATTACHED):

Vehicular Access, Circulation, and Parking

The applicant proposes to replace the existing driveway with two (2) on-site parking spaces and to make use of the on-street metered parking in addition to the public parking garage located on Ellsworth Drive. The applicant proposes operating hours from 7:30 AM until 9:00 PM for Monday to Friday, with office hours from 9:00 AM until 5:00 PM on weekends. A total office staff of sixteen (16) personnel is proposed, with up to a maximum of ten (10) client visits per day to the office. The proposal will not change or adversely impact existing pedestrian facilities.

### Master Plan Roadways and Bikeways

Cedar Street is classified as an arterial roadway with a minimum recommended right-of-way width of 80 feet. At its signalized intersection with Ellsworth Drive, Cedar Street is designated as an element in the on-road bicycle facilities network of Silver Spring.

### Local Area Transportation Review

A traffic study is not required to satisfy Local Area Transportation Review, because the site would generate fewer than 30 total peak-hour trips during the morning and evening peak periods. Therefore, the applicant is not required to analyze the impact of site-generated traffic on adjacent intersections.

### **Environmental**

*(Source: Environmental Planning Division staff)*

The petition includes an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) and the property has been granted an exemption for Forest Conservation Requirements of Chapter 22A because there is no clearing of existing forest or trees proposed.

### **Historic**

*(Source: Historic Preservation Division)*

Historic preservation staff has reviewed the subject petition. No historic resource will be affected.

### **Inherent and Non-inherent Effects**

Inherent and non-inherent adverse effects of a special exception on nearby properties and the general neighborhood must be considered pursuant to Section 59-G-1.2.1 of the zoning ordinance which states:

*"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."*

Seven points, or physical operating effects should be considered when reviewing for inherent and non-inherent adverse effects. These relate to the size, scale, scope, light, noise, traffic and environment. Since all of these elements are in every special exception to some varying degree, it must be determined whether or not adverse impacts will be created by these elements.

#### *Inherent and Non-inherent effects of the subject petition*

ANALYSIS: In the case of the subject non-residential office proposal, the inherent adverse effects include the building, vehicle activity and lighting associated with the parking, traffic and movement of people and employment related goods and items also associated with the proposed office. The building is located in the Silver Spring Parking Lot District. The proposal is to construct an addition onto the existing building. The building is small, and the addition of 325 square feet will not result in any significant increase in the overall existing footprint of the building that would cause adverse impacts on existing properties. The building already has architectural design features to provide compatibility with the existing buildings in the general neighborhood area. The proposal to light the building and the parking with standard residential fixtures is consistent with residential lighting in the general neighborhood area. The lighting will not spill directly onto neighboring properties as shown on the petitioner's plan for residential lighting fixtures installed on the building. Given the proposed hedge screening on the property, lighting and noise from the building and the parking is reduced and it should not have an adverse impact on adjoining properties. The impact of traffic generated by the proposal will not create an adverse impact on the adjacent roadway network, and the use will generate fewer than 30 peak hour trips during the morning and evening peak hour traffic periods. There are no non-inherent adverse affects associated with this application.

### **Compliance with the General and Specific Conditions of the Special Exception**

#### **General Conditions:**

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

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

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

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

ANALYSIS: The subject proposed use is allowed by special exception in the R-60 Zone.

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

ANALYSIS: The proposed use does comply with all of the specific standards and requirements for a non-residential professional office pursuant to Section 59-G-2.38 of the zoning ordinance.

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

ANALYSIS: The proposed use is consistent with guidelines in the North and West Silver Spring Master Plan Approved and Adopted August 2000 which states that *"existing residential structures be retained but that continued designation as suitable for non-residential professional offices is appropriate given the surrounding uses."* (page 44).

- (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.

ANALYSIS: The general and surrounding neighborhood is mixed in character with R-60 zoning, directly across a street from the Central Business District. The building area will be in harmony with the general character of the neighborhood and in harmony with the design, density, size, scale and scope of the existing improvements on the property. The site will be well landscaped. Hedges will

screen the building and parking, and topography will reduce impacts from light and noise, onto adjoining properties.

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

ANALYSIS: The proposed use will not be detrimental to other property in the general neighborhood and will not adversely effect the peaceful enjoyment, character or future development of the general neighborhood. The location, which is adjacent to the Central Business District, will allow employees and patrons of the office to come and go without disrupting the general 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.

ANALYSIS: The proposed primary use will be limited to the indoors, and the proposal will limit parking to the two proposed spaces. The use will not be readily visible from adjoining properties because of proposed hedge screening. The proposal includes wall lighting of the building, which will not cause excessive illumination that would create an adverse impact on the general neighborhood area.

- (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 effect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

ANALYSIS: The proposal will retain the existing residential structure as recommended in the Master Plan. By retaining the main structure, the petitioner has met the basic criteria of retaining the *existing residential structure*. The proposal also adheres to the recommended special exception policy in the Master Plan by maintaining the residential style of architecture with the addition proposed.

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

ANALYSIS: The proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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.

ANALYSIS: The Property is served by public services.

- (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 the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when 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.

ANALYSIS: No preliminary plan is required for the subject application. The Board of Appeals must determine the adequacy of public facilities when the special exception is considered. M-NCPPC Transportation Planning staff determined that a traffic study is not required to satisfy Local Area Transportation Review, because the site would generate fewer than 30 total peak-hour trips during the morning and evening peak periods. Therefore, the petitioner is not required to analyze the impact of site-generated traffic on adjacent intersections. Other public facilities appear to be adequate.

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

ANALYSIS: The petitioner proposes no changes to the site that would remove sidewalks or impede vehicular traffic. New sidewalks are proposed and a ramp for accessibility is also proposed. New entrances and sidewalks will improve circulation and access to the property.