

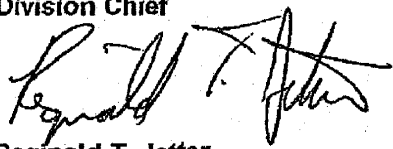
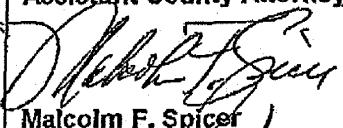
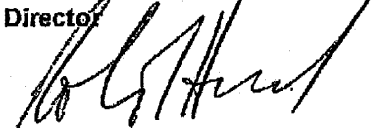
Measure the shortest distance from the front property line of each building to it's nearest

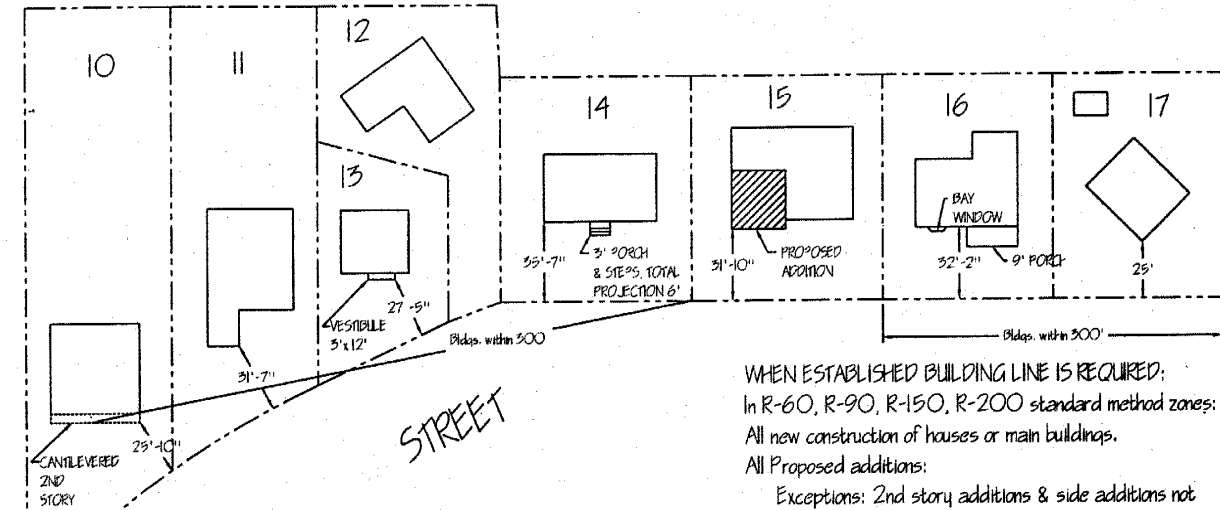
- i. Foundation wall
- ii. Cantilevered floor
- iii. Open steps, stoop, terrace or covered porch projecting more than 9 feet into the established building line setback
- iv. Bay window or vestibule more than 10 feet in width projecting more than 3 feet into the established building line setback.

The measurement must be taken at a 90 degree angle from the front property line. This measurement is the front yard setback for that building.

Add all of the front yard setbacks together and divide by the number of houses included in your calculation. The result is the **established building line**.

An example is attached.

Interpretation/Policy No. ZP0404-2	Date 5/7/04	Division Chief  Reginald T. Jetter
Interpretation/Policy No.	Date 5/7/04	Assistant County Attorney  Malcolm F. Spicer
Interpretation/Policy No.	Date 5/7/04	Director  Robert C. Hubbard



Established Bldg. Line Calculation
for addition to Lot 15:

Lot 10	25' 10" or 25.83'
Lot 11	31' 7" or 31.58'
Lot 12	not included, pipestem lot
Lot 13	27' 5" or 27.41'
Lot 14	35' 7" or 35.58'
Lot 15	not included, subject property
Lot 16	32' 2" or 32.16'
Lot 17	not included, corner lot
TOTAL =	152' 7" or 152.56' divided
by 5 lots =	30.51' is EBL

ESTABLISHED BUILDING LINE

WHEN ESTABLISHED BUILDING LINE IS REQUIRED:

In R-60, R-90, R-150, R-200 standard method zones:

All new construction of houses or main buildings.

All Proposed additions:

Exceptions: 2nd story additions & side additions not extending beyond the existing front of the building.

Corner lots have EBL on both streets.

INCLUDE IN CALCULATION:

All bldgs. within 300' of side property lines of subject property.

Between intersecting streets and within the same block.

Bldgs. existing at time permit application is filed.

Any cantilevered second story.

Open steps, stoop, terraces or covered porches projecting more than 9 ft.

Bay window & vestibule more than 10' in width or projecting more than 3'.

EXCLUDE FROM CALCULATION:

Subject property.

Corner lots.

Pipestem, flag-shaped or lots not meeting min. width @ min. front setback.

Houses with front setback variances.

Bldgs. with nonconforming front yard setbacks.

Open steps, stoops, terraces or covered porches projecting 9' or less.

Bay window & vestibule 10' or less in width and projecting not more than 3'

Scale: 1" = 60'

Revised 01/04

Attachment 3

LAW OFFICES OF

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NORMAN G. KNOPF

January 9, 2005

RECEIVED

JAN - 9 2005

OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS

VIA HAND DELIVERY

Hearing Examiner Martin L. Grossman
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

Re: Special Exception Petition of Brenneman and Pagenstegher, Inc. - Case No. S-2651

Dear Hearing Examiner Grossman:

Opponents, Norma Spiegel, Ronald Nessen and John Juenemann, through undersigned counsel, respond to the December 15, 2005 letter of Jody S. Kline, Esquire counsel for the applicant.

Preliminarily, we again raise the issue of the appropriateness of continuing these proceedings. As a condition prerequisite for obtaining a special exception, the property must be designated as historic in the Master Plan for Historic Preservation. §59-G-2.38(c)(1). We are unaware of anything in the record which reflects such designation.

I. MacArthur Boulevard does not satisfy the "highway" requirement of §59-G-2.38(c)(2).

Mr. Kline correctly notes that the term "highway" is not defined in the zoning ordinance. A highway is generally understood to mean "a major road,...which has multiple lanes of traffic in each direction." See, e.g., "Highway" from Wikipedia, the online free encyclopedia. (Excerpt attached). The narrow two-lane paved MacArthur Boulevard, having no curbs and gutters, hardly constitutes what is normally considered a "highway". In fact, it is doubtful whether this road would even meet the standards set forth in the Montgomery County Road Code for a "primary residential" road (requiring a paving of at least 36' wide, with the entire right-of-way having drainage structures, paving, curbs, gutters and sidewalks, §49-34(d)) or the standards for a "secondary residential" road, (requiring pavement of at least 26' in width, plus curbs, gutters and sidewalks, §49-34(e)). Mr. Kline argues that in the absence of a definition it is

appropriate to look at the Council's intent and that the Council intended to have this property considered under the new zoning text amendment. However, it was the intent of the Council to have a special exception granted only if the specific requirements of that zoning text amendment were satisfied. One such requirement is that the property be on a "highway". If the Council was mistaken as to the facts at this site, and erroneously believed the property was on a "highway", that does not make the road a highway nor does it answer the question as to whether the Council, had it known the correct dimensions of the paved MacArthur Boulevard at this site, would have deemed the site as an appropriate one for consideration of such use as a special exception.¹

II. The applicant fails to satisfy the criteria for waivers.

The applicant has requested waivers relating to the parking facilities, including waivers of front yard setback, side yard setback, grading, shading, and pedestrian walkway requirements.

A waiver may be granted only upon a finding that the waived requirements are not necessary to accomplish the objectives of §59-E-4.2. (§59-E-4.5). No such finding may be made here.

As we will explain in much greater detail during the hearing, the waivers of setback and screening requirements defeat the purpose of having the parking facility buffered from adjoining properties and from the public road. §59-E-4.2. The adverse aesthetic impact created by the waivers is particularly important here because of the "delicate, irreplaceable environmental features of wooded lots, rivers and cliffs" along MacArthur Boulevard generally and this area specifically, which have resulted in the Master Plan objective to preserve the scenic character of MacArthur Boulevard including designating it as a Maryland Scenic Route. (BCC Master Plan, pp. 64, 70; see pp. 29, 31).

Similarly, the waivers requested present serious safety problems for both cars and pedestrians, including those caused by backing out from the parking facility onto Walhonding Road.

¹ Another requirement of the zoning text amendment that appears not to be satisfied by the present application is §59-G-2.38(c)(3). This provides that the use must be in a structure formerly used for non-residential purposes. The testimony to date has reflected that the structure has been used for residential purposes, at the same time a portion was used for non-residential purposes, and most recently the structure was used solely for residential purposes.

III. Section 59-G-4.12, Non-Conforming Buildings, precludes grant of the special exception.

Mr. Kline correctly notes that the building is a non-conforming one. In our view, §59-G-4.12 is therefore applicable and expressly precludes the building from being "altered, renovated or enlarged" except if the construction will conform the building to the requirements of the zone. It is undisputed that such construction will not so conform the building. Mr. Kline quotes the caption of the section, "Structural Alterations", to argue that notwithstanding the clear language of the statutory provision itself, the provision should be interpreted as precluding only structural alterations not bringing the building into conformity but permitting alterations or renovations without restriction. Such use of a caption to interpret the plain language of a statutory provision has been flatly rejected by the courts. See, e.g., Erwin & Shafer, Inc. v. Pabst Brewing Co., 304 Md. 302, 498 A.2d 1188, 1191, 1193-94 (1985):

In resolving the first certified question before us [statutory construction], we initially look to the language in the statutes. If it is clear and unambiguous, then we need look no further. [citing cases]. . . . [Appellant] ignores the settled rule that a caption is not part of the law, unless expressly provided or part of the law as enacted. [citing cases]. . . . It constitutes a mere 'catch word' indicative of the content of that section.

Not only is the language of the statutory provision itself unambiguous, but giving effect to that language is consistent with legislative purpose of such non-conformity provisions: "to contain and finally to eliminate non-conforming uses." 1 Anderson, American Law of Zoning, 4th Edition (1995) at §6.06. Thus, as noted in the American Law of Zoning, "[c]onsistently with this policy of restriction and eventual elimination, the courts have ruled that the right of non-conformity should be strictly construed." Id.

Mr. Kline asserts that there is a long-standing interpretation by Montgomery County to permit alterations, renovations or enlargements so as to allow interior modifications, providing they do not compound the existing non-conformity. Even assuming there is such an administrative interpretation, its correctness need not be decided now for it would not be applicable under the unusual circumstances here. This case involves the extensive alteration of a non-conforming building so as to change its use from that of a single family dwelling, the sole use of the building when last occupied, to a new and expanded use – office.

IV. Section 59-B-5.3 does not remove the non-conformity status so as to permit the special exception.

Section 59-B-5.3 provides that this property is not non-conforming if it was a one family dwelling and if it meets the development standards of the 1928 zoning ordinance. Mr. Kline correctly points out that it has not been established that this building was a one family dwelling but might have also been constructed as a store. In any event, even if it is deemed a one story building, the non-conforming status is not removed because the dwelling fails to meet the 1928 zoning ordinance setback standards. The Site Plan, Exhibit 18b, reflects that the front yard setback and the side yard setback are each less than 2 feet. This is substantially below the 1928 zoning code development standard setbacks.²

V. Section 59-G-4.27 also precludes the special exception.

Section 59-G-4.27, by its express terms, permits development of a one family dwelling only consistent with development standards in the R-60 zone that were in effect when the lot was recorded. This arguably brings in the 1928 development standards, which as explained above, require a greater setback for the front and side yards than are present here. Mr. Kline suggests that this provision is not applicable because the property is not being "developed" since there is an existing structure. This is an undue restrictive interpretation of the term "developed". This is demonstrated by the term "development standards" used in the same provision which clearly encompass standards applicable to improvements to existing buildings, not just new construction on an empty lot.

VI. The proposed use does not constitute "offices, professional".

Section 59-G-2.38 permits "offices, professional" which use it defines as one for "professional office purposes by any member or members of a *recognized profession*,

² Court decisions opine that special exception uses are to be deemed legislatively compatible with uses permitted as a matter of right providing the special exception use meets the conditions of the special exception, e.g., no adverse impacts, etc. See, e.g., Creswell v. Baltimore Aviation Serv. Inc., 257 Md. 712, 719, 264 A.2d 838, 842 (1970). This legislative presumption of compatibility is premised upon the property/structure being in compliance with the development standards for that zone. Here, that presumption of compatibility is lost because the site fails (drastically) to meet the zone's setback requirements. As noted above, the structure is setback less than two feet from the front and side property lines.

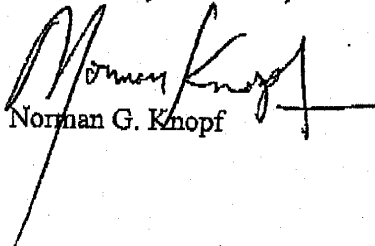
Hearing Examiner Martin L. Grossman
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January 9, 2005
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such as doctor, lawyer, architect, accountant, engineer, veterinarian,...." [Emphasis added]. The evidence of record to date establishes that the proposed office use here is not limited to that of architects. Rather, the offices are to be used by builders. This is outside of the statutory authorization.

Builders are not a recognized profession. For a person to meet the "recognized profession" criteria, that person must "(1) have a professional education; (2) be bound by a code of ethics and some principles of practice through a professional organization; and (3) be professionally licensed." Colker v. District of Columbia Board of Zoning Adjustments, 474 A.2d 820 (D.C. Ct. of App., 1983). See, e.g., 2 Anderson's American Law of Zoning, 4th Edition (1996) at §13.08. None of these criteria is satisfied here.

For the above-stated reasons, we suggest that the application for special exception is insufficient as a matter of law, and should be recommended for denial without further proceedings.

Respectfully submitted,


Norman G. Knopf

/attachment

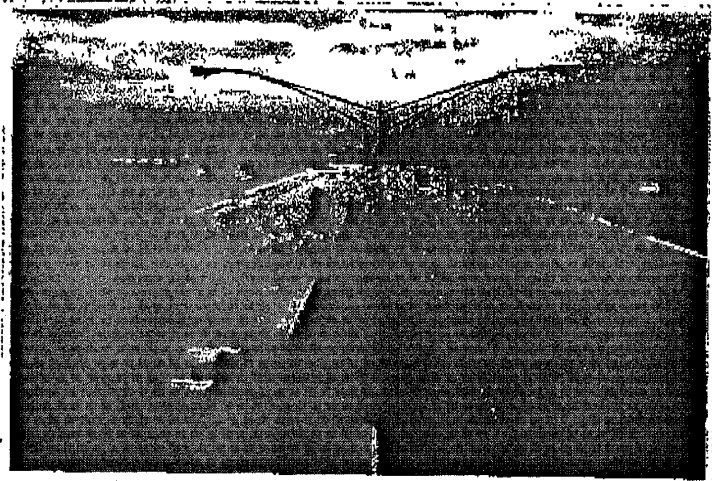
cc: Jody S. Kline, Esq. (By Hand)
Martin Klauber, Esq.
People's Counsel
Glen Echo Heights Citizens Association
c/o John G. Fenton
Norma Spiegel
Ronald Nessen
John Juenemann

Highway

From Wikipedia, the free encyclopedia.

For other uses, see Highway (disambiguation).

A highway is a major road within a city, or linking several cities together. It includes roads known as interstate highway, freeway, motorway and autobahn, where a full description varies by country. Generally, a highway is a road which has multiple lanes of traffic in each direction, often with a physical division (median) between opposing traffic, and separate access ramps to and from the highway which are more widely separated than connections on a standard road and are often grade-separated. A highway may prohibit access by pedestrians and limit what vehicles may travel on it.



Mitchell Freeway in Perth, Western Australia

Historically, a highway was any major road travelling a long distance outside of a city. Early roads between cities would sometimes suffer from highwaymen who would rob people travelling the route.

In the 20th century, however, the word generally came to be used only for high-speed, often specially-designed automobile routes. On 10 September 1913 the first paved coast-to-coast highway opened in the US.

Highways usually have a higher speed limit than other roads because they have additional lanes and are designed for driving at a higher speed. In remote areas, a highway may have rest areas where motorists may stop and relax before resuming a long drive.

By convention, the lane nearest the median on a multi-lane highway is called the *passing lane*.

The United States has a vast network of national highways (Interstate highways) linking the different U.S. states together, as does Australia albeit on a much smaller scale and mostly concentrated on the southeast coastline. Some highways, like the Pan-American Highway or the European routes, bridge multiple countries. With the latter a single road may have several national designations in addition to the European one.

Probably the most famous highway in the United States is Route 66, as immortalised in the song "(Get Your Kicks On) Route 66", while if one follows Australia's Highway 1 the driver can travel from state capital to state capital, almost the entire way around the whole country.

The longest single national highway in the world is the Trans Canada Highway, which runs from Victoria, British Columbia, on the Pacific Coast, through ten provinces to the Atlantic Coast, at St. John's, Newfoundland.

Contents

- 1 Nomenclature

ATTACHMENT

LAW OFFICES

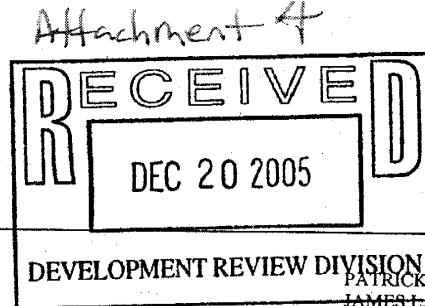
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December 15, 2005

Martin Grossman, Esquire
Hearing Examiner's Office
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 217
Rockville, MD 20850

RE: Board of Appeals Special Exception No. S-2651
Brenneman & Pagenstecher, Inc.
Non-Residential Professional Office

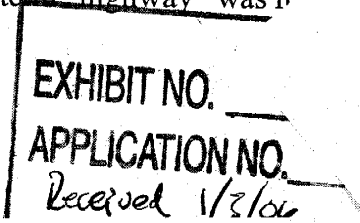
Dear Mr. Grossman:

At the public hearing on November 4, 2005, the Petitioner was directed to provide information on several issues, the analysis of which follows:

I. Does MacArthur Boulevard satisfy the "highway" requirement of Section 59-G-2.38(c)(2).

Section 59-G-2.38(c)(2) of the Zoning Ordinance states that a special exception for a non-resident professional office use can only be granted when the subject property is located "along a highway with an existing right-of-way of at least 120 feet;" (Emphasis added). The Hearing Examiner has asked for an explanation of how the proposal of Brenneman & Pagenstecher achieves this statutory requirement.

When trying to interpret the meaning of statutory provisions, usually where one is trying to divine the intent of the County Council for an action taken long ago. In this instance, the County Council created Section 59-G-2.38(c)(2) on April 12, 2005 (effective May 2, 2005), so there is readily available paperwork, and memoranda are fresh, so that we do not have to speculate on the meaning of this new Zoning Ordinance provision. Fortunately, the record of Text Amendment No. TA 6 provides ample guidance to demonstrate that the term "highway" was intended to include MacArthur Boulevard.



In particular, attached is the Technical Staff report of Zoning Ordinance Text Amendment TA 05-01 noting that the text amendment was initiated "...to provide an opportunity to preserve the 'Sycamore Store' located at 7025 MacArthur Boulevard". Furthermore, the Technical Staff Report states that the "text amendment will allow for the adaptive reuse of the one very important structure: the Sycamore Store on MacArthur Boulevard." It is, therefore, clear that the Council know that the term "highway" was intended to include MacArthur Boulevard.

Looking to other factors that show that MacArthur Boulevard is a "highway", for purposes of analyzing the Brenneman & Pagenstecher proposal, we note the following information:

- A. "Highway" is not a defined term in the Zoning Ordinance. The word "highway" is often used in a generic sense as a transportation right-of-way that is more than a street ("public or dedicated right-of-way 30 feet or more in width", Section 59-A-2.1).
- B. Section 49-31 of the County Road Code defines the term "road" as "Any street, highway, avenue, lane, alley or viaduct or any segment or part of the length thereof." (Emphasis added).
- C. The Zoning and Highway Plan as part of the 1990 Bethesda-Chevy Chase Master Plan classifies MacArthur Boulevard as an "Arterial Road" (A-300). (See also page 128, of the Plan). The Highway Plan does not contain a classification for "highways", only "Major Highways". However, the B-CC Master Plan also contains other references to MacArthur Boulevard including:
 1. On page 199, improvements to MacArthur Boulevard are listed under a section of the Plan entitled "Other Long-Term Highway Needs". (Emphasis added).
 2. On page 123 (Exhibit C, attached), a section of Mac Arthur Boulevard is discussed as becoming a "scenic highway". (Emphasis added).

In summary, the term "highway" is imprecise in terms of describing a road of fixed dimensions and is a term commonly used when describing various types of public rights-of-way. Moreover, the record is clear that the County Council understood when it adopted Text Amendment TA 05-01 that MacArthur Boulevard should be considered a "highway" for purposes of analyzing the Sycamore Store proposal.

II. Is the existing structure covered by Zoning Ordinance Section 59-G-4.12.

A. Yes! Section 59-G-4.12 reads:

“Structural alterations.

Except as otherwise provided in this chapter, a non-conforming building or structure may be altered, renovated, or enlarged only if the construction will conform the building or structure to the requirements for the zone in effect when construction begins.”

The existing structure is a “non-conforming” building because it was constructed before Montgomery County adopted Zoning Ordinance standards that applied to the property. A “non-conforming building” is a “building or structure that was lawful when constructed and continues to be lawful, even though it no longer conforms to the requirements of the zone in which it is located because of the adoption or amendment of the Zoning Ordinance or the Zoning Map.” (“Definitions”, Section 59-A-2.1). The subject property was made non-conforming by the adoption of a Zoning Ordinance and a Zoning Map that created development standards which the property could not meet for the front yard setbacks.

The long-standing Montgomery County policy and interpretation of Section 59-G-4.12, a section titled “Structural alterations”, is that alterations, renovations, or enlargements are permitted to an existing structure as long as those modifications do not constitute a “structural alteration”. It is on the basis of this long-standing interpretation of this applicable section that the Department of Permitting Services advised the Technical Staff at Maryland-National Capital Park & Planning Commission that no variances for the existing structure were required. The Petitioner understands that at the public hearing the Hearing Examiner will wish to hear testimony from a representative of the Montgomery County Department of Permitting Services and/or the Technical Staff of Maryland-National Capital Park & Planning Commission on this subject.


B. Additionally, it is the policy and practice of Montgomery County, Maryland to permit “alterations, renovations or enlargements” that do not affect the non-conformity in question. This is a rational interpretation of Section 59-G-4.12 that allows simple interior modifications of existing structures, and even enlargement of structures provided that the manner in which a structure is modified does not compound the existing non-conformity.

III. Does Section 59-B-5.3 apply to the subject property.

The answer to this question can only be determined by historical facts that are not currently available to the Petitioner (but will be the subject of further research to determine if a conclusive answer can be provided to this question). The answer to whether Section 59-B-5.3 applies to the subject case is dictated by whether the

structure was originally built as a “one-family dwelling” or whether it was built as a dual use structure (residence/store). But, **in either event**, the applicability of Section 59-B-5.3 would not require the applicant to seek variances prior to implementing its proposed program for the following reasons:

- A. If the Sycamore Store was built as both a one-family dwelling and a neighborhood grocery store, it would not qualify under this statutory provision and would remain a non-conforming building. Accordingly, requirements of this section to meet the development standards of the 1928 Zoning Ordinance and the current standards for height, coverage and established set-back would not apply. As argued previously, redevelopment of the Sycamore Store would be determined by the provisions of Section 59-G-4.12 which would ultimately govern new construction on the subject property.
- B. If it is determined that the Sycamore Store structure was constructed initially as a dwelling unit, and the building certainly was constructed prior to 1958, then the conclusion would be that Section 59-B-5.3 applies. But the applicability of the phrase “altered, renovated or enlarged” would be limited to those construction activities which alter the specific non-conformity(s) in question. In this instance, no construction would have any effect on the present non-conformities. Furthermore, the current building complies with current building, height and lot coverage standards. Therefore, compliance with Section 59-B-5.3 is satisfied.



The Hearing Examiner can take administrative notice of the published Code Interpretation Policy (to be provided under separate cover) published by the Department of Permitting Services dealing with “established building line”. This policy specifically identifies its purpose as being for “additions that extend beyond the front property line”. Note that the policy is interpreted as not affecting existing structures. Furthermore, this DPS interpretation excludes side editions not extending beyond the existing front of the building. This policy statement demonstrates that the Department of Permitting Services interpreting County regulations as relating to only that construction which deals with existing non-conformities, policy position which supports the arguments set forth above in this Section and in Section II.

IV. Does Section 59-G-4.27 apply to the subject property.

Section 59-G-4.27, “Residential lots reclassified from R-60 to R-90 zone” does not apply in the circumstances of this application. Although the subject property was previously zoned R-60, and was rezoned to the R-90 classification as a result of the comprehensive rezoning implementing the Bethesda-Chevy Chase Master Plan adopted in 1990, the remaining text of this section shows why this provision does not apply. In particular, the property will not be “...developed with a one-family dwelling and accessory structures”. Not only is there a structure already existing on the property, so there will be no “[development] with a one-family

dwelling and accessory structures”, nor will the building on the property be reused as a one-family dwelling. Therefore, Section 59-G-4.27 is not relevant to this application.

V. Does the Petitioner’s proposed use constitute an “office, professional, non-residential”.

The use of the subject property proposed by Brenneman & Pagenstecher does satisfy the requirements of Section 59-G-2.38 and Section 59-A-2.1. The latter section defines an “office, professional, non-residential” as permitting the offices of architects along with other professionals.

Brenneman & Pagenstecher is an integrated firm of design professionals. The business plan of Brenneman & Pagenstecher is the creation of a “seamless” process between design conception and product delivery resulting in the implementation of the professional work product of the designers. The proposed office at 7925 Mac Arthur Boulevard will be primarily occupied by architects, designers and administrative staff supporting the operations of the company as a whole. The only periodic occupant of the building who is not a “professional” (under the County’s definition) is Peter Pagenstecher, a principal of Brenneman & Pagenstecher who oversees the design and construction estimating functions of the company, as well as monitors construction activities in the field. Architects are expected to supervise the construction of the work products of their office. In this instance, the firm employs Mr. Pagenstecher, a licensed builder, to accomplish that function. The Petitioner will organize the operation at the subject property so that the Sycamore Store will be used and occupied almost exclusively by those persons specifically identified in the Zoning Ordinance as “professionals”.

As a threshold measure before Brenneman & Pagenstecher proceeded forward with its project, it obtained a zoning opinion letter from the Montgomery County Department of Permitting Services verifying that the activities which will be the subject of Special Exception Application No. S-2651 “...would be viewed as and qualify as a non-resident professional office”. Confirmation of that determination is enclosed in a letter dated March 25, 2005, from Susan Scala-Demby of MCDPS.

VI. Waivers required by the Petitioner’s proposal.

As part of its petition for special exception, Brenneman and Pagenstecher, Inc. requested a waiver of the requirements of Section 59-E-2.83(b) (“Setbacks”). At the public hearing, questions were raised about whether additional waivers would be required to implement the applicant’s proposal. After further analysis, it appears that the following waivers will be required to achieve the Petitioner’s proposed plan:

- A. Waiver of the front yard setback (Section 59-E-2.83(b))
- B. Waiver of the side yard setback (Section 59-E-2.83(b))
- C. Waiver of the screening requirement found in Section 59-E-2.83(c)
- D. Waiver of the shading requirement of Section 59-E-2.83(d)

- E. Waiver of the separation requirements of Section 59-E-2.43 (“Separation from parking spaces”)
- F. Waiver of the pedestrian walkway requirements of Section 59-E-4.2 (“Walkways”)
- G. Waiver of the size of parking spaces pursuant to Section 59-E-2.22 (“Size of spaces”)

The basis for the waivers is presently set forth in the Petitioner’s Statement of Operations but will be expanded on during testimony presented by the Petitioner and its expert witnesses at the time of the public hearing. Furthermore, Petitioner will submit a revised special exception site plan denoting the location and the nature of the variances requested. Detailed information regarding the requested waivers will be contained in a mailing to all interested parties sent by the Petitioner.

In an excess of caution, the Petitioner will request a waiver of the number of parking spaces required (from 8 to 7) but at the public hearing will demonstrate that, in fact, no waiver of that standard is necessary because the policy and practice is not to “round up” the number of required parking spaces when the overage is only 0.005 of a space (not 0.05 as was suggested at the public hearing).

In the opinion of the Petitioner, no waiver of the requirements of Section 59-E-2.41 (“Driveways”) is necessary because no drive aisles are proposed and tandem parking spaces are a permitted parking configuration.

Petitioner believes that the information set forth above is consistent with the instructions which it received at the November 4, 2005 public hearing and awaits the opportunity to further respond to a submission by opposition’s counsel.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK/dlt

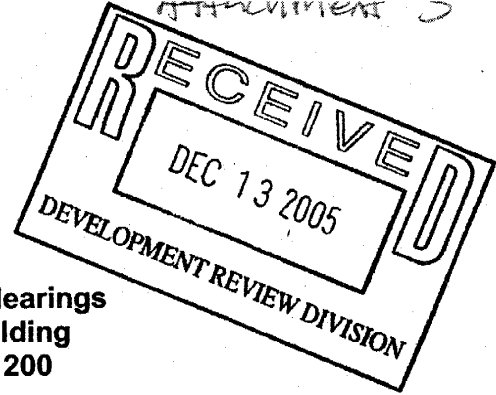
Enclosures

cc: Dan Janousek
Martin Klauber, Esquire
Dean Brenneman
Bill Landfair
Norman Knopf, Esq.
Glen Echo Heights Citizens Association

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850, Room 200
(240) 777-6660

www.montgomerycountymd.gov/council/hearing.asp



Case No. S-2651

PETITION OF BRENNEMAN AND PAGENSTECHER, INC.

NOTICE OF DATE FOR FURTHER HEARING AND REVISED DATES FOR SUBMISSIONS
BY THE PARTIES

At the hearing held in the above-captioned case on November 4, 2005, the parties agreed that the hearing should be adjourned following the receipt of testimony from community members who wished to be heard, and that the remainder of the hearing be continued to another date. It was also agreed that the parties would brief various legal issues in the interim. A briefing schedule that was established at the hearing proved to be unworkable, and the parties therefore agreed to a revised schedule, which is hereby adopted by the Hearing Examiner. That schedule is:

Petitioner's submission on legal issues is due on **December 16, 2005**; *Revised*

Any Opposition submissions will be due on **January 9, 2006**; and *Revised*

Any Rebuttal by Petitioner will be due on **January 11, 2006**.

All submissions should be served on all parties, upon Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and upon David Niblock of the Department of Permitting Services (DPS). The Hearing Examiner hereby requests that M-NCPPC and DPS re-review their previous positions in light of the briefs submitted¹ and that Technical Staff, by **January 27, 2006**, re-submit its recommendation to the Planning Board so that the Board has the opportunity to review its original position, if it elects to do so, in light of the new submissions no later than **February 16, 2006**. The Hearing Examiner further requests that Dan Janousek of the Technical Staff and David Niblock of DPS appear at the hearing when it resumes on the date specified below, and be prepared to testify, if called.

Notice is hereby given that the remainder of the hearing in this case will be held by the Office of Zoning and Administrative Hearings for Montgomery County, Maryland, in the Stella B. Werner Council Office Building, Third Floor Council Hearing Room, at 100 Maryland Avenue, Rockville, Maryland, on Tuesday, the 28th day of February, 2006, at 9:30 a.m., or as soon thereafter as this

¹ It is not being suggested that the initial conclusions of these agencies were incorrect. Rather, in fairness to them and to insure a complete record, they should have the opportunity to consider this case with the knowledge of certain issues that came to light after they completed their reviews. Examples are the possible applicability of Zoning Ordinance §59-G-4.12, which pertains to non-conforming structures, as distinguished from non-conforming uses; the possible applicability of Zoning Ordinance §59-B-5.3 and its sub-parts, which pertain to structures pre-dating 1958; and the full extent of the parking waivers sought by Petitioner, under both Zoning Ordinance §59-E-2.83(b), which calls for setbacks for parking facilities, and Zoning Ordinance §59-E-2.83(c), which calls for six-foot tall screening of parking facilities from abutting lots in residential zones and three-foot tall screening along street right-of-ways. At the request of the Hearing Examiner, the parties have agreed to brief these and other issues.

Resolution No.: 15-1247
Introduced: December 6, 2005
Adopted: December 6, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
WITHIN MONTGOMERY COUNTY, MARYLAND**

By: District Council

SUBJECT: Planning Board Final Draft Amendment to the Approved and Adopted Master Plan for Historic Preservation: Moreland and Sycamore Store

Background

1. On August 30, 2005, the Planning Board submitted to the District Council and to the County Executive, the Planning Board Final Draft Amendment to the Master Plan for Historic Preservation: Moreland and Sycamore Store.
2. On September 1, 2005, the Executive submitted to the County Council a fiscal impact analysis and comments on the Final Draft Amendment to the Approved and Adopted Master Plan for Historic Preservation: Moreland and Sycamore Store.
3. On October 25, the County Council convened a public hearing on the Final Draft Amendment to the Approved and Adopted Master Plan for Historic Preservation: Moreland and Sycamore Store. The Council heard testimony both for the proposed Master Plan Amendment. No one testified against the historic designation.
4. Because the Council received no testimony against the designation and because the property owners are in favor of the designation and were interested in seeing this master plan move forward quickly, the Council referred the master plan directly to the full Council.
5. On December 6, 2005, the County Council sitting as the District Council held a worksession on the Final Draft Master Plan Amendment.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following resolution:


The Final Draft Amendment to the Approved and Adopted Master Plan – Moreland and Sycamore Store is approved as follows:

Designate the following properties as individual historic sites:

Site #	Name	Address
35-154	Moreland	7810 Moorland Lane, Bethesda
35-155	Sycamore Store	7025 MacArthur Blvd., Bethesda

The text and maps of the Final Draft Amendment to the Master Plan for Historic Preservation: Moreland and Sycamore Store will be amended to correct all typographical errors, make technical changes and reflect master planned transportation rights-of-way where they will affect the environmental setting of the resource.

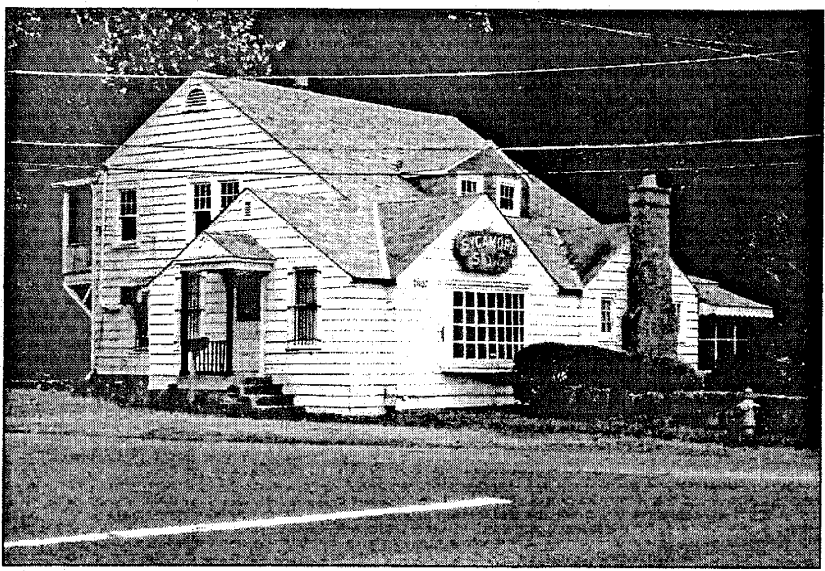
This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

35-155 Sycamore Store 7025 MacArthur Boulevard

- The Sycamore Store is significant for representing the development of the Glen Echo Heights area. The structure is the last vestige of a commercial intersection that thrived from about 1892, when the Baltzley brothers established a nearby store until 1995, when the Sycamore Store closed.
- The resource is significant for representing the summer resort history of the Potomac River valley in Montgomery County. The store was operated by members of the Sycamore Island Club, a private club for outdoor enthusiasts located within walking distance. Hugh Johnston, Captain of Sycamore Island Club, opened the store about 1920.
- Located at the one-time terminus of the Glen Echo Railroad, known as Sycamore Junction, the store has a close relationship with the streetcar. Even after the streetcar line was extended to Glen Echo, the trolley continued to stop at the Sycamore Store. The store was located across Walhonding Road from the stone car barn and power house.
- The Sycamore Store is an established and familiar visual feature of the Glen Echo Heights neighborhood. Built as a bungalow-type residence about 1916, the structure was converted into a store about 1920, and was expanded with a front addition by the early 1930s.
- This resource meets criteria 1a, 1d, and 2e.
- The recommended environmental setting is the entire parcel of 6,873 square feet, being part of Lot 32, Block 2 of Glen Echo Heights.





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

October 28, 2005

Ms. Allison I. Fultz, Chairperson
Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Re: Special Exception Petition S-2651

Dear Ms. Fultz and Board Members:

At the regular meeting of the Planning Board on October 28, 2005, we reviewed the special exception petition and associated development plan made by the firm of Brenneman and Pagenstecher, Inc., for a non-residential, professional office special exception. The firm proposes to utilize the Sycamore Store for the proposed use. The building is located at 7025 MacArthur Boulevard. The property is in the R-90 Zone. Following presentation by staff, public testimony, and presentation by the petitioner, the Planning Board recommended that the special exception development plan be APPROVED.

The Planning Board believes that the special exception application is in conformance with the 1990 Bethesda-Chevy Chase Master Plan. The use will be compatible with existing and planned land uses in the surrounding area. The proposed use will be in harmony with the general character of the neighborhood considering population density, design of the proposed new structure, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Compatibility issues were sufficiently addressed by the petitioner at the Planning Board Meeting. The petitioner will provide a sidewalk and plant grass along Walhonding Road to allow safe pedestrian access to MacArthur Boulevard.

EXHIBIT NO. _____
APPLICATION NO. _____

Sign lights will be on timers that will coincide with the staff's "flex hours" of operation. The number of ground lights along MacArthur Boulevard will be reduced, leaving only enough lights to illuminate the historic Sycamore Store sign. The petitioner also agreed to move all retaining walls onto the petitioner's property.

On a motion for approval with conditions by Commissioner Bryant, seconded by Commissioner Wellington, with Commissioner Robinson, Commissioner Perdue and Chairman Berlage in agreement, the Planning Board recommends that the special exception request be APPROVED subject to the following 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 seven (7) employees.
4. Primary hours of business operation from 7:00 a.m. to 5:30 p.m. daily, Monday through Friday. Extended Visitor hours until 7:00 p.m., Tuesday and Thursday evenings. Visitor and Staff Flex hours as noted below:

a. Visitors

- i. No clients or other visitors allowed on weekends, or at any other time outside of Primary and Extended Visitor hours.
- ii. Client visits limited to five (5) per week. Client visits to be logged and reserved for DPS inspection purposes.
- iii. No company trucks or vans allowed visiting outside of the primary business hours (7:00 a.m. to 5:30 p.m. daily).
- iv. No construction materials allowed to be delivered, received or stored at any time.