



Development Applications and Regulatory Coordination Division

Effective 6/29/2015

M-NCPPC

8787 Georgia Avenue, Silver Spring, MD 20910

301-495-4550, fax: 301-495-1306

APPLICATION

Forest Conservation Law Applicability for Conditional Uses/Special Exceptions

Property Information

9000 16th Street Silver Spring
 Address City
 B. F. Leighton Add to Woodside 1199 12 15 JP121 0000
 Subdivision Name Plat(s) Lot(s) Block(s) Tax Map Parcel(s)
 01089336
 Property Tax ID 1 Property Tax ID 2 Property Tax ID 3 Property Tax ID 4

Applicant (Owner, Contract Purchaser, or Owner's Representative)

Vladimir Gurevich
 Name Company
 13544 Glen Mill Road
 Street Address
 Rockville MD 20850
 City State Zip Code
 240-453-9790
 Phone Number Email Address

Total Area of Property: 0.04 acres 1,648 square feet

Applicant attests that the following statements apply to the subject property conditional use/special exception application:

The application does not propose any clearing or grading activities on or near (Requires plan number and M-NCPPC signature below)
 the conditional use/special exception site.

OR, all of the following:

- ☒ The application applies to a property of less than 40,000 square feet. (Not subject to Forest Conservation Law; requires M-NCPPC signature below)
- ☒ The property is not subject to a previously approved Forest Conservation Plan.
- ☒ The conditional use/special exception proposal will not impact any champion tree as defined by the Montgomery County Forestry Board.

PLEASE NOTE: If regulated activities occur on the property other than what is being attested to, the exemption immediately terminates without action by the Planning Board. The Planning Director may require the submission and approval of a Natural Resources Inventory/Forest Stand Delineation and a Forest Conservation Plan, and may also issue a fine of up to \$1,000 per day.

Applicant's Signature

Vladimir Gurevich

Printed Name

Date

07/13/2021

For Staff Use Only

M-NCPPC acknowledges that the conditional use/special exception for the above property:

- ☒ is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code.
- ☐ is exempt from the Forest Conservation Plan requirements under Section 22A-5(q)(1) of the Forest Conservation Law.

Plan Name: 9000 16th Street

Plan Number: 42022122E

8/16/21

M-NCPPC Signature

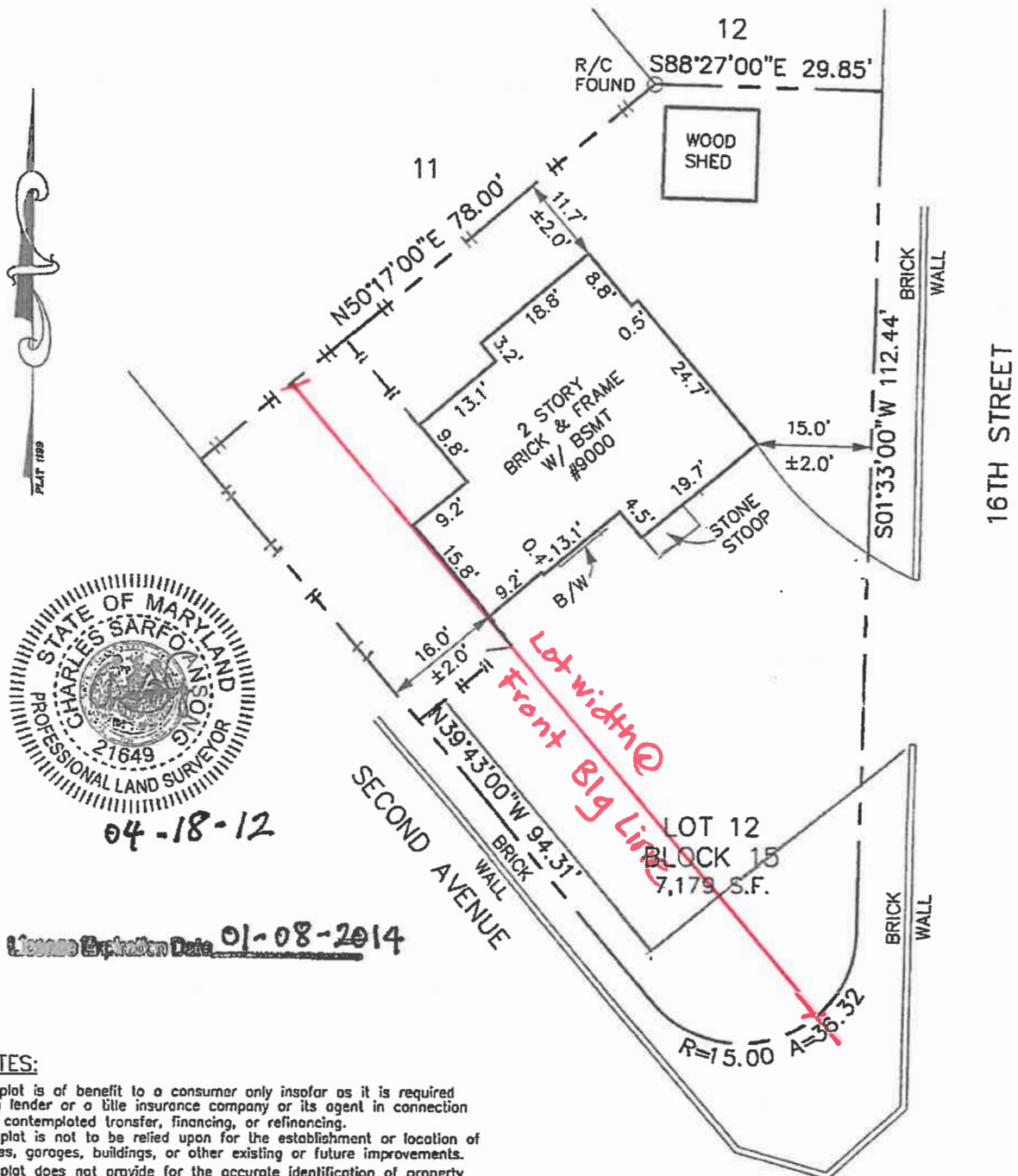
Aaron Savage

Printed Name

Date

Application Updated 11/24/2021: Mariah Clayborne

LOCATION DRAWING
9000 16TH STREET
LOT 12, BLOCK 15
B. F. LEIGHTON'S ADDITION TO WOODSIDE
PLAT No. 1199
THIRTEENTH (13TH) ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND



NOTES:

1. The plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing, or refinancing. The plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. The plat does not provide for the accurate identification of property boundary lines, but such identification may be required for the transfer of title or securing financing or re-financing.
2. No Title Report furnished, therefore this survey may not reflect all easements and/or restrictions of record.
3. Boundary information was obtained from available records and field verified in so far as possible. This survey is not to be used in

FLOOD NOTE:

Flood plan information available upon request

CERTIFICATION NOTE:

HOW LONG DOES IT TAKE TO DROP OFF/PICK UP CHILDREN FROM DAY CARE

DROPPING OFF IN THE MORNING

| PARENT | TIME IN AND OUT | | MINUTES |
|----------|-----------------|---------|---------|
| Parent 1 | 7:40 am | 7:42 am | 2 |
| Parent 2 | 7:45 am | 7:48 am | 3 |
| Parent 3 | 8:10 am | 8:20 am | 10 |
| Parent 4 | 8:25 am | 8:30 am | 5 |
| Parent 5 | 9:20 am | 9:23 am | 3 |

PICK UP IN THE EVENING

| PARENT | TIME IN AND OUT | | MINUTES |
|----------|-----------------|---------|---------|
| Parent 1 | 5:00 pm | 5:05 pm | 5 |
| Parent 2 | 5:00 pm | 5:03 pm | 3 |
| Parent 3 | 5:05 pm | 5:11 pm | 6 |
| Parent 4 | 5:40 pm | 5:42 pm | 2 |
| Parent 5 | 5:45 pm | 5:48 pm | 3 |

How Application meets criteria of North/West Silver Spring Master Plan

The August 2000 North and West Silver Spring Master Plan currently governs this property. The Master Plan does not provide explicit recommendations for the property or identify specific areas that are deemed suitable for the proposed use. It indicates that approval requires a finding that there is not an increase in the number, intensity, or scope of special exception uses sufficient to affect the area adversely...”. P.42.

At the time the Master Plan was approved by the Planning Board, this site housed a special exception granted in 1998, Trees for the Future, Special Exception Case No. S-2294 and A-4880, for the operation of a nonprofit corporation (charitable or philanthropic institution) pursuant to §59-C-1.323(a) and §59-E-2.81(a). The Board decision was recorded in the Montgomery County Land Records at Liber 16775; Folio 726-740. (**Exhibit 5**).

The Master Plan also cautions the Board to “apply increased scrutiny to the review of special exception applications to minimize their impact in residential neighborhoods.” p.3. The Master Plan indicates that “a special exception (Conditional Use Application) may be granted when the Board of Appeals finds on the basis of the evidence on record that the proposed use:

- Is a permissible special exception in the zone.
- Satisfies the specific standards for the special exception.
- Is consistent with the relevant master plan.
- Is in harmony with the character of the neighborhood considering population, design, intensity, character, traffic, and number of similar uses.

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**BOARD OF APPEALS
FOR
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(301) 217-6600

Case No. S-2294 and A-4880

PETITION OF TREES FOR THE FUTURE
(By: David E. Deppner, Director)

(Hearings held March 18, 1998 and September 1, 1998)

OPINION OF THE BOARD
Effective date of Opinion: November 23, 1998

Case number S-2294 is the application filed for a special exception pursuant to Section 59-G-2.21(Charitable or Philanthropic Institution) of the Zoning Ordinance to permit operation of a nonprofit corporation. Case number A-4880 is the application for a thirteen (13) foot variance from the required setback of fifteen (15) feet, in accordance with Sections 59-C-1.323(a) and 59-E-2.81(a). The Board of Appeals considered the two cases together, since they are related.

The subject property is Lot 12, Block 15, Leightons Addition to Woodside Subdivision, located at 9000 16th Street, Silver Spring, Maryland, in the R-60 Zone.

Decision of the Board in Case Number S-2294: Special Exception **GRANTED**, subject to conditions enumerated below.

Decision of the Board in Case Number A-4880: Requested variance **GRANTED**.

Steve Orens, Esquire, represented the Petitioner, Trees for the Future. During public hearings held on March 18, 1998 and September 1, 1998, he called several witnesses including, David E. Deppner, Director of Trees for the Future, Mr. Lee Cunningham, of Cunningham and Associates, an expert in land use and transportation planning, Mr. David Mitzel, Interim Executive Director of Trees for the Future, and Ms. Pat Aikman, a member of the Board of Directors of Trees for the Future.

Members of the community who testified in opposition to the petition included Anne McDermott, Clifford Hall, Frances Wright, Francisco Calvo, Gene Lynch and Mary Ellen Lynch, President of the North Woodside/Montgomery Hills Citizens' Association.

The Board of Appeals received written correspondence both in support of and in opposition to the petition.

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MONTGOMERY COUNTY

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Res 1000 401-199999
Feb 11 1999 11:42 AM

The subject property is located at the northwest corner of 16th Street and 2nd Avenue within the North Silver Spring Sector Plan area. It has approximately 112.5 feet of frontage along Sixteenth Street and 94.3 feet of frontage along Second Avenue. The site is a corner lot within a triangular shaped block. The property is improved with a two story single-family house, a one story frame shed, two gravel parking areas that can accommodate approximately five spaces, a driveway and a decorative masonry wall. By letter dated March 17, 1998 the Maryland State Highway Administration acknowledges that the wall is within the public right of way and consents to it remaining "with the stipulation that if...the roadway is widened, the wall would be removed" [Exhibit No. 35].

Two single-family residences adjoin the property, and single family residences are the predominant surrounding use. The subject lot is flat and irregularly shaped.

PETITIONER'S CASE

Trees for the Future, Inc. (Trees) wishes to use the subject property as the headquarters for a Charitable Institution, pursuant to Section 59-G-2.21 of the Montgomery County Zoning Ordinance. "Trees for the Future is a nonprofit corporation organized and operated for the purpose of bringing private resources, via grants, individual contributions and donations, to bear on the problems of deforestation and the destruction of agricultural lands of developing nations" [Exhibit No. 14(a), p.3]. They plan to use the existing house, without significant enlargement. They also plan to remove the existing shed.

A maximum of four full-time and two part-time employees will work on the site. Mr. Mitzel testified that one part time employee works about 1/2 time, one part time employee works about 1/3 time and the full time employees spend approximately 20-25% of their time in the field (September 1, 1998 Transcript, p. 8). Work conducted on the site will primarily support employees in the field. There will be a library, and Trees will communicate with employees and people they work with by fax, by E-mail and by telephone from the site. The hours of operation will be 8:30 AM to 5:00 PM.

Mr. Deppner testified that over the nine years Trees has existed, they have had "visitors...no more than at the rate of three per month...who would stop there for anywhere from an hour to two hours". He also said that "on the average of five nights a year...there would be an overnight guest [March 18, 1998, Transcript p.19]. A guestroom in the house will be used to accommodate overnight guests from either out of state or out of the country. Most overnight guests will be escorted to the site or will come via public transportation. In their testimony, both Mr. Deppner and Mr. Mitzel expressed the applicant's commitment to having a maximum of six people at any time on the site.

According to Planning staff, prior uses of the property have included a single family residence, medical practitioners' offices for various doctors, a basement apartment, a basement telemarketing facility, offices for a certified public accountant, parking for used cars and rental of bedrooms to various unrelated persons [Exhibit No. 20(a), p. 5]. Testimony indicates that the property has been vacant, and prior to acquisition by Trees for the Future, badly maintained for the last three or four years.

Master Plan and Special Exception Impact

In his report and testimony, Mr. Cunningham identified both the boundaries of the North Woodside/Montgomery Hills Citizens Association [Exhibit No. 12(a) p. 3, and depicted in orange on Exhibit No. 27], and an impact area, bounded by Sixteenth Street on the east, Hanover Street on the north and west, the CSX railroad right of way on the south and west [outlined in yellow on Exhibit No. 27], which he felt would be likely to be affected by the instant special exception. Within the impact area Mr. Cunningham found no similar special exception uses.

The relevant Master Plan is the 1978 North Silver Spring Sector Plan. Mr. Cunningham noted that the Sector Plan makes no specific recommendations for this site. He pointed out that in the Existing Land Use Exhibit in the plan, the subject property appears to have been in use as a doctor's office in 1978, when the plan was written. Referring to an excerpt from the Sector Plan, [Exhibit No. 54], he quoted the following statement:

A major goal of the Sector Plan is to ensure the continued stability of the North Silver Spring area by reinforcing desirable patterns of land use. The majority of the existing land uses are desirable in their location and their extent; therefore, this goal primarily entails maintenance of established uses. In a few instances, however, a change in the present land use will provide greater community stability than the continuation of a use that no longer makes sense under present or future conditions. [Exhibit No. 54 p. 23]

Mr. Cunningham stated his belief that the Sector Plan recognizes that in some instances due to traffic impact or lot shape, a use other than residential might "not only be acceptable, but would be desirable to maintain the residential appearance and the residential character of these areas" [September 1, 1998 Transcript, p. 18].

Section 59-G-1.21 General Conditions

Mr. Cunningham testified that the use will comply with all conditions of Section 59-G-1.21:

- A Charitable Institution is a permissible special exception in the R-60 zone.
- It complies with the specific standards for the use in Section 59-G-2.21, except for those instances where waivers are requested.
- It is consistent with the general plan and the sector plan as it continues the residential appearance of an existing structure.
- It will be a low intensity use, with a small number of persons at the site, and minimal associated traffic, which is consistent with a residential community.
- Refurbishment and use of the site will be an economic asset to the community.

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Case Nos. S-2294 and A-4880

Page 4

- No activities on site will impact upon the use and peaceful enjoyment of surrounding properties, and no noise, vibrations, fumes, odors, dust glare or other physical activity anticipated on the site will impact adjacent homes. The only outdoor lighting planned is the current lamppost [September 1, 1998 Transcript p. 116]. Mr. Cunningham testified that there will be one sign, two square feet in size, which will be attached to the lamppost. [September 1, 1998 Transcript p.40]
- As discussed above, this use, when evaluated together with existing approved special exceptions in the neighboring one family residential area, will not adversely affect or alter the predominantly residential character of the area.
- It will not adversely affect the health, safety, security, morals or general welfare of residents, workers or visitors to the area.
- Adequate public water, sanitary sewer and storm drainage serve the site. It will likely have no impact on local schools, and little on police and fire protection immediately available in Silver Spring. The number of trips to the site will not have a significant impact on the surrounding road network.

Section 59-G-2.21 Specific Conditions - Development Standards

Referring to Petitioner's Revised Development Chart, [Exhibit No. 52, as corrected, Exhibit No. 55], Mr. Cunningham addressed the application's conformance with the specific requirements for a special exception for a Charitable or Philanthropic Institution, under Section 59-G-2.21(a) of the Zoning Ordinance.

- Section 59-G-2.21(a)(1) referring to Section 59-C-1.322(a) Minimum Lot Area.

Mr. Cunningham noted that the application requires a minimum lot area of twice the minimum required in the R-60 Zone, which would be 12,000 square feet. The actual lot area for the site is 7,179 square feet. The applicant requests a waiver for 4,821 square feet.

- Section 59-G-2.21(a)(3) Referring to Section 59-C-1.323(b) Minimum Side Setback.

Per the Department of Permitting Services, the side of the property is adjacent to Lot 11. The Zoning Ordinance Standards in effect in February, 1940, when the Record Plat for the property was recorded, apply. Those standards required a seven foot setback. The proposed setback at Lot 11 is fourteen (14) feet.

- Section 59-G-2.21(a)(4) Referring to Section 59-C-1.322 (b) Minimum Frontage.

The code requires fifty (50) feet, the proposal has 112.4 feet of frontage along Sixteenth Street, and 94.31 feet of frontage along Second Avenue.

- Section 59-G-2.21(a)(5) Minimum Green Area.

The code requires a minimum green area of 50%, the proposal has 56%.

The Board recognizes that based on Petitioner's initial submission [Exhibit No. 4], Petitioner and Planning Staff calculated that a waiver for minimum green space was required. Planning staff calculated that the proposal contained 38% green area. However, upon re-certification of its site plan, and reconfiguration of the parking, with added landscaping, applicant proposes to provide 56% green area [Exhibit No. 50, areas marked in green and yellow].

- Section 59-G-2.21(a)(6) Maximum Floor Area Ratio.

The code requires a maximum of 0.2 (1435.8 SF). The proposal has 0.24 (1776 SF). The applicant requests a waiver of .04 or 287 square feet

- Section 59-G-2.21(a)(7) Referring to Section 59-C-1.328 Maximum Lot Coverage.

The code allows 17.5%, the proposal will comprise 14.08%

- Section 59-G-2.21(a)(8) Referring to 59-C-1.327(a) Building Height.

The code allows 35 feet, the proposal is 35 feet high.

- 59-G-2.21(a)(9) Frontage.

Requires a building to front on or have access to a road built to arterial or higher standards. The subject property fronts on and has access to Sixteenth Street, which is classified as a major highway.

The Petitioner requests waivers from two of the specific requirements of Section 59-G-2.21(a) of the Montgomery County Zoning Ordinance. Mr. Cunningham cited Section 59-G-2.21(b) as authority for the Board of Appeals to grant the requested waivers.

- Parking - Section 59-G-2.21(f)

Number of Parking Spaces

At the September 1, 1998 hearing, the Applicant submitted an Interior Floor Plan [Exhibit No. 51]. Referring to that plan, Mr. Cunningham testified that the gross floor area for the building is 2,353 square feet. [September 1, 1998 Transcript p.26].

Mr. Cunningham testified that determination of the number of parking spaces required for a charitable institution under the zoning ordinance is based on the total gross floor area of the building. For the area of the county in which the subject site is located, the requirement is 2.4 parking spaces per 1,000 square feet of gross floor area. For a building with 2,353 square feet of floor area, therefore, the requirement is for six parking spaces.

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Case Nos. S-2294 and A-4880

Page 6

The applicant requests a waiver of one space from the requirement for six spaces, to provide five spaces. Mr. Cunningham cited Section 59-E-5.4 Reduction - New use in Existing Building of the Montgomery County Zoning Ordinance for the Board's authority to waive one parking space.

Configuration of Parking

Initially the application [Exhibit 40(b)] proposed five parking spaces accessible from the existing asphalt drive, one in the gravel parking area along Sixteenth Street, and four in the gravel parking area along Second Avenue. Referring to the Revised Rendered Special Exception Site Plan [Exhibit No. 50], Mr. Cunningham described the proposed reconfiguration of the five parking spaces. Access to the site will continue to be from the existing asphalt drive off of Sixteenth Street, with one space next to the house and four spaces adjacent to the existing wall along Second Avenue. Landscaping is proposed between the wall and the parking spaces to screen the parking area. Mr. Cunningham testified that this reconfiguration of the parking permits an increase in greenspace provided.

Mr. Cunningham also testified that in the event of a need for more than five parking spaces on the site, there will be the possibility for additional parking in the existing gravel parking area at the east of the site, which can accommodate two vehicles. In the event of a temporary stop, for example a delivery, one vehicle can be parked on the driveway. Referring to the testimony and the applicant's statement of operations, Mr. Cunningham emphasized that the need for this additional parking would be rare.

Requested Variance for Parking Setback

The Petition includes a request for a variance (Case No. A-4880) from the required parking setback of fifteen (15) feet along Second Avenue. The petition meets the required 10-foot setback, with planting strip, along Sixteenth Street, but the reconfigured parking [Exhibit 50] provides only a two-foot setback along Second Avenue. Petitioner requests a variance of thirteen (13) feet.

Mr. Cunningham testified that because of the triangular shape of the lot, it would be impossible to provide parking for the use without the variance. He noted that granting the variance allows petitioner to configure the parking in a way that provides more green space than currently exists on the site in the form of landscaping which will provide screening to neighboring properties.

COMMUNITY OPPOSITION

Ms. McDermott raised a concern about whether Trees for the Future currently operates within the requirements of the zoning law.

Mrs. Wright, a neighbor to the rear, expressed concern about the outreach by Trees to the surrounding community.

Mr. Calvo expressed concern about whether the on site parking would be sufficient, and if it is not, the possible added parking burden to surrounding streets. He testified that returning the property to residential use would be best for the community, and more in keeping with the residential character of the neighborhood. He was also concerned about possible security issues associated with having the property vacant at night or occupied by non-English speaking guests. He was concerned about enforcement of the conditions of the special exception in the event that Mr. Deppner 'stepped back' from being Director.

At the March 18, 1998, public hearing, Mr. Lynch expressed concern about not having adequate information about the gross square footage of the building.

At the September 1, 1998, public hearing, Mary Ellen Lynch testified as president of the North Woodside/Montgomery Hills Citizens' Association:

- She asked whether a landscape and lighting plan had been submitted to the Park and Planning Commission.
- She testified that the Petition fails to meet the specific and general requirements of the zoning ordinance.
- She cited the 1978 North Silver Spring Sector Plan, and said the petition is inconsistent with the goals in the Master Plan to preserve the single family residential character of the community and establish a clear demarcation between residential and nonresidential uses. Ms. Lynch quoted from page 29 of the Master Plan, and said she felt that it intended only for certain residential uses on large lots to be changed to office use [Transcript, September 1, 1998, p. 82].
- She emphasized that the property is located at a gateway to the community and should therefore be in harmony with the residential character of the neighborhood. She felt that the parking would not be harmonious, and would not be adequate.
- She felt that a non-residential use at this site will be destabilizing to nearby homes and will adversely affect property values.
- She felt that there was insufficient information in the Petition about possible noise impacts and proposed lighting.
- She reiterated the community position, expressed in community input to revisions to the Silver Spring Sector Plan, that there are too many special exceptions within the North Woodside/Montgomery Hills Citizens' Association boundaries.
- She objected to the Board granting waivers for lot size, side yard setback [which is not actually needed or granted], and FAR, and questioned whether the applicant will really provide as much green space as stated.

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Case Nos. S-2294 and A-4880

Page 8

- Ms. Lynch expressed opposition to Trees' request for a variance for the parking setback along Second Avenue (Case No. A-4088), and questioned the Board's ability to grant such a variance.
- Ms. Lynch expressed concern that the use will bring unknown people into the neighborhood, will increase both pedestrian and auto traffic, and that having a lot of computer equipment in the house could invite burglary.
- Ms. Lynch expressed concern about changes in Petitioner's submissions, and felt that the actual use and impact of the site will be unpredictable.

MARYLAND STATE HIGHWAY ADMINISTRATION APPROVALS

By letter of March 17, 1998 the Maryland State Highway Administration (SHA) gave its approval of the proposed 30' entrance and gave permission for the existing wall, within SHA right of way, to remain, until such time as the road is widened [Exhibit No.35].

FINDINGS OF THE MARYLAND NATIONAL CAPITAL PARK AND PLANNING COMMISSION

In a report dated March 6, 1998, Planning Staff recommended approval of Variance A-4880 and approval of Special Exception S-2294, with conditions.

By letter dated March 13, 1998, the Montgomery County Planning Board recommended denial of the application.

FINDINGS OF THE BOARD

The Board finds that the proposed special exception for a charitable or philanthropic institution meets the general requirements for special exceptions found in Section 59-G-1.21, as well as the specific requirements for a charitable institution contained in Section 59-G-2.21, with waivers, which will be discussed below. The Board also finds that the impact of this use will be no greater at this location in the R-60 zone than it would be elsewhere. In fact, situated as it is, at the corner of two busy streets, it may well have less impact on neighboring homes and adjacent roadways than it would in a quieter residential location.

Section 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 use in the zone.

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Case Nos. S-2294 and A-4880

Page 9

A charitable or philanthropic institution is a permitted special exception use in the R-60 zone.

- (2) Complies with the standards and requirements set forth for the use in division 59-G-2, discussed below under Specific Requirements.
- (3) Will be consistent with the general plan for the physical development of the district, including any masterplan or portion thereof adopted by the commission.

The relevant Master Plan is the North Silver Spring Sector Plan. The Plan provides no specific guidance for the subject property or for Charitable Institution special exceptions. The Board recognizes that a stated goal of the Sector Plan is to "Preserve and protect the single-family residential character of the community" [North Silver Spring Sector Plan, p. 20]. The Board also notes the Plan's recognition that, "In a few instances...a change in the present land use will provide greater community stability than the continuation of a use which no longer makes sense under present or future conditions " [Exhibit No. 54, p.23]. The property is located at the corner of two busy streets. The history of its use indicates difficulty in establishing a residential use there. The Petition proposes little change to the exterior appearance of the structure, and in its Revised, Rendered Site Plan [Exhibit No. 50] proposes extensive landscaping to screen the parking. Because the property has long been unused and in disrepair, the Petition offers an opportunity to improve the appearance of the property and enhance its residential compatibility.

- (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 use will not be an intense one. The Applicant has committed to a limit of six persons on site at any one time. The outward appearance of the house will not change from its current residential nature. Parking on the site will be reconfigured to provide better screening to the neighboring community. The State Highway Administration has approved the proposed driveway. Moreover, as stated above, the Board finds that the impact of this use will not be greater in this location in the R-60 zone than it would elsewhere. There are no Special Exceptions for Charitable Institutions within the neighborhood impact area.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations fumes, odors, dust glare or physical activity.

This low-impact use will not change the residential appearance of the existing house, and will involve no activities that would generate noise, fumes, odors, dust or physical activity out of character with a residential neighborhood. Anticipated traffic impact will not increase

significantly from past use of the site. On site parking is provided and traffic to and from the site will not significantly increase the traffic on Second Avenue or Sixteenth Street. The only exterior lighting proposed is repair of the existing outside lamppost, which is not expected to cause any glare. While the Board heard testimony expressing concern about the possible decline in surrounding property values, there is no evidence that the proposed use will have that effect. In fact, Trees for the Future has repaired and restored the property, which would seem to have a beneficial impact on the economic value of surrounding properties.

- (6) Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature. Special exception uses in accord with the recommendations of a master or sector plan are deemed not to alter the nature of an area.

The Board finds that this use, in this location, does not amount to a detrimental concentration in the number, scope or intensity of special exception uses. Within the neighborhood impact area, the only special exception uses are for two accessory apartments, which do not alter the residential character of the neighborhood. The Board recognizes community concern about other special exceptions outside the impact area, but within the citizens' association boundaries. There is a nursing home two blocks away. Four blocks away on Columbia Boulevard, at the edge of the R-60 Zone, there is a special exception for a funeral home and one for a charitable institution. However, the Board finds that the addition of this use, with access from Sixteenth Street, with a maximum of six people on site at any time, will not pose an adverse cumulative effect. Six cars coming to this site via Sixteenth Street will not affect the adjacent roadways.

- (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

Ownership and renovation of the property have made it more secure than previously, and have included elimination of a serious infestation of rats. With respect to safety, the Board considered two issues: crime and traffic impact. Members of the community expressed concern that a non-residential use plus the presence of computer equipment might attract crime. The Board considered this concern, and feels that regular use of the property, which has been difficult to establish in the past, will make it a less likely subject of criminal activity. With respect to traffic impact, the number of trips associated with the use will not add significantly to local traffic.

- (8) 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.

The subject site is served by all required public facilities.

Specific Conditions - Section 59-G-2.21. Charitable or philanthropic institution.

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Case Nos. S-2294 and A-4880

Page 11

The Board finds that the proposed use meets the requirements in Section 59-G-2.21(a) for minimum side yard setback, minimum frontage, minimum green area, maximum lot coverage, maximum building height and access to a public road built to arterial or higher standards.

The Board grants the requested waivers of 4,821 square feet from the requirements of Sections 59-G-2.21(a)(1) Minimum Lot Size and .04 or 287 square feet from the requirements of Section 59-G-2.21(a)(6) Maximum FAR.

Section 59-G-2.21(b) provides that the Board may waive the standards stated in paragraphs (a)(1) through (9),...if the special exception is for re-use, without significant enlargement, of an existing building that either complies with the standards of the zone in which the property is located, was originally approved for another special exception use, or is designated as a historic resource by the master plan for historic preservation. The Board must not grant any such waiver unless it finds that:

- (1) Road access will be safe and adequate for the anticipated traffic to be generated; and
- (2) The requested special exception currently complies with the general conditions stated in section 59-G-1.21.

The Board finds that:

- The proposal is for re-use of the existing house without enlargement.
- Evaluation of compliance with the standards of the zone, pursuant to Section 59-B-5, and according to standard practice in the Department of Permitting Services, requires examination of the zoning in effect at the time of platting of the property. The Board notes that, according to technical staff [Exhibit No. 20(b), p. 14] the property complies both with current zoning standards, and with the standards in effect when the property was platted.
- Access to the site will be from Sixteenth Street, a major highway, which can well accommodate the number of trips anticipated. The Maryland State Highway Administration has approved the proposed thirty (30) foot entrance [Exhibit No. 35].
- As discussed above, the Board finds that the requested use complies with the general conditions of section 59-G-1.21.

The Board finds that the proposal satisfies all of the conditions in Section 59-G-2.21(b) for granting waivers from the development standards in Section 59-2.21(a). Moreover, since the proposal is for re-use of an existing building, which complies with the development standards for the R-60 Zone, and whose attendant traffic impact is consistent with residential use of the property, the Board finds that granting the waivers will cause no adverse impacts to the surrounding community.

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Case Nos. S-2294 and A-4880

Page 12

Parking**Number of Spaces****Section 59-G-2.21(f) provides:**

Adequate parking must be provided on site in accordance with the requirements for a general office, as stated in Section 59-E-3.7 and the setback and screening standards of Sections 59-E-2.8 and 59-E-2.9, respectively.

Section 59-E-3.7 provides:

Office, general office, and professional buildings or similar uses. Parking shall be provided in accordance with the parking requirements for office developments contained in Section 59-E-3.2. The calculation of building square footage is based on the sum of the gross areas of the several floors of the of the building measured from the exterior faces to the exterior walls or from the center line of party walls, which area shall include cellars or basements but shall not include floor area used for off-street parking.

In Section 59-A-2.1, the definition of Gross Floor Area excludes attic space with a structural headroom of less than six (6) feet, six (6) inches.

Section 59-E-3.2 provides in pertinent part:

Base parking requirements for offices shall be determined in accordance with a property's Office Parking Policy Area designation and the proximity of the property to a Metrorail station.

Section 59-E-3.2 also contains an Office Parking Policy Area map of Montgomery County. The subject site is located in the Southern Parking Area on that map. The section also contains a table showing Base Requirements for Office Parking. The table shows the proximity of each Parking Policy Area to a Metro Station. Thus, the subject site, located more than sixteen (16) hundred feet from a metro Station, is required to provide 2.4 parking spaces per thousand (1000) feet of gross square footage.

The Board finds that the parking requirement must be calculated on the basis of the total gross floor area of the existing house, which is 2353 square feet [Exhibit No. 51]. This calculation must exclude the attic space, which has structural headroom of less than six (6) feet six (6) inches [Exhibit No. 29]. At 2.4 spaces per thousand feet of gross floor area, Section 59-E-3.2 requires six (6) parking spaces at this site.

Section 59-E-5.4 Reduction - New use in existing building, provides:

LF 16775,738

Case Nos. S-2294 and A-4880

Page 13

(a) Upon application, the Board of Appeals shall have authority to reduce the number of parking spaces required for an existing building if the Board finds that:

(1) A new use will be conducted in the building that would normally require more parking spaces; and

(2) The reduced number of parking spaces will be adequate to accommodate the proposed use. Any such reduction in required parking spaces shall be restricted to such proposed new use and shall not operate to permit a later occupancy of such building if the use is subsequently changed or enlarged, unless the Board shall further approve such change.

(b) Action by the board of appeals in such matters shall be:

(1) Subject to the notice and procedural requirements for requests for variances as found in Section 59-A-4.2;

(2) In accordance with the provisions for special exceptions as contained in Section 59-G-1.21; and

(3) After consideration of the recommendations of the Planning Board or Planning Board's staff.

The Board finds that Petitioner's request for a reduction of one space in the number of spaces required falls squarely within Section 59-E-5.4, and therefore the Board grants the request. The proposed use is for a new use in an existing building, which is required by Section 59-E-3.2 to have six parking spaces. Petitioner has committed to having no more than a total of six people on site at any time. Mr. Deppner testified that Trees for the Future has operated in its current location with four parking spaces. He emphasized Trees' commitment to limiting itself to five on-site parking spaces, with no use of street parking [March 18, 1998, Transcript p. 21]. The Board is thus persuaded that five spaces will be adequate.

The Board's waiver of one parking space will apply only to this special exception, not to subsequent uses. The requisite notice and procedural requirements have been fulfilled, as discussed above, the Petition conforms to the general requirements for special exceptions in Section 59-G-1.21. Finally, the Board makes its decision having had the benefit of analysis by the technical staff, and a recommendation by the Planning Board.

Requested Variance for Parking Setback

As noted above, the Petition for a special exception is accompanied by a request for a variance (Case No. A-4880) of thirteen (13) feet from the parking setback of fifteen (15) feet along Second Avenue which is required by Section 59-E-2.8. The Board grants this variance.

Unlike most of the lots in the R-60 zone, the subject lot is narrow and triangular in shape. The existing house is set toward the back of the lot. The combined effect of these conditions is

11 16775.739

to restrict the possible location of parking to the one proposed. The requested use of the property as the headquarters for a charitable institution is permitted by special exception in the R-60 zone. Denial of the variance would eliminate the possibility to provide parking, and therefore eliminate this use of the property. The Board feels that such a restriction constitutes a disproportionate impact of the zoning ordinance upon this property, and results in a practical difficulty for the petitioner by completely preventing this use. The Board finds that the requested variance is the minimum reasonably necessary to achieve the parking. The proposed configuration of the parking, with landscaping and screening, allows more green space and screening than currently exist, which harmonizes the property with surrounding residences. Moreover, the Board notes that no such green area or screening, nor any restriction of parking on the site would be required if it were used for a strictly residential purpose. Therefore, the Board finds that the variance causes no detriment to the use and enjoyment of adjoining property.

The Board considered whether granting this variance amounts to an impermissible variance from the specific requirements of the special exception, but does not see such a problem.

The specific requirement for parking in Section 59-G-2.21(f) refers to the general parking requirements in Sections 59-E-3.2, 59-E-2.8 and 59-E-2.9. If the special exception contained no parking requirement, these same sections of the code, containing general parking requirements, would apply. In this way, the Board regards Section 59-G-2.21(f) as a cross-reference to the general requirements, from which the Board can grant variances.

In addition, the Board makes a distinction between granting a variance that eliminates a specific requirement of the special exception and the instant area variance, which observes the requirement to provide parking, but allows it to occur in the existing location with enhanced screening and landscaping.

Accordingly, the requested variance [Case No. A-4880] of thirteen (13) feet from the fifteen (15) foot side lot line setback, as required by Sections 59-C-1.323(a) and 59-E-2.81(a), is granted.

Accordingly, the Special Exception for a Charitable or Philanthropic Institution is granted, subject to the following conditions:

1. As required by Section 59-A-4.127, the holder of the special exception is bound by all of its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in this Opinion and except as altered by compliance with the following conditions:

2. The holder of the special exception must submit a landscape and lighting plan to the Technical Staff at M-NCPPC for review and approval, and to the extent allowable, landscaping must be according to Exhibit Nos. 49-52.

LF 16775.740

Case Nos. S-2294 and A-4880

Page 15

3. Signage is subject to approval by the Department of Permitting Services and the Sign Review Board.

4. Hours of operation are 8:30 a.m. to 5:30 p.m.

5. There will be no more than six employees on site at any time.

6. There will be no more than five permanent parking spaces on the site.

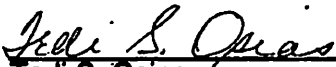
7. Employees and guests of Trees for the Future will park on site.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Wendell M. Holloway, Louise L. Mayer, and Susan W. Turnbull, Chair in agreement, the Board adopted the foregoing Resolution.

I do hereby certify that the foregoing Opinion was officially entered in the Opinion book of the County Board of Appeals this 23rd day of November 1998


Tedi S. Osias
Executive Secretary to the Board

NOTE: See Section 59-A-4.53 of the Zoning Ordinance for regarding the twenty-four-months' period within which the right granted by the Board for a Special Exception must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.