

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF FAIK AND LAUREN TUGBERK: Case No. S-2875
: OZAH No. 14-04
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A hearing in the above-entitled matter was held on October 24, 2014, commencing at 9:41 a.m., at the Office of Zoning and Administrative Hearings, Stella B. Werner, Council Office Building, 100 Maryland Avenue, Second Floor, RDMHR, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S		Page 2
On Behalf of the Petitioner:		
Heather Dlhopsky, Esq.		
C. Robert Dalrymple, Esq.		
Linowes and Blocher, LLP		
7200 Wisconsin Avenue, Suite 800		
Bethesda, Maryland		
* * * * *		
Opening Statement by Ms. Dlhopsky, Esq.		Page 5
* * * * *		
Witnesses:	Direct	
Michael Naas	8	
Faik Tugberk	18, 31	
William Landfair	34, 47	
Christopher Kabatt	50, 55	

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38 Affidavit of Posting	23	
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P R O C E E D I N G S

1 MS. ROBESON: Good morning.

2 VOICES: Good morning.

3 MS. ROBESON: Are the parties ready?

4 MS. DLHOPOLSKY: Yes.

5 MS. ROBESON: Or party?

6 MR. DALRYMPLE: We're having a party?

7 MS. ROBESON: Are you ready?

8 COURT REPORTER: Yes.

9 MS. ROBESON: I'm calling the case of Faik and

10 Lauren Tugberk, BOA Case Number S-2875, OZAH Case Number 14-

11 04, an application for a special exception to operate a

12 professional office at 9400 Georgetown Road, Bethesda,

13 Maryland. Is there anyone here that wishes to testify

14 that's not on behalf of the applicant? Yes, sir?

15 MR. NAAS: My name is Michael Naas.

16 MS. ROBESON: Okay. Let me just, you can sit now.

17 Let me just explain the proceedings a little bit. This

18 hearing is conducted on behalf of the Board of Appeals, I

19 take all the evidence and testimony and I write a

20 recommendation to the Board and the Board makes the final

21 decision on the application. You don't have a second chance

22 to testify in front of the Board of Appeals, so whatever you

23 want to say you should make sure you say it here. All

24 right. It's informal, but there's certain formalities,

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1 testimony will be under oath and subject to cross-

2 examination. And you have the ability to make an opening

3 statement before we start and we generally go the petitioner

4 goes first then you will have an opportunity to say what you

5 want to say. All right. Now the special exception is

6 somewhat of a misnomer because it's not special. Basically,

7 if you can meet the conditions of approval and those are

8 repeated in the Staff Report, then the special exception

9 must be granted. All right.

10 All right. With that, any opening statements?

11 MS. DLHOPOLSKY: Yes, good morning, Madam Hearing

12 Examiner. My name is Heather Dlhopsky, I'm an attorney

13 with Linowes and Blocher, I have here with me today Bob

14 Dalrymple, also an attorney with Linowes and Blocher, my

15 associate for today.

16 MS. ROBESON: Yes. Yes, you look like an

17 associate.

18 MR. DALRYMPLE: Thank you.

19 MS. ROBESON: You haven't aged, you've gotten

20 younger.

21 MR. DALRYMPLE: Yes, I have, thank you. The gray

22 hair is just, I dye my hair gray.

23 MS. ROBESON: Yes, just to look older.

24 MR. DALRYMPLE: Yes.

25 MS. ROBESON: Just for the record and in the

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1 interest of disclosure, I did work with Mr. Dalrymple at
2 Linowes and Blocher, but I'm not saying how many years ago.
3 But it was a while ago.
4 MS. DLHOPOLSKY: Understood.
5 MS. ROBESON: Okay. Go ahead.
6 MS. DLHOPOLSKY: Certainly. Thank you. I also
7 have here with me Faik Tugberk, the petitioner and his wife
8 Lauren and their son Carl. Mr. Tugberk will be testifying
9 today for the petitioner. We also have Bill Landfair with
10 VIKA, who is our expert in land planning and Chris Kabatt
11 with Wells and Associates who is our expert in
12 transportation planning, who we will be having testify later
13 as well.
14 As you noted, the application is for a
15 nonresidential professional office and I'm sure that you've
16 seen in the materials that you've reviewed thus far, this
17 use has been on the property for about 14 years, which is
18 when Mr. Tugberk purchased the property. What we're
19 proposing now is not actually any physical or operational
20 changes, the proposed special exception is purely to change
21 what was an existing special exception approved back in 1965
22 for a medical practitioner's office on the property to the
23 nonresidential professional office. Mr. Tugberk when he
24 purchased the property and you'll hear more from him about
25 this, believed that the medical practitioner's office

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1 special exception covered the architect's office that he has
2 on the property. He became aware of the fact that the
3 special exception category needed to be changed back at the
4 end of last summer when he was visited by a Montgomery
5 County Department of Permitting Services Inspector and
6 informed of that fact. Immediately thereafter Mr. Tugberk
7 contacted Bob and myself and we put together our team and
8 started preparing this application. So that is how we are
9 here today and we will put on a full, you know, a
10 presentation for you from our expert witnesses.
11 Up until this point we had not actually had any
12 feedback from any citizens. Mr. Tugberk had reached out to
13 his neighbors before filing to let them know about the
14 application. But given that I see that Mr. Naas is here
15 today does it make sense to hear from him now about what the
16 nature of his concerns are, so that we can be prepared to
17 address them, we'd be happy to do that if that makes sense
18 to you.
19 MS. ROBESON: All right. That's probably a good
20 idea. Mr. is it Naas?
21 MR. NAAS: Naas.
22 MS. ROBESON: Okay. Naas. Why don't you come up
23 and sit next to Mr. Dalrymple --
24 MR. NAAS: Okay.
25 MS. ROBESON: All right.

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1 MR. NAAS: I can get nervous here or I can get
2 nervous --
3 MS. ROBESON: Don't get nervous. This is very
4 informal. Just a second. Please raise your right hand.
5 Okay. Whatever you want. Do you solemnly affirm under
6 penalties of perjury that the statements you are about to
7 make are the truth, the whole truth and nothing but the
8 truth?
9 MR. NAAS: I do.
10 MS. ROBESON: Now would you just prefer to say
11 what you want to say instead of doing an --
12 MR. NAAS: I think so, yes.
13 MS. ROBESON: Okay. Go ahead.
14 MR. NAAS: I would start with the history of the
15 place first.
16 MS. ROBESON: All right.
17 MR. NAAS: At 9400 Old Georgetown Road.
18 MS. ROBESON: Well, first state your name and
19 address.
20 MR. NAAS: Okay.
21 MS. ROBESON: I don't --
22 MR. NAAS: My name is Michael Anthony Naas, I live
23 at 9305 Singleton Drive, in Bethesda, Maryland, zip code
24 20817.
25 MS. ROBESON: Okay. So you're toward the rear of

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1 the property?
2 MR. NAAS: I'm on Singleton Drive, it would be the
3 back of this --
4 MS. ROBESON: Right.
5 MR. NAAS: -- he backs up to Singleton Drive.
6 MS. ROBESON: Right.
7 MR. NAAS: And I'm about 50 yards, the second
8 house from, the third house, his house, one house, two
9 houses and then --
10 MS. ROBESON: I understand. Okay. Thank you.
11 MR. NAAS: My concern is more with parking, but
12 I'm going to start off with a little bit of the history of
13 the place. In 1956, there was a Dr. McLeod built a doctor's
14 office there. The property, the reason it's laid out the
15 way it is and it goes from front to back is it was, they put
16 that parking lot in the front when he moved in. At that
17 time, it was just a two lane road, Old Georgetown Road was.
18 And it was just a highway like any other two lane road, no
19 sidewalks, no nothing. The neighborhood wanted this very
20 bad, they wanted a doctor in their neighborhood and they got
21 it.
22 The Y across the street was, well the road changed
23 to a six lane --
24 MS. ROBESON: Across Old Georgetown?
25 MR. NAAS: Yes, across Old Georgetown Road and the

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1 six lane highway that Old Georgetown Road is today came in
2 effect about, in the early 60's. I can't give you an exact
3 date --
4 MS. ROBESON: That's fine.
5 MR. NAAS: -- but I know it was the early 60's.
6 MS. ROBESON: That's fine.
7 MR. NAAS: I know the Y sent people around to the
8 school, sent people into the neighborhood asking if they
9 wanted it, the people overwhelming wanted the Y. My biggest
10 concern is with parking on Singleton and Conway, right in
11 the neighborhood.
12 When I think, is it Turuk (phonetic sp.)?
13 MS. DLHOPOLSKY: Tugberk.
14 MR. NAAS: I'm sorry, first moved there all I,
15 there wasn't much traffic on Singleton Drive. I think there
16 was a big boat parked out on the pad, which my wife just
17 absolutely died over. And there wasn't much traffic, but a
18 few years later, people started parking on Singleton and on
19 Conway. And it got to be a lot of cars there. It was
20 anywhere from five, six cars to 10, 11 cars at times and
21 that was where my objection is. And that's my biggest
22 concern.
23 MS. ROBESON: Okay.
24 MR. NAAS: I don't know if the other --
25 MS. ROBESON: Do you have trouble parking?

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1 MR. NAAS: Do I have what?
2 MS. ROBESON: Do you have trouble parking?
3 MR. NAAS: No, I don't have any trouble --
4 MS. ROBESON: -- or making it through the roadway?
5 MR. NAAS: -- any parking, it's just the traffic
6 in and out.
7 MS. ROBESON: Oh, the traffic in and out. Okay.
8 MR. NAAS: Yeah, and that's on the back side of
9 his house on Singleton Drive. That's and the other thing I
10 know myself and several of the neighbors, a lot of trash out
11 there when trash day comes. His pickup should be on Old
12 Georgetown Road.
13 MS. ROBESON: Okay.
14 MR. NAAS: And he, because that's where all the
15 neighbors up through there, all the doctor's offices have it
16 on Old Georgetown Road, their pickup on Wednesday morning,
17 Thursday mornings, I'm sorry.
18 MS. ROBESON: So you say there's a lot of trash on
19 Singleton?
20 MR. NAAS: Well he puts a lot of trash out and I'm
21 not going to say it's messy, but a lot of trash.
22 MS. ROBESON: You would prefer his trash pickup to
23 be on Old Georgetown Road?
24 MR. NAAS: Old Georgetown Road, yes. And I would
25 prefer that he figure out how to park on the front side.

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1 MS. ROBESON: Okay.
2 MR. NAAS: On Old Georgetown Road instead of
3 Singleton --
4 MS. ROBESON: All right.
5 MR. NAAS: -- and Conway.
6 MS. ROBESON: Now this is the time when they can
7 ask you questions, when the petitioner's attorney can ask
8 you questions about your testimony.
9 MR. NAAS: Right.
10 MS. ROBESON: All right. So if you can just
11 answer the questions, you'll get another chance to say what
12 you want to say after they finish asking questions.
13 MR. NAAS: Okay.
14 MS. ROBESON: All right.
15 MS. DLHOPOLSKY: I think I just have one question.
16 The cars that you say that are out on Singleton and Conway,
17 are you certain that they associated with 9400 Old
18 Georgetown Road --
19 MR. NAAS: I will say this, lately it has slowed
20 down a lot. I'd say about 90 percent. But what I'm worried
21 about is if this is okay, if they'll come back. It has
22 slowed down since somebody gripped or something. Oh, there
23 was another thing, there was a motorcycle. I work until 3
24 o'clock, 4 o'clock in the morning sometimes. I like to
25 sleep and here came this motorcycle vroom down the street.

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1 And into the, onto the pad or whatever it was down there. I
2 mean I was ready to take a hammer down there and work it
3 over, to tell you the truth, particularly when I had worked
4 until 5:00 a.m. in the morning and it did wake me up at 8
5 o'clock or 9 o'clock, coming down the street. That was,
6 that was --
7 MS. ROBESON: That's parking on the pad along
8 Singleton?
9 MR. NAAS: Yes. Yes.
10 MS. DLHOPOLSKY: And have you noticed that the
11 motorcycle --
12 MS. ROBESON: The motorcycle has not been there in
13 the last, seven or eight months, maybe even longer. I can't
14 give you an exact date.
15 MR. DALYRYMPLE: That's because it's broken down
16 next to your hammer.
17 MR. NAAS: Tell you when you go to bed at 5
18 o'clock in the morning, that roars by --
19 MR. DALYRYMPLE: I hear you.
20 MS. ROBESON: All right. Anything else?
21 MS. DLHOPOLSKY: I don't think we have anything
22 else.
23 MS. ROBESON: Is there anything you want to say
24 based on her questions?
25 MR. NAAS: No, not really. I do know, I don't

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1 know, I, I know, I don't think it would hurt the
2 neighborhood if everything was kept out front on the
3 Singleton side of the road. I --
4 MS. ROBESON: On the Old Georgetown side?
5 MR. NAAS: Excuse me, Old Georgetown --
6 MS. ROBESON: No, that's fine.
7 MR. NAAS: I don't think it would hurt. I don't
8 know that it's I just hate for something in the future that
9 if this is granted with that many employees if something
10 else comes, it keeps building on that. Because I know most
11 of their work is done with high rises and things of that
12 nature, not individual homes like in our neighborhood.
13 MS. ROBESON: Okay. All right.
14 MR. NAAS: That bothers me a lot when I think,
15 hmm, what's coming next.
16 MS. ROBESON: You mean if the traffic gets worse?
17 MR. NAAS: Well not only that, if they keep
18 opening businesses. I know they've got all kinds of
19 doctor's offices up and down that street and like I said
20 before --
21 MS. ROBESON: Oh I see. --
22 MR. NAAS: -- like I said before what happens when
23 another business this size opens up next door or they
24 remodel or, you know, keep on going. How does that effect,
25 effect the area of the neighborhood.

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1 MS. ROBESON: And you're worried about sort of
2 commercial creep --
3 MR. NAAS: Yes.
4 MS. ROBESON: -- so to speak?
5 MR. NAAS: Yes. Yes.
6 MS. ROBESON: Okay.
7 MR. NAAS: That bothered me more than anything
8 else that it just creeps up and I know, I knew all the
9 neighbors that owned those houses behind us, that his
10 neighbors, I knew all of those. A lot of them were close
11 friends, a lot of them played with my kids when they were
12 growing up. I've lived there since 1972, my wife has lived
13 there since 1951.
14 MS. ROBESON: Wow.
15 MR. NAAS: And the neighborhood has changed a lot.
16 She knew all the neighbors when she was growing up, I knew
17 them when I moved there in, I take it back, I moved there in
18 '71, December of '71. I knew all the neighbors after she
19 knew them, they were her friends when they were growing up.
20 A lot of them, some of them are still there.
21 MS. ROBESON: One thing that we can do as part of
22 this hearing is place conditions, I'm going to let the
23 applicant respond to what you're saying, but one thing, but
24 I want everybody to start thinking if it would resolve a
25 problem, one thing we can do is put conditions on or

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1 restrictions on the use to address any problems. And one
2 restriction would be no parking in the alley. Now I haven't
3 heard from the applicant as to whether those cars but would
4 something like that address some of your concerns?
5 MR. NAAS: Yeah, as long as they're not parked
6 along that Singleton. There's one other thing. I know they
7 have accessory apartment. And I know you can get a permit
8 for that and everything. I would rather the person who
9 owns, or who is living in that accessory apartment --
10 MS. ROBESON: Park in back?
11 MR. NAAS: -- park in back. Park on the Singleton
12 side on the back.
13 MS. ROBESON: Okay.
14 MR. NAAS: I know there's two spaces required, but
15 I think they only have one car. And if they do, somebody
16 does move in there and eventually has two cars, they could
17 park that one on the --
18 MS. ROBESON: Does the accessory apartment have a
19 license?
20 MR. NAAS: I don't know, I've never checked into
21 it.
22 MS. ROBESON: Okay. I'm not sure it would be an
23 accessory apartment, but we'll figure that out.
24 MR. NAAS: Well it has it in their, some of their
25 sheets that they, that were in the, I've got it back here, I

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1 don't have it with me. It's mentioned in some of the
2 paperwork.
3 MS. ROBESON: Yes, it is. There is a residential
4 apartment on the second floor.
5 MR. NAAS: Yeah.
6 MS. ROBESON: Okay.
7 MR. NAAS: But it's, you know, that's all I can
8 think of right now.
9 MS. ROBESON: Okay. That's fine. Thank you very
10 much, and if you want to hang around you can listen to what
11 the applicant has to say about your concerns and they're
12 going to testify. Do you have a copy of the Staff Report?
13 MR. NAAS: Is that the one that was out on the --
14 MS. ROBESON: No, it's report that looks like
15 this. This is their --
16 MR. NAAS: I think I do, yes.
17 MS. ROBESON: Okay. Because they recommended
18 approval with certain conditions. That doesn't mean we
19 can't take your testimony into account which we will. All
20 right.
21 MR. NAAS: Yes.
22 MR. DALYRYMPLE: From the Maryland National
23 Capital Park and Planning Commission.
24 MR. NAAS: I think I've got that, yeah, I think I
25 made copies of it thanks.

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1 MS. ROBESON: Okay. Thank you. And you can
2 please stick around and you will have the ability to ask
3 their witnesses questions. So you can either remain there
4 or sit in the back, it's up to you.
5 MR. NAAS: I'll sit in the back. I'm chicken.
6 MS. ROBESON: Retiring.
7 MR. DALRYMPLE: Is it because I didn't shower
8 today? Is it because I didn't shower?
9 MR. NAAS: No, no.
10 MS. ROBESON: Okay. More information. All right.
11 Now there's no testimony about whether you showered or not,
12 you look like, I'm teasing you. Okay. Is this your first
13 witness?
14 MS. DLHOPOLSKY: Yes. Mr. Tugberk will be.
15 MS. ROBESON: Please raise your right hand. Do
16 you solemnly affirm under penalties of perjury that the
17 statements you're about to make are the truth, the whole
18 truth and nothing but the truth?
19 MR. TUGBERK: I do.
20 MS. ROBESON: Okay.
21 MS. DLHOPOLSKY: And Mr. Tugberk, as we go through
22 your testimony, we'll address some of the points raised by
23 Mr. Naas, but to get started, can you please state your
24 name, business address and your role at your business?
25 MR. TUGBERK: My name is Faik Tugberk and my

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1 business address is 9400 Old Georgetown Road, Bethesda,
2 Maryland, and I'm the principal of Architects Collaborative
3 which is in this building.
4 MS. DLHOPOLSKY: And can you generally describe
5 the nature of your business, how long you've been there, how
6 long you've been in business?
7 MR. TUGBERK: We've been in business for 24 years,
8 we have been at this location for 14 years, since year 2000,
9 which is the time that I bought the property along with my
10 wife.
11 MS. DLHOPOLSKY: And I touched on it a little bit
12 in my opening, but can you just go into a little bit more
13 detail about how you came to realize --
14 MR. TUGBERK: Sure. Sure.
15 MS. DLHOPOLSKY: -- this process was needed?
16 MR. TUGBERK: Sure. I would like to just step
17 back for a second. I moved my business to the next door
18 house at 9404 in 1997 and we stayed there for three years,
19 until the time that I realized that this property that we're
20 talking about become available. It had been a run down and
21 abandoned property, I found out as I inquired about it, and
22 that the mortgage holder was in default and it was owned by
23 an out of state bank of some sort, which was incredibly
24 difficult to reach. And I never met Mr. Naas before. I
25 wish I had. I frequently walk my little dog in the back

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1 street, occasionally I run into my neighbors and I know my
2 immediate neighbors.
3 Shortly after I moved my business to 9404 I
4 realized what a wonderful location it was and that it will
5 be fantastic if I could have an office there.
6 Unfortunately, the owner wouldn't sell so I became
7 interested in this property. And through some difficult
8 negotiations with the bank, I bought this property which was
9 in total disarray, in need of mainly repairs and
10 maintenance, it was being used as a cut through by a lot of
11 the people living on Singleton and Conway, and the
12 neighborhood kids were using it as a hangout. So we moved
13 in, we repaired and maintained the property. My office was
14 very small, we were three or four people. Yes, at one point
15 I did have a power boat that I kept in the back. I thought
16 that was my right. I didn't think that it was bothering
17 anybody but I'm a good neighbor, if I had heard from anyone
18 regarding any issues, no matter where I work or live, I
19 would have addressed it, or did my best to address it.
20 Over the years, my business grew as Mr. Naas
21 stated, we do multifamily residential projects but we also
22 do custom home renovations. It's just that the more of what
23 you do people bring you more of that thinking that you're an
24 expert and they are looking for an expert piece. We, we
25 really love this neighborhood, we love this building. The

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1 previous owner had planted wonderful trees and I'm doing my
2 best, my family is doing our best to take care of these
3 trees and we did added plants. We maintained the screens,
4 it's a very private property. There is no noise emanating
5 from this property, our operations are all indoors except
6 for parking. We would love to be able to continue what
7 we're doing on this property because it has been a blessing
8 truly, my wife and at times my son helps me in my business.
9 Laurie does marketing, accounting and my son is also an
10 attorney, unfortunately and he helps me with some of my
11 legal contracts, et cetera. So he gives me some advice.
12 We have, we're currently all together 11 of us,
13 there are 10 architects or architectural employees and one
14 administrative staff. That number can fluctuate downwards
15 depending on the market. Over the 14 years that we've been
16 there, the upstairs apartment was not an accessory, it's
17 part of the building and we have stayed there, my, I used to
18 have a partner, he lived there for the longest time. And
19 right now a family friend is staying in there and she does
20 park her car on the pad in the back.
21 As I mentioned, our operations are indoors.
22 Generally our hours of operations are 9:00 a.m. to 6:00
23 p.m., Monday through Friday. Occasionally I do go there on
24 Saturdays to take care of just general business, be ready
25 for you know, the coming week. And then we have, the nature

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1 of the business has changed because of internet and phone
2 and conferencing. We really hardly ever have meetings, if
3 we do maybe it's one a week or something, if that with our
4 clients. Most of the time our work takes us out of our
5 office. We go to our client's offices or it is simply done
6 over e-mail and electronically, teleconferences, et cetera.
7 We may get to one a week, maybe a FedEx or a UPS delivery,
8 paper supplies. We go generate paper in our architectural
9 business. Plotting and sheets although even most everything
10 we do is on the computer, we do plot things. We, we propose
11 really no changes to the operation. I have added more trees
12 over the years and, and as you and the staff Commission I
13 agreed to cut down some of the bamboo, keep it under control
14 and put more trees. As soon as I found out about that we
15 were not in compliance with the special exception, all I
16 knew was the property had a special exception, that's the
17 information I really didn't realize that it was one special
18 exception or another one and if you saw the building it is
19 set up for a business with the parking lot on Old Georgetown
20 Road. So there was nothing struck me as being odd or out of
21 the ordinary and I assumed that I would be able to continue
22 my business there.
23 Anyway, the only change that we're proposing is
24 that we're allowed apparently a two square foot sign. We
25 would like to have a sign, we've never had a sign but again

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1 we don't have that many visitors and people who come to
2 visit us they know where we are. It's a very well screened
3 property with bamboo. We like it, but I agreed again to cut
4 down some of the bamboo and add some other vegetation in
5 it's place.
6 MS. DLHOPOLSKY: Thank you, Mr. Tugberk. Do you
7 have the sign plan here with you today that you proposed?
8 MR. TUGBERK: Yes, I do.
9 MS. DLHOPOLSKY: Madam Hearing Examiner, I'd like
10 to pass around copies of the sign and introduce it as an
11 exhibit into the record.
12 MS. ROBESON: Okay. I also am going to mark the
13 affidavit, I did get your affidavit of posting.
14 MS. DLHOPOLSKY: Great.
15 MS. ROBESON: And I am going to mark that as
16 Exhibit 38.
17 (Hearing Exhibit No. 38 was
18 marked for identification.)
19 MS. ROBESON: And then we'll take the sign
20 exhibit. That will be Exhibit 39.
21 (Hearing Exhibit No. 39 was
22 marked for identification.)
23 MS. ROBESON: Is that your signage plan?
24 MS. DLHOPOLSKY: Yes, it is. Yes. Proposed sign
25 plan. I also brought the CD with the electronic copy of the

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1 sign plan. I don't know if that needs to be a separate
2 exhibit but that was --
3 MS. ROBESON: We do that as 39A.
4 (Hearing Exhibit No. 39A was
5 marked for identification.)
6 MS. DLHOPOLSKY: Okay.
7 MS. ROBESON: Thank you. Now did you get a chance
8 to show Mr. Naas the sign --
9 MS. DLHOPOLSKY: No, we did not but I have extra
10 copies and I will give him a copy --
11 MS. ROBESON: Okay.
12 MS. DLHOPOLSKY: -- right now. And Mr. Tugberk,
13 could you just very briefly describe what the proposed sign
14 is here?
15 MR. TUGBERK: The proposed sign is approximately
16 11 inches by 26 inches, it just simply says Architects
17 Collaborative, Inc. and 9400. Currently, the only
18 identification we have is a mailbox with a 9400 number. I
19 think this may be helpful in people locating us without
20 passing us by. The sign is a very small sign in my
21 judgment, but you know this is what we are allowed and we
22 set it pretty low in the ground. We were trying to see that
23 as people drive it would be at the driver's eye level. It's
24 like 4 foot 6 inches --
25 MS. ROBESON: So it's under the 5 feet?

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1 MR. TUGBERK: Yeah.
2 MS. ROBESON: Yes.
3 MR. TUGBERK: The site has a light slope, a
4 gradual from Old Georgetown going up to.
5 MS. DLHOPOLSKY: Okay. Thank you, Mr. Tugberk. I
6 think you've covered most of the points we wanted to raise
7 in your testimony but I had just a few quick follow up
8 questions based on some of the concerns that Mr. Naas raised
9 in his testimony. Can you just briefly describe where your
10 employees for the most part are currently parking, the
11 people who work at your site?
12 MR. TUGBERK: Well our employees, including
13 myself, currently we are parking in the front.
14 MS. DLHOPOLSKY: In the front, you mean?
15 MR. TUGBERK: I'm sorry, the front is Old
16 Georgetown Road for us. As you see this is a through lot
17 and the property sits on two lots. So one day there could
18 be two homes, one fronting Old Georgetown and one fronting
19 Singleton. That is possible.
20 MS. ROBESON: Oh, there's two underlying lots?
21 MR. TUGBERK: Right. So.
22 MS. DLHOPOLSKY: And I think you'll see when Bill
23 Landfair, our expert in land planning testifies that most of
24 the lots between straddling Old Georgetown and Singleton are
25 two lots kind of split down the middle. This one actually

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1 goes all the way through so it's a little bit different from
2 his neighbors. So it's your understanding that --
3 MS. ROBESON: So it's a zoning merger, is it still
4 two lots?
5 MS. DLHOPOLSKY: It's just one lot.
6 MR. TUGBERK: No, it's one lot but it's
7 equivalent, if you look at next door it's equivalent to two
8 lots.
9 MS. ROBESON: Oh, I see what you're saying. I see
10 what you're saying.
11 MR. TUGBERK: It's just that you know, we, want to
12 continue our operation but that's why this property has
13 frontage on Old Georgetown --
14 MS. ROBESON: And Singleton.
15 MR. TUGBERK: -- and on Singleton.
16 MS. ROBESON: Yes. Okay.
17 MS. DLHOPOLSKY: So just to confirm, so to your
18 understanding your employees are parking on the Old
19 Georgetown Road side?
20 MR. TUGBERK: Right.
21 MS. DLHOPOLSKY: Okay. And as I think you
22 indicated previously your resident is generally parking on
23 the pad on Singleton.
24 MR. TUGBERK: Always parking on the pad.
25 MS. DLHOPOLSKY: Okay.

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1 MR. TUGBERK: Unless something is obstructing her
2 way.
3 MS. DLHOPOLSKY: Okay.
4 MS. ROBESON: Did you in your statement of
5 operations propose a maximum number of employees?
6 MR. TUGBERK: 11.
7 MS. ROBESON: 11? That's your maximum?
8 MR. TUGBERK: That's, that's corrects.
9 MS. ROBESON: Including you and your wife?
10 MR. TUGBERK: Well, including me.
11 MS. ROBESON: Including you?
12 MR. TUGBERK: Right. Right, that's part-time
13 work, including the, she does invoicing and marketing, she
14 doesn't necessary have to come to work with me. She has her
15 own job.
16 MS. ROBESON: Well okay, all right, I was just
17 thinking of the parking and the traffic test is based on the
18 square footage, but if there's overflow parking, you know,
19 one other condition that we can put on is to set a maximum
20 number of employees.
21 MR. TUGBERK: I think that's what we --
22 MS. DLHOPOLSKY: Right. I think in our statement
23 right now we indicate 11 employees and Mr. Tugberk, I think
24 we also indicate that there is nine parking spaces on site.
25 Do you ever have more than nine cars every day?

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1 MR. TUGBERK: No, we don't. A number of employees
2 always public transportation. We have a bus stop right at
3 the corner.
4 MS. ROBESON: Yes, I saw that. Do clients visit
5 this site?
6 MR. TUGBERK: Clients visit the site, but keep in
7 mind, you know, it's, we don't have this huge parking lot,
8 people come in and out. Most people come in the morning and
9 stay the day. We have very short lunch hours, people eat
10 their lunches at their desks and they either bring food or
11 somebody goes out and gets stuff. So if there is any kind
12 of an issue, you can just pull into the parking lot and
13 really park there. Okay. We have, in 14 years I don't
14 remember having had any issues with parking. And we really
15 don't intend to exceed this number of employees. My
16 business is not set up that way. I mean I want to go into
17 the discussion, it changes what I do and I don't want to
18 change. I would like to be able to continue my design
19 efforts and not become an administrator. If the office
20 grows much bigger, we'll move out of this location, but
21 that's not my intent. My intent is to retire here.
22 MS. ROBESON: Okay.
23 MR. TUGBERK: If, if I'm allowed to do that.
24 MS. ROBESON: Okay.
25 MS. DLHOPOLSKY: And I just had, I guess just one

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1 or two more quick questions, Mr. Tugberk. With regard to
2 the prior concern about the trash and recycling pickup, can
3 you explain where those pickups are currently occurring on
4 your site?
5 MR. TUGBERK: Sure. You know for the time that
6 I've been in there, Old Georgetown Road putting trash on the
7 sidewalk, it's a very narrow sidewalk and some of our
8 neighbors do that. My immediate neighbor to my right if
9 you're on Old Georgetown Road and it blocks the sidewalk.
10 The way we're set up, we don't generate much trash, there
11 isn't trash coming in. What's coming out is recycled paper.
12 We want to make sure we follow the County recycling
13 procedures with plastic and metal and paper and yes we have
14 two paper bins and one plastic bin and a trash can that we
15 walk to the back which is to Singleton and Singleton is a
16 level ground and we can easily push them up and back. And I
17 mean I can put it on the other side of the driveway, we put
18 it on the road, really, on the edge of the asphalt.
19 MS. ROBESON: Wait. The other side of --
20 MR. TUGBERK: Meaning like --
21 MS. ROBESON: -- you've got two driveways.
22 MR. TUGBERK: -- instead of the parking pad --
23 MS. ROBESON: One on Singleton --
24 MR. TUGBERK: -- to one side of the parking pad,
25 pad, we can move it to the other side of the parking pad on

1 the Singleton side.
 2 MS. ROBESON: Okay.
 3 MR. TUGBERK: It would be really difficult for us
 4 to bring all of that around and push it up, up and down hill
 5 and again clutter Old Georgetown more. So I'm really not
 6 certain why I mean everybody there is a recycling trash on
 7 Singleton and if this property had been split there would be
 8 a residence there with trash and recycle and parking.
 9 MS. DLHOPOLSKY: Okay. Thank you, Mr. Tugberk.
 10 Two final questions. One, the issue was raised about the
 11 neighbors concern about the proliferation of the uses in the
 12 neighborhood. Is it your understanding that the Bethesda
 13 Chevy Chase Master Plan actually recommends your site as
 14 suitable for a nonresidential professional office?
 15 MR. TUGBERK: Absolutely, yes.
 16 MS. DLHOPOLSKY: Great, and we'll hear more from
 17 Mr. Landfair about that as well in a moment. And just the
 18 final question I have for you, if the Board grants approval
 19 of this application, is it your intention to operate the
 20 improvements in accordance and in full compliance with the
 21 plans and specifications submitted and all conditions of
 22 approval?
 23 MS. DLHOPOLSKY: Yes.
 24 MS. ROBESON: What about the SHA's letter about
 25 the driveway along Old Georgetown? Are you going, planning

1 to comply with that?
 2 MS. DLHOPOLSKY: Madam Hearing Examiner, I think
 3 there was an initial, if I may speak, there was an initial
 4 SHA letter submitted that talked about revising the access,
 5 but then there was actually a second SHA letter that was
 6 submitted, where they took away that comment and said that
 7 because there are no operational changes on this site,
 8 they're not recommending any improvements to access now.
 9 That second letter made it into the record as Exhibit 27.
 10 MS. ROBESON: Okay.
 11 MS. DLHOPOLSKY: And we were going to have our
 12 traffic engineer --
 13 MS. ROBESON: Okay. All right.
 14 MS. DLHOPOLSKY: -- speak to that.
 15 MS. ROBESON: All right. All right. Mr. Naas, do
 16 you wish to ask Mr. Tugberk any questions about his
 17 testimony?
 18 MR. NAAS: Well like I said, our biggest concerns
 19 are the neighborhood --
 20 MR. DALYRYMPLE: Why don't you come on up?
 21 MS. ROBESON: You need to come up so you're near
 22 the mics.
 23 MR. NAAS: Yeah, like I said, one of the biggest
 24 concerns in the neighborhood is the trash on the Singleton
 25 side and that's the only, or, that's the biggest objection

1 in the neighborhood, believe it or not. I've been talking
 2 to everybody around there. And I can't tell that it's
 3 flatter in the back than it is in the front when I walk
 4 around. I, I walk a lot and I'm sure I don't know if you've
 5 ever seen me or not, I have two dogs, that you --
 6 MR. TUGBERK: No, I, I, I've never seen you.
 7 MR. NAAS: -- and they bark at yours. I promise
 8 you. But that, that's the only concern I have right there.
 9 And you know when I walk around the place it looks flat, as
 10 flat in the front as it does in the back and like I said
 11 before everybody along there, all those doctor's offices,
 12 which I think almost all of them are doctors or there used
 13 to be one veterinarian, he's no longer there. But they put,
 14 put all their trash out in front of the house on Old
 15 Georgetown Road.
 16 MS. ROBESON: Okay. Okay. Do you want to ask Mr.
 17 Tugberk any questions though?
 18 MR. NAAS: Yeah. Is it, you know, like I said,
 19 I've never, I had, I've been up on your property but it's
 20 been probably 30 years ago when a lady owned the property.
 21 Is it any flatter in the back? It didn't look like it when
 22 I've been up in there. It's been that long?
 23 MR. TUGBERK: It's, it's absolutely flat in the
 24 back and there is about, I would say roughly 9 to 10 feet of
 25 rise from Old Georgetown, we, I mean we have a contour plan.

1 MR. NAAS: I didn't think it was that much of a
 2 rise, because when I walk up in there it's, or when I look
 3 up in there it's very --
 4 MR. TUGBERK: It's very, it's very gradual.
 5 MR. NAAS: -- it's just maybe a foot or two.
 6 MR. TUGBERK: It's very gradual but you know, we
 7 have a contour map, you can take a look at.
 8 MR. NAAS: That's, like I said, that's our biggest
 9 concern and that that's, I don't think any of the neighbors
 10 really have any objections except for the trash and the cars
 11 that were parked over there on Singleton Drive and Beech.
 12 MS. ROBESON: All right. All right, any other
 13 questions?
 14 MR. NAAS: No, I don't think so.
 15 MS. ROBESON: Okay. You may be excused, Mr.
 16 Tugberk.
 17 MS. DLHOPOLSKY: All right. We'd like to call, if
 18 you like you can take a seat.
 19 MR. TUGBERK: Oh.
 20 MS. DLHOPOLSKY: We, you can take a seat back
 21 there. We'd like to call our next expert witness, Bill
 22 Landfair, an expert in land planning with VIKA.
 23 MS. ROBESON: Please raise your right hand. Do
 24 you solemnly affirm under penalties of perjury that the
 25 statements you're about to make are the truth, the whole

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1 truth and nothing but the truth?
2 MR. LANDFAIR: I do.
3 MS. ROBESON: All right. Go ahead.
4 MS. DLHOPOLSKY: All right. Thank you, Mr.
5 Landfair. Can you please state your name, address, employer
6 and occupation?
7 MR. LANDFAIR: Yes. My name is William Landfair,
8 I'm with VIKA Maryland and our address is 20251 Central
9 Boulevard, Suite 400, Germantown, Maryland.
10 MS. DLHOPOLSKY: Thank you. And my understanding
11 is that your resume is already an exhibit in the record, as
12 Exhibit 13A, and have you recently been recognized as an
13 expert in land planning before this body?
14 MR. LANDFAIR: I have, before this Hearing
15 Examiner.
16 MS. ROBESON: Mr. Naas, do you have any objection
17 to qualifying him? He's testified many times --
18 MR. NAAS: No.
19 MS. ROBESON: Okay. I'm going to qualify him as
20 an expert, because he's testified many times. Is your
21 license in Maryland still current?
22 MR. LANDFAIR: My certification is current.
23 MS. ROBESON: Okay. That's right, cert, because
24 you're the, okay, go right ahead. I'm going to qualify him
25 as an expert in land planning.

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1 MS. DLHOPOLSKY: All right. Mr. Landfair, we've
2 talked already a bit about the site, but can you, referring
3 to our Special Exception Site Plan and our Neighborhood Plan
4 and Landscape Plan that are in the record, can you please
5 just walk us through the site and the expert analysis that
6 you've conducted from a land planning perspective?
7 MR. LANDFAIR: Sure. I'm referring now to the
8 Site Plan which is in the record. The property is on the
9 west side of Old Georgetown Road, it has 80 feet of frontage
10 along Old Georgetown Road, a depth of 230 feet extending
11 back to Singleton Drive. So as has been described in the
12 record, it is a through lot. It is improved with a two
13 story structure, which measures 5,300 square feet in size.
14 Within that structure, there is the architect's office on
15 the main floor which consists of 2,200 square feet and then
16 on the second floor there is a residential unit, or
17 apartment which measures about 1,200 square feet. And then
18 on the lower level in the basement measuring about 1,900
19 square feet is storage area and a break room for the
20 architect's office.
21 There is existing access off of Old Georgetown
22 Road itself, that entrance point has been there for many
23 years and it's built to standard and it provides access to
24 eight parking spaces. Six of those parking spaces are
25 aligned perpendicular to the driveway and two parking spaces

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1 are within a car port along the front of the building. Then
2 in addition to that, we have a concrete parking pad on the
3 rear side, in what we would call the rear yard off of
4 Singleton Drive, which is also suitable for parking. The
5 property itself if gently contoured up from Old Georgetown
6 Road --
7 MS. ROBESON: How many, I'm sorry.
8 MR. LANDFAIR: I'm sorry, go ahead.
9 MS. ROBESON: How many spots do you have on
10 Singleton?
11 MR. LANDFAIR: On Singleton it's one.
12 MS. ROBESON: Okay. Go ahead. I'm sorry.
13 MR. LANDFAIR: I suppose you could maybe park,
14 squeeze two smaller cars, but one, one car would be in the
15 public right-of-way --
16 MS. ROBESON: Okay.
17 MR. LANDFAIR: -- and that would not be --
18 MS. ROBESON: Right.
19 MR. LANDFAIR: The property is well landscaped,
20 the topography is fairly gentle from Old Georgetown Road, I
21 think Mr. Tugberk testified that the contour rises up about
22 9 feet and that's correct, based on the Site Plan and the
23 contour shown on --
24 MS. ROBESON: From the right-of-way to the
25 structure?

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1 MR. LANDFAIR: From the right-of-way to the
2 structure itself, right.
3 MS. ROBESON: Okay.
4 MR. LANDFAIR: And then the rear yard along
5 Singleton is pretty much flat. The property is heavily
6 landscaped, particularly along the side property lines,
7 along the south side and along the north side. This
8 screening is primarily bamboo, very mature bamboo. But in
9 addition to that we also have arboreta and we have Leyland
10 Cyprus trees that are also planted. So it is very, very
11 thick and very effective by the screening on the property,
12 in addition to that we also have various mature trees that
13 are scattered in the front yard and the rear yard. As part
14 of this process going through the special exception, it was
15 noted by Park and Planning staff that several trees on the
16 property seemed to be in poor condition, so we conditioned a
17 report by an arborist within our firm to review the
18 condition of those trees. Those two trees were in the rear
19 yard, they are, were mature white pines and it was
20 recommended to remove them. And so those trees have been
21 removed and they served no particular purpose and they did
22 not provide any kind of screening. It was felt that from a
23 public safety perspective and also to improve the appearance
24 of the property that they should be removed. So those trees
25 are now gone.

1 Also along the frontage of the property, there are
2 also a number of other mature trees that also help to screen
3 the view of the front yard from Old Georgetown Road. In
4 fact, as you drive up and down Old Georgetown Road it's easy
5 to miss the property because of the effective screening on
6 site.

7 There is lighting; there are three wall mounted
8 lights on the property which are very similar to what you
9 would find on any residence in the surrounding area. These
10 are for safety and security, two are mounted on the front of
11 the building and there's on mounted on the rear side of the
12 building. So there's nothing particularly unusual about the
13 property other than the fact that there are parking spaces
14 in the front yard.

15 Briefly just to describe the surrounding
16 neighborhood. The surrounding neighborhood contains a
17 mixture of residential uses along both the west and east
18 side of Old Georgetown Road, or at least they were
19 originally constructed as residences. Many of them have now
20 been converted over into office uses, primarily medical
21 oriented offices.

22 Immediately adjacent to the subject property on
23 the north side is a single family residence. It's in the R-
24 60 Zone, much like the other properties in the surrounding
25 area. And then on the south side there is a building

1 occupied by offices, I think the acronym was AMSUS, A-M-S-U-
2 S and I think it's a federal employees organization of some
3 kind. The surrounding neighborhood is zoned R-60, there are
4 homes that front along Singleton Drive and as has already
5 been testified, the subject property at some point in time
6 could be re-subdivided. It's roughly 18,000 square feet in
7 size. So it can easily meet the development standards for
8 the R-60 Zone. So at some time if Mr. Tugberk wishes, they
9 could re-subdivide the property and two new homes could be
10 constructed on the property.

11 While there are no changes that are contemplated
12 to the building itself or to the parking or to the lighting,
13 it is recognized that we have this thick bamboo and staff
14 recognized that some might perceive this to be an attractive
15 nuisance, if you will. Although the neighbors have never
16 complained and in fact, appreciate the fact that we have the
17 bamboo there, staff has asked that over time that we
18 gradually introduce new plant materials, although initially
19 they would like us to supplement this bamboo with eight
20 American Holly trees planted along the south side and then
21 one red eastern cedar planted along the north side to fill
22 the gap in between some Leyland Cyprus trees and the
23 existing standing bamboo. Just to make sure that again we
24 have complete screening of both the north and south property
25 lines.

1 MS. DLHOPOLSKY: Thank you, Mr. Landfair, and
2 based on your expert analysis is it your opinion that this
3 proposed special exception conforms with the Bethesda Chevy
4 Chase Master Plan recommendation?

5 MR. LANDFAIR: Yes. The Plan recognizes that over
6 the years there's been a proliferation of office type and
7 nonresidential type uses within the planning area itself and
8 more particularly along Old Georgetown Road. And to try to
9 address that the plan makes specific recommendations as to
10 what properties are suitable for special exception uses and
11 in our case, the property is specifically cited as being
12 suitable for special exception use for a nonresidential
13 professional office.

14 MS. ROBESON: But wasn't that due to community
15 desire for the use?

16 MR. LANDFAIR: Community desire for --

17 MS. ROBESON: I thought a doctor's office.

18 MR. LANDFAIR: -- well I think it was recognized,
19 well, perhaps. It's recognized that many of these
20 nonresidential uses are medical oriented offices. But other
21 offices are not. So they recognize that there are other
22 professions in addition to doctors, such as an architect
23 that are also desirable within the community.

24 MS. ROBESON: Okay.

25 MR. LANDFAIR: And so not only do they recommend

1 certain properties being suitable for medical type offices,
2 but also for quote, nonresidential professional office. And
3 so in our case this property is recommended specifically for
4 a nonresidential professional office.

5 MS. ROBESON: Okay.

6 MR. LANDFAIR: And clearly an architect falls
7 within the definition of a professional.

8 MS. ROBESON: Right.

9 MS. DLHOPOLSKY: Thank you, Mr. Landfair. And is
10 it your opinion that this use is compatible with the
11 surrounding and existing and proposed uses?

12 MR. LANDFAIR: Yes. We believe so. First of all,
13 this office has operated on site for 14 years and generally
14 has been very well received by the community. In fact,
15 aside from the parking on site there's not typically any
16 real sign of activity. We are recognizing and establishing
17 this use anew through this special exception application.
18 But having said that we are not proposing any changes to the
19 property. We're not proposing any new construction for the
20 building, for renovations, no changes to the lighting itself
21 or to the parking. We believe that it is extremely well
22 screened, so any, any adverse effects from the parking we
23 feel are adequately mitigated from the existing screening.

24 In addition to that, we are proposing additional
25 screening in the form of these holly trees and the cedar

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1 trees and we'll continue to maintain the property in the
2 good condition that it has been for these past 14 years.
3 In terms of the operations of the use itself, it
4 operates standard business hours, from 5, I'm sorry from
5 8:00 a.m. to 6:00 p.m., generally. We are willing to cap
6 the number of employees to 11 for the use. Generally
7 speaking, most meetings with clients and non-employees are
8 held offsite. So we feel that the parking is more than
9 adequate. The parking requirement technically is seven
10 parking spaces for the use, when factoring in the
11 requirement for the office which is based on square footage
12 and the parking for the residential unit.
13 MS. ROBESON: Right.
14 MR. LANDFAIR: So that being the case, we have two
15 spaces above and beyond what the parking requirement calls
16 for and generally it's been the practice to again to make
17 sure that most meetings are held offsite. So by and large,
18 the nine parking spaces have proved to be adequate.
19 In addition to that, some employees also do take
20 public transportation. There is a bus stop on the opposite
21 side of Old Georgetown Road, directly opposite --
22 MS. ROBESON: Right.
23 MR. LANDFAIR: -- the property. So we don't think
24 there will be an issue with respect to the parking.
25 As noted in the application and I think will be

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1 further testified to, there is a need for a parking waiver.
2 This parking has existed for many years in the location in
3 which it is currently operating. Technically speaking as a
4 parking facility in a residential zone, it needs to respect
5 the setback standards that the main structure on the
6 property needs to hold to and that would be 25 feet from the
7 front property line and 15 feet from the side property line.
8 And we actually have 15 feet from the front and 7 feet from
9 the side yard. But we feel that given the size of the
10 parking area, the way the spaces are organized perpendicular
11 to the drive isle, it's overall size, the lighting that's
12 provided and perhaps most importantly, the screening, we
13 feel that we can mitigate any impacts of the parking area
14 and so we feel that the parking area is fully justified and
15 that does relate back to harmony and being compatible with
16 the surrounding properties.
17 MS. DLHOPOLSKY: Thank you, Mr. Landfair. And
18 just to clarify, so the parking waiver is not actually any
19 sort of a waiver for number of required parking spaces, it's
20 just --
21 MR. LANDFAIR: Correct.
22 MS. DLHOPOLSKY: -- related to setbacks?
23 MR. LANDFAIR: Correct. It's just related to the
24 setbacks itself and again this parking area has been long
25 established and we are not changing it in any way.

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1 MS. DLHOPOLSKY: And it's your opinion that the
2 way that the parking is configured at this time with the
3 reduced setbacks adequately protects the health, safety and
4 welfare of employees, of adjoining property owners, of
5 nearby roads?
6 MR. LANDFAIR: Absolutely, yes.
7 MS. DLHOPOLSKY: Okay. Thank you. And one
8 clarification, a little earlier in your testimony I think
9 you mentioned that the hours of operation are generally 8:00
10 a.m. to 6:00 p.m., but I believe we indicated in our
11 justification statement that it was 9:00 a.m. to 6:00 p.m.
12 So I just wanted to clarify that.
13 MR. LANDFAIR: I'm sorry, I, I stand corrected.
14 MS. DLHOPOLSKY: That's okay.
15 MS. ROBESON: Rare.
16 MS. DLHOPOLSKY: We'll forgive you.
17 MS. ROBESON: Rare. No.
18 MS. DLHOPOLSKY: I just wanted to clarify that on
19 the record. Just a few more things that I wanted to cover.
20 Is it your understanding, Mr. Landfair, that your expert
21 land planning report is already submitted into the record as
22 Exhibit Number 11?
23 MR. LANDFAIR: Yes.
24 MS. DLHOPOLSKY: And Madam Hearing Examiner, I
25 think for the most part covered the standards and

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1 requirements of the Zoning Ordinance and I won't have Mr.
2 Landfair walk through all the development standards
3 specifically, unless you're interested. Okay.
4 MS. ROBESON: No.
5 MS. DLHOPOLSKY: And I think it's been detailed in
6 all three reports submitted so far. Mr. Landfair, just a
7 few more things. Is it your understanding that adequate
8 public facilities are provided to serve the use on this
9 property?
10 MR. LANDFAIR: Yes, given its location. First of
11 all the property as is the surrounding neighborhood is
12 located within an area that is classified as W1S1. These
13 are water sewer categories. They ensure that public water
14 and sewer is provided to the property and to the surrounding
15 neighborhood. In addition to that, there are gas lines and
16 overhead electric lines provided along Old Georgetown Road
17 and Singleton Drive itself. And then in addition to that,
18 there is a police station and a fire station located
19 relatively close by and of course there is a public bus stop
20 located --
21 MS. ROBESON: Right.
22 MR. LANDFAIR: -- which is directly opposite the
23 street. Given the nature of the use, there should be no
24 impact on local schools.
25 MS. ROBESON: Okay.

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1 MS. DLHOPOLSKY: All right. Mr. Landfair, I just
2 have some final burden of proof conclusions and questions
3 for you. But Madam Hearing Examiner, do you have any
4 specific questions for Mr. Landfair before I got into our
5 final wrap up with him?
6 MS. ROBESON: No, I usually ask them as I go
7 along.
8 MS. DLHOPOLSKY: Okay. Understood. All right.
9 MS. ROBESON: Now he doesn't have to go through,
10 if there's something in particular you want to address on
11 the special exception standards, but he doesn't have to go
12 through every special condition. Do you, Mr. Landfair,
13 agree with the findings of the Staff Report and the Planning
14 Board?
15 MR. LANDFAIR: We do.
16 MS. ROBESON: Okay. Go ahead. Did you have any
17 follow up?
18 MS. DLHOPOLSKY: No, I think that we feel that
19 we've satisfied the burden of proof and that has been
20 demonstrated in the materials that we submitted thus far.
21 So it sounds like in the interest of time it may make more
22 sense to see if Mr. Naas has any questions. And if not, we
23 can proceed to our next witness.
24 MS. ROBESON: Okay. Mister --
25 MR. NAAS: My only question would be if you needed

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1 more parking in the front, is there any way to readjust that
2 parking lot to get more parking?
3 MR. LANDFAIR: You might be able to squeeze one
4 more space in. I would hesitate to, let me refer again to
5 the exhibit.
6 MS. ROBESON: Do you have the exhibit number?
7 That's the Site Plan.
8 MR. LANDFAIR: Right.
9 MS. ROBESON: I'm just for the record, so we know.
10 MS. DLHOPOLSKY: Yes, Madam Hearing Examiner, the
11 most recent Site Plan is Exhibit 26A and that should be what
12 Mr. Landfair is referring to and was revised in response to
13 a few comments that we had received from planning staff
14 throughout their review process.
15 MS. ROBESON: Right. Okay.
16 MR. LANDFAIR: You know, there is a planter in the
17 parking area which could be eliminated and the parking area
18 could be restriped which might provide one more space. I
19 would not recommend extending the parameters of the existing
20 paving. The only direction that you could move to, is
21 further to the south across the front yard itself. There is
22 two reasons for that. One is first of all, appearance. I'm
23 not sure that would really allow for any more real parking
24 spaces. It might allow you to widen the drive isle, the
25 drive isle frankly functions just fine in terms of the --

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1 MS. ROBESON: How wide is the drive isle?
2 MR. LANDFAIR: The drive isle is about 18 feet
3 wide. And to provide for more pavement, you would then be
4 affecting the critical root zone of certain mature trees in
5 the front yard. The critical root zone, basically, follows
6 the drip line of the trees. And those trees have gotten
7 acclimated to the existing pavement that's out there today.
8 So we would again hesitate to put down more pavement because
9 that could have a very real effect on those trees and if
10 they decline and then have to be removed that then opens up
11 the property to further view from passersby. So from an
12 environmental perspective, we would say probably not a good
13 idea to additional pavement. From an operational
14 perspective, we think very little would be gained.
15 MR. NAAS: That's all.
16 MS. ROBESON: That's all, Mr. Naas?
17 MR. NAAS: Yeah.
18 MS. ROBESON: Okay.
19 MR. NAAS: Like I said before, I have no
20 objections for them being in the front, I have no objections
21 at all. It's at the back that I was concerned about, of the
22 Singleton side is what I'm more concerned about. And the
23 neighbors are also. That's --
24 MS. ROBESON: Okay.
25 MR. NAAS: -- that it was to extend back there,

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1 more parking or something, they would really object to that.
2 MS. ROBESON: Okay. Do you have any follow up
3 questions for Mr. Landfair based on Mr. Naas's questions?
4 MS. DLHOPOLSKY: I have no further questions,
5 thank you.
6 MS. ROBESON: All right. You may be excused.
7 MR. LANDFAIR: Thank you.
8 MS. ROBESON: Thank you.
9 MS. DLHOPOLSKY: Madam Hearing Examiner, we'd like
10 to call our final witness, Chris Kabatt.
11 MS. ROBESON: Mr. Kabatt, please raise your right
12 hand. Do you solemnly affirm under penalties of perjury
13 that the statements you're about to make are the truth, the
14 whole truth and nothing but the truth?
15 MR. KABATT: I do.
16 MS. ROBESON: You know what I am going to let the
17 recording mics won't let you have the side bar. If we can
18 take a 10 minute recess, would that be helpful if you two
19 want to talk?
20 MR. DALYRYMPLE: I was just asking him which other
21 neighbors he's speaking on behalf of. I think we're done
22 now.
23 MS. ROBESON: Okay. Go ahead with Mr. Kabatt.
24 MS. DLHOPOLSKY: Mr. Kabatt, can you please state
25 your full name, your address, your employer and your

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1 occupation?

2 MR. KABATT: Sure. I'm Christopher Kabatt with

3 Wells and Associates, where our offices are at 8730

4 Georgia Avenue, Suite 200 in Silver Spring, Maryland. I'm a

5 transportation planner engineer with the company for over 17

6 years, and I have a professional engineer's license in the

7 State of Maryland.

8 MS. ROBESON: I am going, he has testified here

9 many times so I am going to qualify him as an expert in

10 transportation. Is it planning or engineering or both?

11 MR. KABATT: Both.

12 MS. ROBESON: Both. And Mr. Naas, do you have an

13 objection to that?

14 MR. NAAS: No.

15 MS. ROBESON: Okay. Continue.

16 MS. DLHOPOLSKY: Thank you. Mr. Kabatt, can you

17 walk us through the analysis that you conducted with respect

18 to transportation and traffic issues for this special

19 exception application?

20 MR. KABATT: Sure. When we came on board, we

21 reviewed the application and talked with the project team

22 and with that we, our first thing we usually do is the trip

23 generation analysis and we consult with Maryland Park and

24 Planning staff to determine or confirm whether a traffic

25 study is required or not. In this case, given the low trip

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1 generation a traffic study is not required; a traffic

2 statement is required, which is what we prepared and it is

3 submitted in the record that traffic statement.

4 MS. ROBESON: What is the generation rate for

5 this? I'm sorry.

6 MR. KABATT: Sure.

7 MS. ROBESON: I'm just trying to figure out how

8 many trips this assumes, but you know what it doesn't

9 matter. You go ahead, just keep going.

10 MR. KABATT: Sure. The, the office use and the

11 resident use together will generate based on the trip

12 generation rates four peak hour trips in the morning and six

13 in the afternoon.

14 MS. ROBESON: Okay.

15 MR. KABATT: And because that is fewer than 30

16 peak hour trips, a traffic study is not required and further

17 the general office use, the professional office use generate

18 fewer trips than what the medical office use would be

19 anticipated to generate and therefore, the transportation

20 policy area review is satisfied. There's no requirement

21 there.

22 The traffic statement also looks at the

23 transportation infrastructure in the area, Old Georgetown

24 Road and the sidewalks and the driveway access. So we did a

25 field review of, of the access and we found them to be safe

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1 and adequate and the efficient access onto the site.

2 MS. DLHOPOLSKY: Thank you, Mr. Kabatt. And

3 obviously planning staff has done a full analysis of your

4 traffic statement and is in agreement with the conclusions

5 of your expert analysis as well?

6 MR. KABATT: That is correct. In the Staff Report

7 there is a transportation section from Park and Planning

8 transportation staff and then also the SHA has reviewed the

9 applicant as Montgomery County DOT.

10 MS. DLHOPOLSKY: And can you touch briefly

11 actually on SHA's review that came up early in our

12 testimony, we did receive one letter from SHA and a second.

13 Do you have a copy of the second SHA letter with you?

14 MR. KABATT: I do have both of them here.

15 MS. DLHOPOLSKY: Okay. And can you walk us

16 through just what the change was there?

17 MR. KABATT: Sure. The first letter which was

18 July 31, 2014, did have a comment about sharing access with

19 the neighbor and modifying that access. But we have spoken

20 with the reviewers at SHA and after that there was an

21 understanding, from our understanding from that they thought

22 there was going to be a change to the use or to the

23 building, then and therefore would trigger some kind of,

24 have the ability to trigger the change to the access.

25 MS. ROBESON: It doesn't change the use?

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1 MR. KABATT: SHA thought the use was going to

2 change or the building was going to change in some way when

3 they understood that the architect's office has been

4 operating there for 14 years or so, and that there was going

5 to be no expansion, they were comfortable with that and they

6 understood and they retracted that comment essentially and

7 that's what the September 25th letter is --

8 MS. ROBESON: Okay.

9 MR. KABATT: -- if you have that --

10 MS. ROBESON: I do.

11 MR. KABATT: -- or I could read it.

12 MS. ROBESON: I have it. You don't have to read

13 it.

14 MS. DLHOPOLSKY: All right. Thank you, Mr.

15 Kabatt. And based upon the expert analysis that you've done

16 and your visits out to the site and observations of the

17 traffic and the parking and the pedestrian access, is it

18 your conclusion that the parking and access on the site, the

19 ingress egress pedestrian facilities around the site are

20 safe, adequate and efficient for the proposed use?

21 MR. KABATT: Yes, as, as noted the office use has

22 been in operation for 14 years. We have been out to this

23 site for this case specifically, but also on a number of

24 occasions, going through Bethesda and on Old Georgetown

25 Road, office use is part of the neighborhood and the

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1 driveway and the, the sidewalks operate in a safe and
2 efficient manner. The number of parking spaces do meet the
3 Code for the number of parking spaces.
4 MS. ROBESON: I guess my question was isn't this
5 an official, like even though it's been there for 14 years
6 it wasn't an office, well it was a medical office. Does SHA
7 make a distinction between those two?
8 MR. KABATT: In our discussions with them they,
9 because it has been used as an office, but also more
10 importantly because there is no expansion or change to the
11 building is where they were mainly concerned. And because
12 that is not the case that they're not requiring any change
13 to the access.
14 MS. ROBESON: Okay. All right.
15 MS. DLHOPOLSKY: So it's your understanding that
16 SHA thought that physical changes were being made on this
17 site as opposed to just a use category change?
18 MR. KABATT: Yes, that is correct.
19 MS. DLHOPOLSKY: Okay.
20 MS. ROBESON: All right.
21 MS. DLHOPOLSKY: I don't believe I have any
22 further questions for Mr. Kabatt.
23 MS. ROBESON: All right. Mr. Naas?
24 MR. NAAS: Yes. Sidewalks.
25 MS. ROBESON: You're getting good at this.

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1 MR. NAAS: I know there's one going up and down
2 Old Georgetown Road, what about Singleton Drive?
3 MR. KABATT: There are no sidewalks on Singleton.
4 MR. NAAS: That's because it said on the --
5 MR. KABATT: On this section?
6 MR. NAAS: -- it indicates there is a section of
7 sidewalk. It goes on the back of his property to the
8 podiatry center.
9 MR. KABATT: I stand corrected.
10 MR. NAAS: But that's, you know, it's not on
11 Singleton Drive as it mentions in here, except for that
12 short area.
13 MR. DALYRYMPLE: What are you referring to there,
14 the planning staff?
15 MR. NAAS: The pedestrian transit, it's in this
16 page here, what is that called, Montgomery County Planning
17 Department.
18 MR. DALYRYMPLE: Exhibit Number 30.
19 MR. NAAS: Exhibit Number 30, page 7, Pedestrian
20 Transit Service.
21 MS. ROBESON: Are you saying there is a sidewalk?
22 MR. NAAS: A short one, maybe a block.
23 MS. ROBESON: I see, okay.
24 MR. NAAS: And no other part of Singleton has a
25 sidewalk until you get sown past Ryland on the other side of

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1 Beech.
2 MS. ROBESON: Okay. Okay. All right. Do you
3 disagree with that, Mr. Kabatt?
4 MR. KABATT: No, there is that, there is, it is
5 shown here there is a sidewalk on his property but the
6 majority of Singleton does not have a sidewalk that I'm
7 familiar with.
8 MS. ROBESON: Okay. So there is a sidewalk on
9 this property?
10 MR. KABATT: Yes.
11 MS. ROBESON: Okay. All right. Anything else,
12 Mr. Naas?
13 MR. NAAS: No.
14 MS. ROBESON: All right. Anything in response to
15 Mr. Naas's questions?
16 MS. DLHOPOLSKY: No, Madam Hearing Examiner.
17 MS. ROBESON: All right. You may be excused, Mr.
18 Kabatt.
19 MR. KABATT: Thanks.
20 MS. ROBESON: Thank you.
21 MS. DLHOPOLSKY: All right. Madam Hearing
22 Examiner, that concludes the presentation of our case unless
23 you have any further questions. But as we discussed in all
24 of the materials that were previously submitted and are part
25 of the record of this case and as you heard from Mr. Tugberk

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1 and Mr. Landfair and Mr. Kabatt today, we believe that the
2 proposed special exception satisfies all of the findings and
3 requirements that are needed.
4 MS. ROBESON: Okay. Well just a minute. I was
5 going to give Mr. Naas, this is odd because we took his
6 testimony first. Let me just do this. Mr. Naas, do you
7 have any other, you don't have any other witnesses?
8 MS. DLHOPOLSKY: No.
9 MS. ROBESON: Okay. Mr. Naas, based on what
10 you've heard do you have anything else you'd like to say for
11 the record?
12 MR. NAAS: Not really. Like I said, our biggest
13 objections were on the Singleton side of it. If he wants to
14 have a business there, I don't think the majority of the
15 neighbors mind. In fact, his next door neighbor, right next
16 door to him doesn't care one way or the other. The only
17 thing the neighbor directly catty, what, catty-corner, one
18 corner to the next corner, is her front window looks right
19 out on his backyard and that's where the trash comes from
20 that she sees all the time. Those are the only objections
21 in most of the neighborhood.
22 MS. ROBESON: And when do you see the parking
23 there? Is it during the day --
24 MR. NAAS: It, it has slowed, during the day. It
25 has slowed down a lot. Like I said over the past few months

1 I think since, I don't know all, it just stopped all at once
 2 and then there are just a few cars. Once in a while you'll
 3 see five or six out there now, but most of the time nothing.
 4 But I don't want it to start back again.
 5 MS. ROBESON: Okay. Okay. Mr. Tugberk, do you
 6 mind coming up one more time? Would you have an objection
 7 if there was a, you're still under oath by the way.
 8 MR. TUGBERK: I understand.
 9 MS. ROBESON: Would you have an objection if there
 10 was a condition prohibiting parking along visitor or
 11 employee parking along Singleton or Conway?
 12 MR. TUGBERK: Ma'am, I'd like to step back just
 13 for a second. In some sense, I do, because this is a
 14 private property. I have children who live in the area.
 15 They come to visit me occasionally and they may park in
 16 front of my lot on Singleton. I don't understand how that
 17 could be prohibited. This is not a business purpose, but
 18 they can come and see me either on the weekend or while I'm
 19 working there and also we love this neighborhood so much
 20 that my son lives three doors down, right on Conway. And
 21 yeah, I don't understand this kind of scrutiny from Mr.
 22 Naas, whom I've never met. Apparently he's seen me, I wish
 23 he had introduced himself because I do know all of my
 24 neighbors, immediately, and I do chat with them and I make
 25 sure that we maintain neighborly relations. So some of

1 these are surprising to me and I'd really like to know which
 2 neighbors Mr. Naas represents that he keeps referring to. I
 3 would like to have seen and met them here.
 4 MS. ROBESON: Well he mentioned one of them and we
 5 can't, the personalities and the identities matter less than
 6 part of going through a special exception is saying okay
 7 this is a use that's not normally permitted, are there going
 8 to be any adverse impacts and so it's not the same as
 9 someone visiting an office building in a commercial zone.
 10 So --
 11 MR. TUGBERK: I understand. I understand that,
 12 yeah.
 13 MS. ROBESON: So I mean it's up, so your objection
 14 would be that family members can't park --
 15 MR. TUGBERK: Somebody can park there. I mean
 16 not, let's say my employees are not going to park there, I
 17 can control that. But what we would leave open to me is
 18 that anytime any car parks there we could get a complaint
 19 from the County and then I would have to chase this down,
 20 who this is, whether they even have any relationship to me
 21 or to my business. It's a public street. So I'm trying to
 22 avoid potential future issues. Okay. That's, I mean, I
 23 think that's reasonable that we have a sidewalk, we have a
 24 curb and a legitimate legal street that people should be
 25 able to park there, unrelated to the business.

1 MS. ROBESON: Well it is permitted parking, but if
 2 it's causing problems, what problems do you see, Mr. Naas?
 3 MR. NAAS: It's just the cars going up and down
 4 the street all day long.
 5 MS. ROBESON: A lot of traffic.
 6 MR. NAAS: There was a lot more traffic than what
 7 there was. Now like I said, in the last few months there
 8 hasn't been that traffic but before --
 9 MS. ROBESON: And when did you observe the
 10 traffic? During the day time?
 11 MR. NAAS: During the day because I, like I said,
 12 I work a lot at night, and I'm home during the day and --
 13 MS. ROBESON: Did you see the traffic --
 14 MR. NAAS: Of course.
 15 MS. ROBESON: -- enter Mr. Tugberk's?
 16 MR. NAAS: I don't now I used to.
 17 MS. ROBESON: You saw the people getting out of
 18 the car --
 19 MR. NAAS: Yes.
 20 MS. ROBESON: -- and going into his property?
 21 Okay.
 22 MR. NAAS: Now as far his relatives or sons or
 23 daughters, I don't mind and right now if it stays the way it
 24 is now, I have no objections. I'm just worried that it's
 25 going to go back to what it was eight or nine months ago.

1 MS. ROBESON: Okay. All right. And do you have
 2 any questions for Mr. Tugberk?
 3 MR. NAAS: No.
 4 MS. ROBESON: Okay. We're going to take a 10
 5 minute break and we'll be back and I'll hear, if you have
 6 any closing comments, I'll hear those. All right. All
 7 right. Thanks.
 8 (OFF THE RECORD.)
 9 (ON THE RECORD.)
 10 MR. DALYRYMPLE: All rise.
 11 MS. ROBESON: No, get down. Geesh. Okay. With
 12 that, we're back the record. Is that on the record? Get
 13 down? Good. Okay. Now we're back on the record. Do you
 14 have any, what we're going to do now unless anyone has
 15 anything else to say, we're going to do closing statements.
 16 Okay. So you can just summarize the testimony and if you
 17 want to add something to your position, you can do that.
 18 Okay. First we're going to start with the petitioner.
 19 MS. DLHOPOLSKY: Yes, Madam Hearing Examiner, in
 20 the 10 minute break that we just took we had a chance to
 21 discuss with Mr. Naas and open the line of communication,
 22 which you know as you've heard this is, I think the first
 23 time these two neighbors are meeting. And what we agreed to
 24 is that Mr. Tugberk and Mr. Naas would address any future
 25 issues with regard to traffic and parking like good

1 neighbors would. They have exchanged contact information
 2 and both encouraged each other just to call or knock on the
 3 door if there are any questions or concerns going forward.
 4 So we understand that they are both happy with that
 5 solution, to deal as good neighbors going forward. I'll let
 6 Mr. Naas speak for himself.
 7 MS. ROBESON: Well, yes. Yes.
 8 MS. DLHOPOLSKY: Yes.
 9 MS. ROBESON: Okay. You go ahead.
 10 MS. DLHOPOLSKY: That's our understanding anyway,
 11 is that that is how we'll proceed moving forward. And with
 12 that, I have no other clarifications with regard to any of
 13 the testimony that was made today or with regard to the
 14 exhibits or materials that were previously submitted into
 15 the record. As I noted before, we do believe that we
 16 satisfy the requirements of the Zoning Ordinance and the
 17 burdens of proof that are required to be proven to approve
 18 the special exception use, and based on the exhibits already
 19 entered and those submitted here today, and the testimony of
 20 record, we would recommend or request a favorable
 21 recommendation for approval of this special exception
 22 application.
 23 MS. ROBESON: Okay. Mr. Naas?
 24 MR. NAAS: We did work it out what we're going to
 25 do. I have no objections to the business plan or the

1 business being there. They know what objections I did have
 2 and one other thing I forgot to ask was I would like to take
 3 a business card and make copies of it and give it to all the
 4 neighbors. There's only about three or four.
 5 MS. ROBESON: Well let me ask you first, do you
 6 understand that I have the power to recommend a condition
 7 requiring all parking for the business, whether it's
 8 families or, I mean you say you have family but they're also
 9 employees. I have the ability to condition onsite parking
 10 only for the business.
 11 MR. NAAS: Yes.
 12 MS. ROBESON: Or to require, the other option
 13 would be to require all visitors to enter Old Georgetown and
 14 park there.
 15 MR. NAAS: Well I understand that and I also
 16 understand --
 17 MS. ROBESON: And if I don't put a condition like
 18 that in then you won't be able to enforce it. Mr. Tugberk,
 19 can you come up here one more time?
 20 MR. TUGBERK: Sure.
 21 MS. ROBESON: I guess the question is, staff says
 22 based on a parking formula that you have adequate parking.
 23 So I guess the question is why aren't your clients and
 24 visitors parking on the site?
 25 MR. TUGBERK: They all do. They all do right now.

1 My point was we have another street in the back. I can
 2 control my employees, but why can't --
 3 MS. ROBESON: You can control your clients.
 4 MR. TUGBERK: And them too, but you know, if my
 5 daughter visits me or my son decides to drive three homes
 6 down, or come by and walk through, I don't think I should be
 7 required to patrol who is parking in the back.
 8 MS. ROBESON: Well let me just say that they're
 9 visiting you at your business, this isn't you residence,
 10 correct?
 11 MR. TUGBERK: Correct.
 12 MS. ROBESON: So if they're visiting you at your
 13 business, that's part and parcel of their visiting you at
 14 the business because it's your business.
 15 MR. TUGBERK: Sure.
 16 MS. ROBESON: So we could require all visitors
 17 park on site or the other option is to require all visitors
 18 to enter from Old Georgetown Road, and that way you don't
 19 have to monitor who is doing what when, they just have to
 20 come in from Old Georgetown Road.
 21 MR. TUGBERK: I guess I'm, I'm failing to see what
 22 the subtle difference is.
 23 MS. ROBESON: The subtle difference is that I
 24 believe him that there's been parking in the back creating
 25 traffic along Singleton, which is a relatively small

1 residential street. Now you've got the extra use of the
 2 apartment, so if their use is unrestricted, you know, we're
 3 not restricting how many they can park, but --
 4 MR. TUGBERK: That's the kind of thing that I'm
 5 talking about.
 6 MS. ROBESON: -- I'm saying you can require all
 7 your employees and clients and family, visitors, people who
 8 don't live there, to come in from the Old Georgetown Road
 9 entrance. That's the concern. Mr. Naas, do you have any
 10 thoughts?
 11 MR. NAAS: I would agree with that, I mean you
 12 know, but I know he's got the apartment there and I know she
 13 parks on the pad, and I don't think she has but one car.
 14 And if they, if she was to have a visitor or something, I
 15 think she works during the day but on weekends I don't,
 16 there's no traffic there at all hardly any time at his
 17 office or anywhere else. But I would have no objections if
 18 she had visitors and things like that. And I, like I told
 19 him, I, I've got his number, he's got my number, if I see
 20 something going on I'm going to call him, you know, that I
 21 think he's, that's --
 22 MS. ROBESON: And what if he says they're my
 23 family.
 24 MR. NAAS: If it's only one or two cars, I
 25 wouldn't call. When it gets to be a ton of cars that I

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1 would call.
2 MS. ROBESON: Do you have space in your parking
3 lot?
4 MR. TUGBERK: We, we're somehow we're missing the
5 picture. I'm, I'm --
6 MS. ROBESON: Are we?
7 MR. TUGBERK: -- missing the picture. Singleton
8 is a dead end street. There are only four homes, two on
9 either side past where I am. So there is no traffic being
10 generated going out of Singleton. Yes, in the past we did
11 have employees parking in the back, never 10, 11. We didn't
12 even have that many employees. And also from like all the
13 way up through 2009 we were only four or five of us there.
14 So there is some undue exaggeration going on. The other
15 thing is --
16 MS. ROBESON: Well he said seven or eight months
17 ago and then it stopped.
18 MR. TUGBERK: Seven or eight, seven or eight
19 months, well when we understood there's an issue with the
20 neighbor, I talked to my neighbors if they had mentioned to
21 me that there is an issue.
22 MS. ROBESON: Well forget that. Forget that
23 because he's here.
24 MR. TUGBERK: We, we moved, we moved everybody.
25 MS. ROBESON: I know you feel upset that they

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1 didn't talk to you.
2 MR. TUGBERK: But we moved them.
3 MS. ROBESON: But we're here.
4 MR. TUGBERK: We moved everybody as soon as there
5 was any kind of a problem.
6 MS. ROBESON: And how did you move them?
7 MR. TUGBERK: I told everybody to park in the
8 back. The issue is --
9 MS. ROBESON: In the back or the front?
10 MR. TUGBERK: I'm sorry, to the front.
11 MS. ROBESON: So you wouldn't have a problem with
12 having --
13 MR. TUGBERK: I don't. I would like to reserve
14 that for general use I don't want to police the front of my
15 property, the 75 feet on Singleton. People should be able -
16 -
17 MS. ROBESON: That's the back of your property?
18 MR. TUGBERK: Right. People should be able to
19 park there, I don't, my neighbor might park there. See what
20 I'm saying, I mean --
21 MS. ROBESON: But what he's saying and what you're
22 saying is that when you had the employees park in the front,
23 the traffic stopped.
24 MR. TUGBERK: And we're going to --
25 MS. ROBESON: So why can't you?

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1 MR. TUGBERK: -- continue, I guess.
2 MS. ROBESON: Then what's the problem with --
3 MR. TUGBERK: I'm not making --
4 MS. ROBESON: -- you can make that a condition in
5 their employee manual.
6 MR. TUGBERK: I don't have an issue, that's what
7 I'm saying. We're missing the point so far.
8 MR. DALYRYMPLE: I think that we are prepared to
9 accept a condition that all parking associated with the
10 business will be on site.
11 MS. ROBESON: Does that now his family members
12 work at the business. I mean I don't want --
13 MR. TUGBERK: No, no. They, they don't, you know,
14 they, they might come and we do work, I mean I might have
15 two contracts come, might review my contracts, he doesn't
16 have to come to my site. And if they do for business, they
17 can come through the front. But this is a private property.
18 The back sidewalk I should be able to park anybody other
19 than my employees. And my son would --
20 MS. DLHOPOLSKY: And I think that that would be in
21 line --
22 MR. TUGBERK: Right.
23 MS. DLHOPOLSKY: -- with all business associated
24 with --
25 MS. ROBESON: Why do you want, I guess my problem

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1 is they're visiting you at your business so they're a
2 visitor like any other. So I mean how can I say --
3 MR. TUGBERK: But this is what I'm trying to
4 avoid. If there is a car parked there, I don't want
5 somebody from the County showing up there's a car parked in
6 the back of your property --
7 MS. ROBESON: Well the County would have to show
8 that the car parked there was going to your business.
9 MR. TUGBERK: I understand, so that's what I'm
10 trying to avoid a condition that says you cannot park there
11 at all, but I can commit to say that anything business
12 related is parked on site.
13 MS. ROBESON: Well I guess I'm just --
14 MR. TUGBERK: I don't want to police the sidewalk
15 in the back.
16 MS. ROBESON: But the condition isn't that nobody
17 can park back there, it's that nobody from your business or
18 visitors can park back there.
19 MR. TUGBERK: I understand.
20 MS. DLHOPOLSKY: If I could just, I think maybe
21 the concern is, if I could just speak for you for a second,
22 is the concern that if there is a car back there that
23 somebody is not happy with that the presumption is going to
24 be that it's associated with your business and you're
25 worried --

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1 MR. TUGBERK: Exactly.
2 MS. DLHOPOLSKY: -- about having to prove that
3 it's not.
4 MR. TUGBERK: Exactly.
5 MS. DLHOPOLSKY: I think that's just the concern
6 is that the presumption would be that it's associated with
7 the business. Which I'm not really sure that changes the
8 condition.
9 MS. ROBESON: And what you're saying is you'll
10 always be on the defensive?
11 MR. TUGBERK: Yes. Automatically --
12 MS. ROBESON: Yes.
13 MR. TUGBERK: -- puts me there.
14 MS. ROBESON: Okay. Mr. Naas?
15 MR. NAAS: Yes?
16 MS. ROBESON: You said that it's greatly improved
17 in the last seven or eight months.
18 MR. NAAS: If it stays the way it is right now I
19 would have no complaints --
20 MS. ROBESON: Okay.
21 MR. NAAS: -- and you'll never hear from me.
22 MS. ROBESON: Okay. So for seven or eight months
23 you've been doing what? Telling your employees to park?
24 MR. TUGBERK: Right. All my employees park on, at
25 the front side.

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1 MS. ROBESON: Okay.
2 MR. TUGBERK: On all, off of Old Georgetown.
3 MS. ROBESON: And you could do the same for
4 clients?
5 MR. TUGBERK: We do that anyway.
6 MS. ROBESON: Yes. Okay. Well then --
7 MR. TUGBERK: Our clients know only one front
8 door.
9 MS. ROBESON: Okay.
10 MR. TUGBERK: Old Georgetown Road.
11 MS. ROBESON: Very sneaky. Which is why it may be
12 a good thing for you to have a sign there, so it's easily
13 identifiable.
14 MR. TUGBERK: I appreciate that. That's part of
15 my answer.
16 MS. ROBESON: Okay. How is that for a condition,
17 Mr. Naas, if I say that employees and clients must park in
18 the front?
19 MR. NAAS: That's fine.
20 MS. ROBESON: Do you think that will address --
21 MR. TUGBERK: That sounds good to me.
22 MR. NAAS: Yes.
23 MR. TUGBERK: If it sounds good to Mr. Naas.
24 MR. NAAS: I agree with that.
25 MS. ROBESON: Okay. All right. Do we have

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1 anything else to discuss as far as closing statements or
2 anything like that?
3 MS. DLHOPOLSKY: I don't think so, no.
4 MS. ROBESON: Okay.
5 MR. TUGBERK: We don't.
6 MS. ROBESON: Well I appreciate you're being
7 persistent and now I understand what you were saying. I
8 appreciate your working and I'm sure --
9 MR. TUGBERK: Great.
10 MS. ROBESON: -- it will be a good thing. All
11 right. With that, I have 30 --
12 MR. DALYRYMPLE: You appreciate me not
13 participating?
14 MS. ROBESON: Yes, I did because that's very unlike
15 you. I have 30 days to write a report and recommendation to
16 the Board of Appeals. And you will get notified, it's
17 posted on our website and you will get notified that the
18 report is out and you'll also get a list of any conditions
19 we have imposed and if you have any, if you disagree with
20 the recommendation you have 10 days to request oral argument
21 before the Board of Appeals. All right. With that, we are
22 going to adjourn. Thank you very much.
23 MR. TUGBERK: Thank you.
24 MS. DLHOPOLSKY: Thank you, Madam Hearing
25 Examiner.

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1 MR. DALYRYMPLE: All rise.
2 (Whereupon, at 11:23 a.m., the hearing was
3 concluded.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Faik and Lauren Tugberk

Special Exception No. S-2875

OZAH No. 14-04

By:

Diane Wilson, Transcriber

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