

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/board.asp](http://www.montgomerycountymd.gov/content/council/boa/board.asp)

**Case No. S-2594**

**PETITION OF RONALD McMICHAEL**

OPINION OF THE BOARD

(Effective Date of Opinion: June 22, 2004)

Case No. S-2594 is an application for a special exception pursuant to Section 59-G-2.29 of the Zoning Ordinance to permit a Home Occupation, Major (insurance agency). Pursuant to the authority in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner to hold a public hearing and submit a written report and recommendation to the Board for final action. The Hearing Examiner convened a hearing on February 27, 2004. The record in the case closed on April 12, 2004, and on April 15, 2004, the Hearing Examiner issued a report and recommendation for approval of the special exception. The Board of Appeals originally considered the report and recommendation at its Worksession on May 5, 2004, but deferred action pending review of a variance granted at the same subject property.

The subject property is Lot P4, Block 2, Plumgar Subdivision, located at 19413 Frederick Road, Germantown, Maryland 20876, in the R-200 Zone.

Decision of the Board:                      Special exception **granted**, subject  
to the conditions enumerated below.

The Board of Appeals considered the Hearing Examiner's report and recommendation at its Worksession on June 9, 2004. After careful consideration and review of the record, the Board adopts the report and recommendation and **grants** the special exception subject to the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record.
2. The Petitioner must limit the number of vehicles parked in his driveway to four at a time to permit space for turning around and safe exit;
3. The Petitioner, in accordance with his revised Landscaping/Lighting Plan (Exhibit 25(b)), must extend his driveway to allow vehicles to turn around and exit safely onto Scenery Drive;
4. The Petitioner must establish and maintain the landscaping to shield the parking area in accordance with his revised Landscaping/Lighting Plan (Exhibit 25(b)), and such landscaping must include all the plantings shown in the revised Landscaping/Lighting Plan on all sides of his driveway (i.e., including those on the north, i.e., Scenery Drive, side, labeled "optional" and then crossed out);
5. The Petitioner must plant and maintain such landscaping so as not to obstruct the visibility of vehicles seeking to enter Scenery Drive from the parking area;

6. The Petitioner must limit the number of client visitors to no more than 5 on any weekday and 2 on any weekend day; nor may Petitioner have more than 2 client visitors at any one time or average more than 30 client visitors per month;
7. The Petitioner must keep a log of the number of client visitors each day available for inspection by the Department of Permitting Services;
8. The Petitioner is bound to the hours specified in his Exhibit 3, 9 a.m. to 5 p.m. weekdays, and an occasional visit on evenings and weekends, but all client visits (not just evening and weekend visits) must be by appointment under Zoning Code §59-G-2.29(e); and
9. The Petitioner must post a sign in his waiting room advising clients that they should park in his driveway, not in the street, and that they should turn around in the driveway so that they can exit onto Scenery Drive facing forward.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron and Donald H. Spence, Jr., Chairman in agreement and Louise L. Mayer necessarily absent, the Board adopted the following Resolution:

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

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 22<sup>nd</sup> day of June, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

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.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

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



## I. STATEMENT OF THE CASE

Petition No. S-2594, filed on November 16, 2003, seeks a special exception, pursuant to §59-G-2.29 of the Zoning Ordinance, to permit a “Home occupancy, major” use in a single-family residential structure located at 19413 Frederick Road, Germantown, Maryland 20876. The subject property is designated part of Lot 4 of Block 2 in the Plumgar Subdivision of Germantown, and it is zoned R-200 (Tax Account No. 00768264). The special exception is sought so that Petitioner can expand his small, independent insurance agency from one employee to two.

On November 26, 2003, the Board of Appeals adopted a resolution (Exhibit 14), effective December 31, 2003, referring this case to the Hearing Examiner for Montgomery County to conduct a public hearing and issue a written report and recommendation to the Board of Appeals for final action. On December 24, 2003, the Board of Appeals issued a corrected notice (Exhibit 13) that a hearing in this matter would be held by the Hearing Examiner for Montgomery County on February 27, 2004, at 9:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building.

On February 17, 2004, the Hearing Examiner received a letter dated February 8, 2004, from Otis E. Smith of 19510 Scenery Drive, Germantown, Maryland, in opposition to the Petition (Exhibit 16). Also on February 17, 2004, Petitioner filed a proposed amendment to the Petition (Exhibit 17) and the Hearing Examiner issued a notice to that effect (Exhibit 18).

Technical Staff at the Maryland-National Capital Parks and Planning Commission (M-NCPPC), in a memorandum dated February 18, 2004, recommended approval of the petition (Exhibit 19).<sup>1</sup>

A public hearing was convened as scheduled on February 27, 2004, and the then pending motion to amend the Petition was granted as a preliminary matter. Testimony was presented by

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<sup>1</sup> The Technical Staff Report is frequently quoted and paraphrased herein.

Petitioner, acting *pro se*, and by Otis Smith, in opposition. Martin Klauber, the People's Counsel participated but did not offer any testimony. Because Petitioner's Landscaping Plan did not contain sufficient detail, and additional information regarding other special exceptions in the area was needed from Technical Staff, the record was held open until April 12, 2004, to give Petitioner the opportunity to submit a revised Landscaping/Lighting Plan and Technical Staff an opportunity to review and supplement its report.

On March 12, 2004, Petitioner submitted a copy of his deed (Exhibit 25(a)), a revised Landscaping/Lighting Plan (Exhibit 25(b)) and a letter from a neighbor, Ben Lewis, owner of the adjacent property at 19511 Scenery Drive, Germantown, Maryland, indicating that he did not oppose the Petition (Exhibit 25(c)). The revised Landscaping/Lighting Plan also called for extending the driveway to allow vehicles to turn around and exit safely onto Scenery Drive. On March 15, 2004, Petitioner further supplemented the record with another neighbor's supportive letter (Exhibit 26, letter from the Slugers) and an explanation of his revised Landscaping/Lighting Plan (Exhibit 27 and subparts). On March 24, 2003, a letter from another community resident, J. Michael Galway, of 19530 Scenery Drive, was received (Exhibit 28). Mr. Galway expressed his confusion about the location of the subject property on the County's real property maps and his concern about the potential for congestion and danger to pedestrians from additional traffic which might be generated by the proposed use.<sup>2</sup> On April 1, 2004, an opposition letter was received from neighbors Alton and Patsy Elder (Exhibit 29), raising the same concerns as Otis Smith over parking, traffic safety and commercialization. On March 31, 2004, the Technical Staff submitted a Supplemental Report (Exhibit 30), but Staff based a portion of that report on the mistaken assumption that Petitioner would be parking up to seven cars in his driveway. Upon learning that Petitioner had agreed to

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<sup>2</sup> The concerns raised by Mr. Galway's letter are similar to those raised by Otis Smith. They are addressed below in that connection. As to the location of the subject property, the Hearing Examiner has examined the maps in the record and found that they do accurately depict the location of Petitioner's home.

limit the number of cars parked in his driveway to four at any given time, Technical Staff submitted a second supplemental report (Exhibit 31) recommending approval, with a condition regarding landscaping. The record closed on April 12, 2004, without additional comment.

The only significant issues remaining in this case are whether the requested special exception will create a dangerous traffic situation and whether it will over-commercialize the neighborhood, the two major concerns raised by opponent, Otis Smith.

## **II. BACKGROUND**

### **A. The Subject Property**

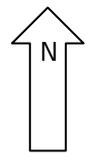
As noted above, the subject property is located at 19413 Frederick Road, Germantown, Maryland, and it is designated as part of Lot 4 in Block 2 in the Plumgar Subdivision of Germantown. The site encompasses .71 acres (30,840 square feet), most of it elevated well above the grade of Scenery Drive, and it is zoned R-200. The property, which is on a corner lot, is developed as a residential structure of approximately 2631 square feet with an attached two-car garage. Petitioner's home office, which is currently functioning as a registered home office pursuant to Zoning Code §59-A-3.41, is housed in an 846 square foot addition, attached to the residence.

The property fronts on Frederick Road (MD Route 355), but access to the home office is from Scenery Drive. Both Frederick Road and Scenery Drive are arterial highways. According to the Technical Staff, Scenery Drive in the vicinity of the special exception site is paved with two travel lanes and two lanes used for on-street parking, and the intersection of Scenery Drive at Frederick Road is not signalized. Technical Staff asserts that the site provides off-street parking for seven cars in the driveway and two additional cars in the garage, but one of the issues in this case is whether seven cars can park in the driveway and safely exit onto Scenery Drive. To better understand this matter, it is helpful to view a blow-up from the aerial photo attached to the Technical Staff report (Exhibit 19) and a photo of the home from Exhibit 9(a).



Petitioner's Driveway

Petitioner's Residence



Scenery Drive

Addition where office is located

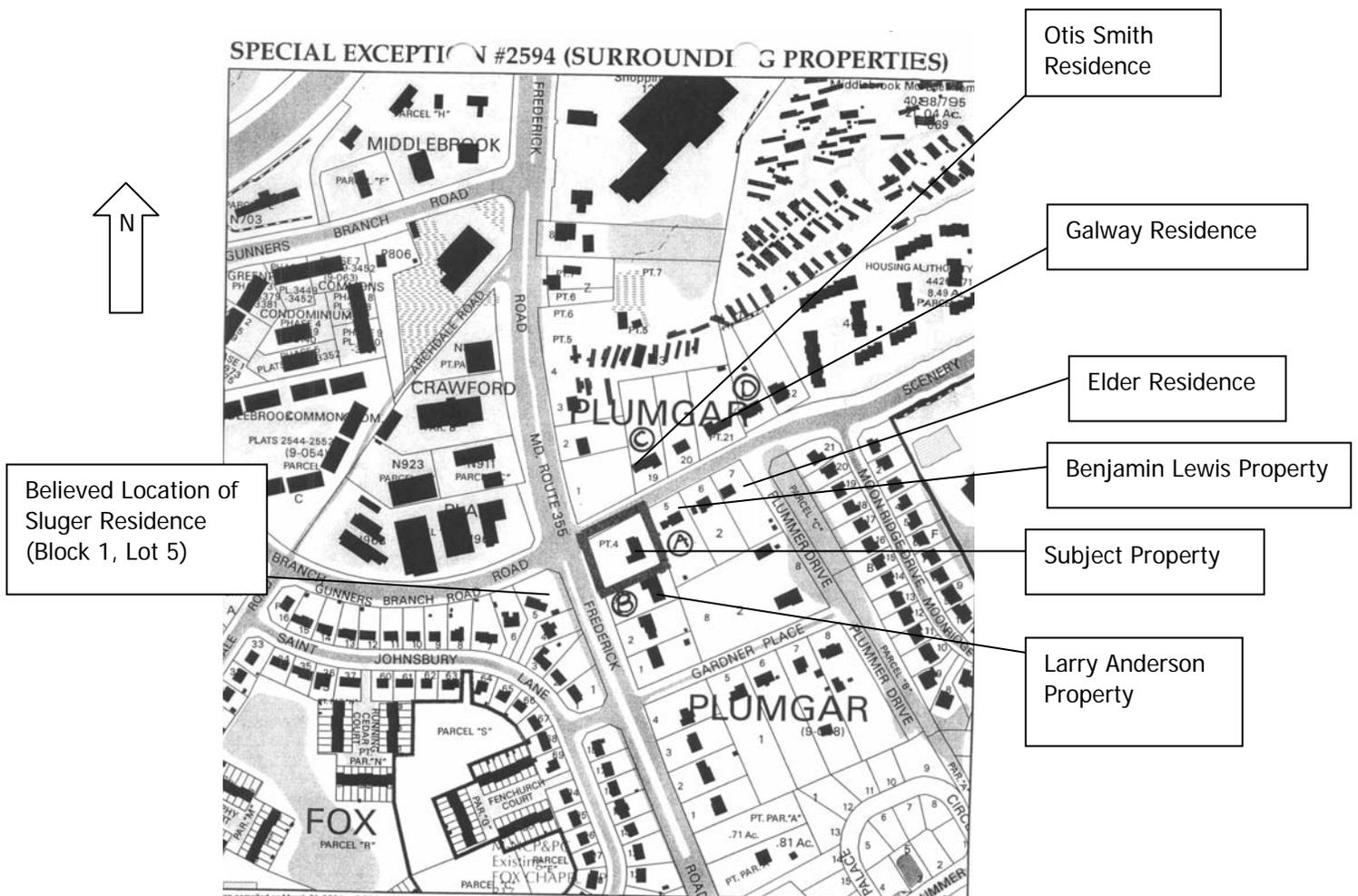
Main Portion of Residence

Frederick Road - Rt. 355

View of Addition from Frederick Road

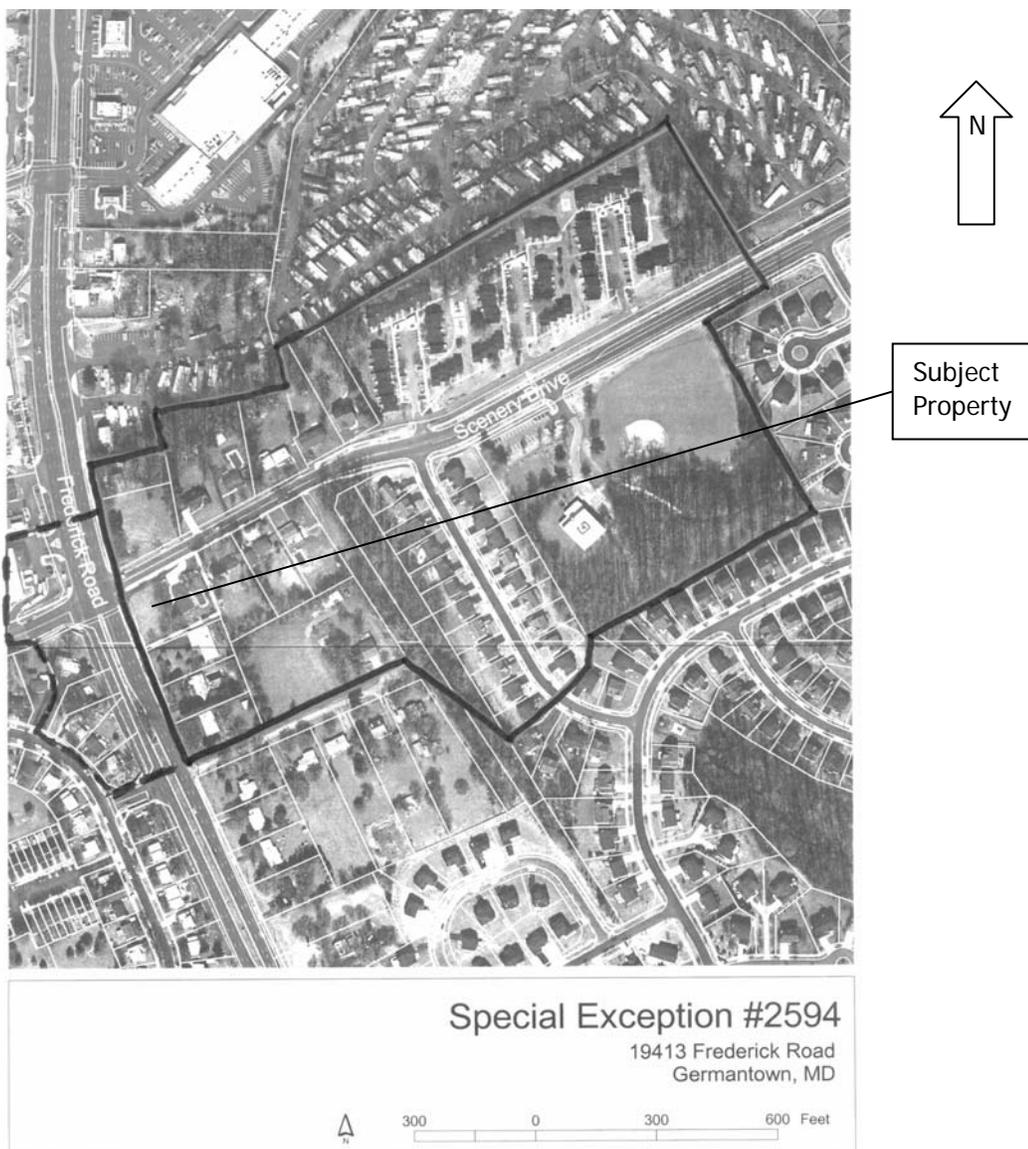
EXHIBIT NO. 9(a)

Technical Staff recommended defining the neighborhood as “the Plumgar neighborhood from Scenery Drive to the Plumgar Recreation Center.” This area includes the residential units interior to the neighborhood that use Scenery Drive as access. Because Petitioner’s driveway accesses his property from Scenery Drive just east of Frederick Road, it is the nearby homeowners who use Scenery Drive that will be most impacted by the proposed Special Exception. Below is the “Surrounding Properties” Map from Technical Staff’s supplemental report, with labels added showing the locations of neighbors who have submitted letters in this matter:



The western border of Technical Staff’s recommended designation of the neighborhood was placed on the east side of Frederick Road, along the subject property’s western property line. The Hearing Examiner is inclined to consider the defined neighborhood as stretching across Frederick

Road (even though it is a major arterial) and including structures fronting on the western side of Frederick Road because the subject property is within sight and sound of at least the neighbors directly across Frederick Road. The Technical Staff's designated neighborhood is shown below, as marked with a solid black line on a copy of the aerial photo attached to its report. The Hearing Examiner's extended designated neighborhood is shown below as a broken black line on the same photo:<sup>3</sup>



<sup>3</sup> The only submission from residents in the Hearing Examiner's extended neighborhood is the supporting letter from the Slugers (Exhibit 26).

The neighborhood is largely residential, consisting of mostly single-family detached homes on lots of approximately 20,000 square feet. According to the Technical Staff, the homes in the vicinity of the special exception request were built in 1950's and 1960's, while newer homes off Scenery Drive were built between 1995 and 2000 on lots of approximately 7,000-9,000 square feet.

The Plumgar Recreation Center is located on Scenery Drive approximately one half mile from the special exception property. Technical Staff also notes that the center operates as a recreation and community center, with after-school and academic programs for the children and youth of the neighborhood. Plumgar Local Park provides a baseball/softball field , playground, basketball court and picnic area. On the north side of Scenery Drive, within the defined neighborhood, is a multi-family community known as The Plumgar Homes. Land uses along Frederick Road south of the subject property are principally residential.

The immediate surroundings of the subject property include Scenery Drive to the north, Frederick Road to the west, a single family house owned by Larry Anderson to the south and a single family house owned by Benjamin Lewis to the east.<sup>4</sup> Directly across Scenery Drive from Petitioner, on the northeast corner of Scenery Drive and Frederick Road, is a vacant lot, which is zoned C-2, according to Technical Staff. Just to the west of that lot (*i.e.*, diagonally across Scenery Drive from the subject property) is a single family home owned and occupied by Mr. Otis E. Smith, who opposes the Petition. Directly across Frederick Road from the subject property are single family residences, and on the corner diagonally across Frederick Road from the subject property is some commercial development.

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<sup>4</sup> The Hearing Examiner takes official notice of the Real Property Records maintained by the Maryland Department of Assessments and Taxation, which indicate that neither the house owned by Mr. Anderson, nor the one owned by Mr. Lewis, is listed as a principal place of residence by the owner. Petitioner testified that Mr. Anderson used to live next door, but now rents the property. Tr. 37.

The Technical Staff determined that there were no other special exceptions in the neighborhood, as they defined it (Exhibit 30):

### **C. The Master Plan**

The property is located within the area covered by the *Germantown Master Plan*, approved and adopted in July 1989. The area containing Petitioner's house is called "Middlebrook Village" in the Master Plan, but it does not fall within any of the six "Analysis Areas" designated for Middlebrook Village in the Plan.

The Plan does not explicitly address the question of major home occupation special exceptions, but it does emphasize "providing opportunities for employment land uses for a variety of businesses and enterprises." (p.1) Moreover, one of the Plan's objectives for its "Employment Corridor" is "to provide, as much as possible, the opportunity for people to both live and work in the same community, thereby creating more efficient use of transportation systems, and public facilities and amenities, and reducing the amount of work trip miles." (p.33) Although Petitioner does not live within the designated "Employment Corridor,"<sup>5</sup> the same rationale supports the use of the major home occupation special exception. Petitioner's employment in his home certainly reduces use of the transportation system regarding his employment.

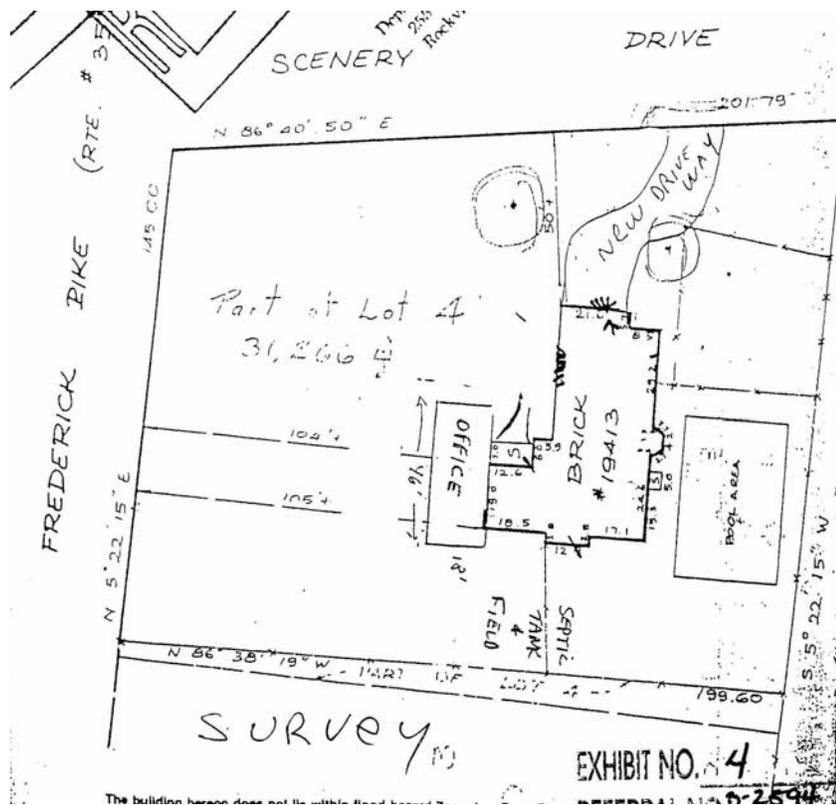
Thus, it is fair to say that the planned use, a major home occupation use in a single family detached home, is not inconsistent with the applicable Master Plan.

### **D. The Proposed Use**

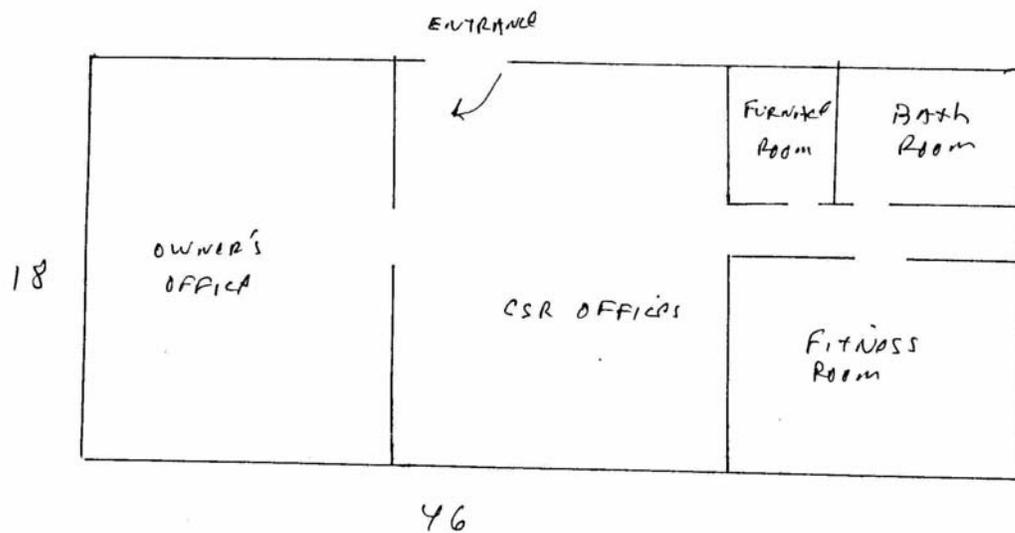
As mentioned above, the major home occupation use is located in an addition to the residential structure. Its location is shown in the Site Plan (Exhibit 4), depicted below:

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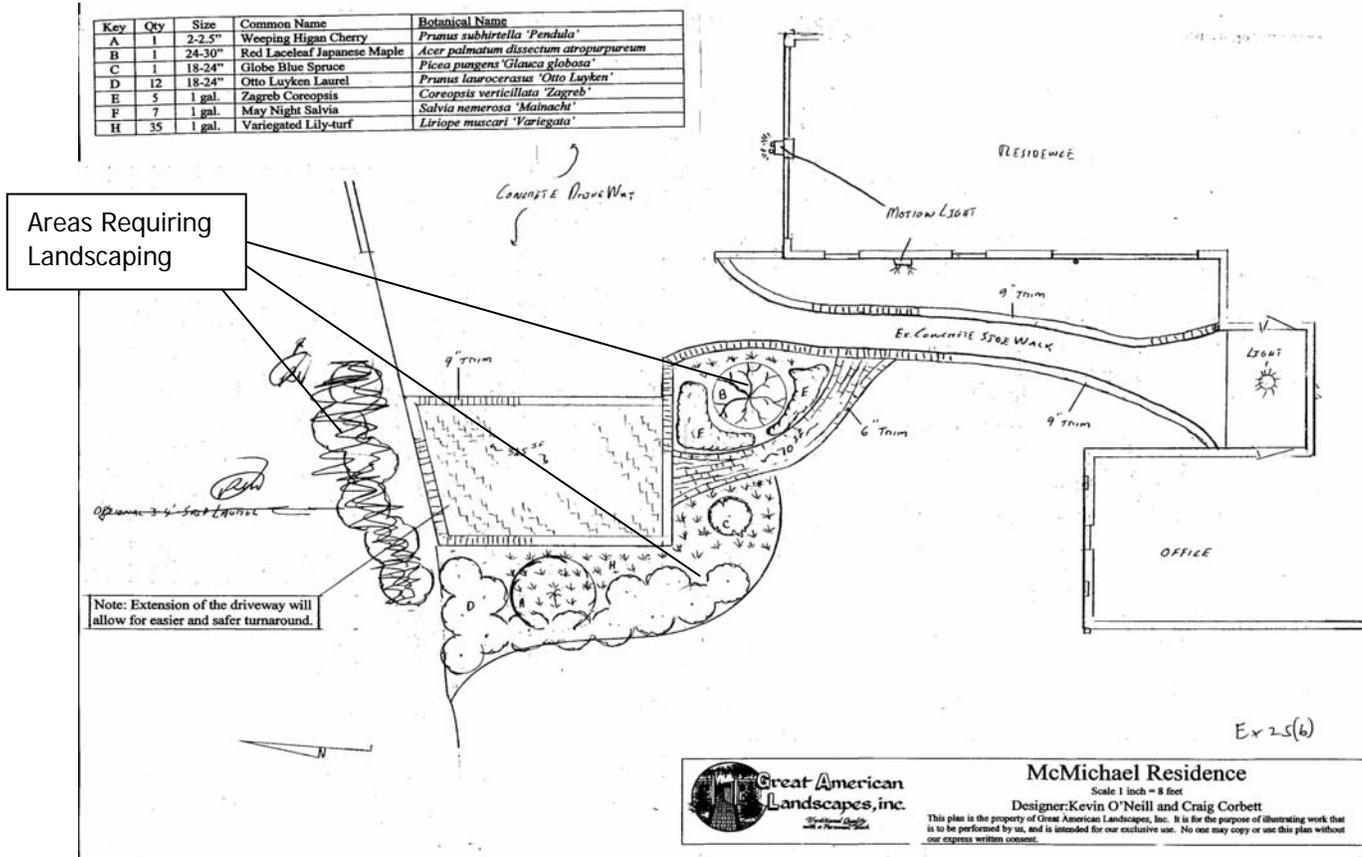
<sup>5</sup> As noted by the Technical Staff, there is no special treatment recommended in the Master Plan for the Petitioner's geographical area.



The addition contains an owner's office, an outer office, a furnace room, a bathroom and a fitness room, as set forth on the Office Floor Plan (Exhibit 7), shown below:

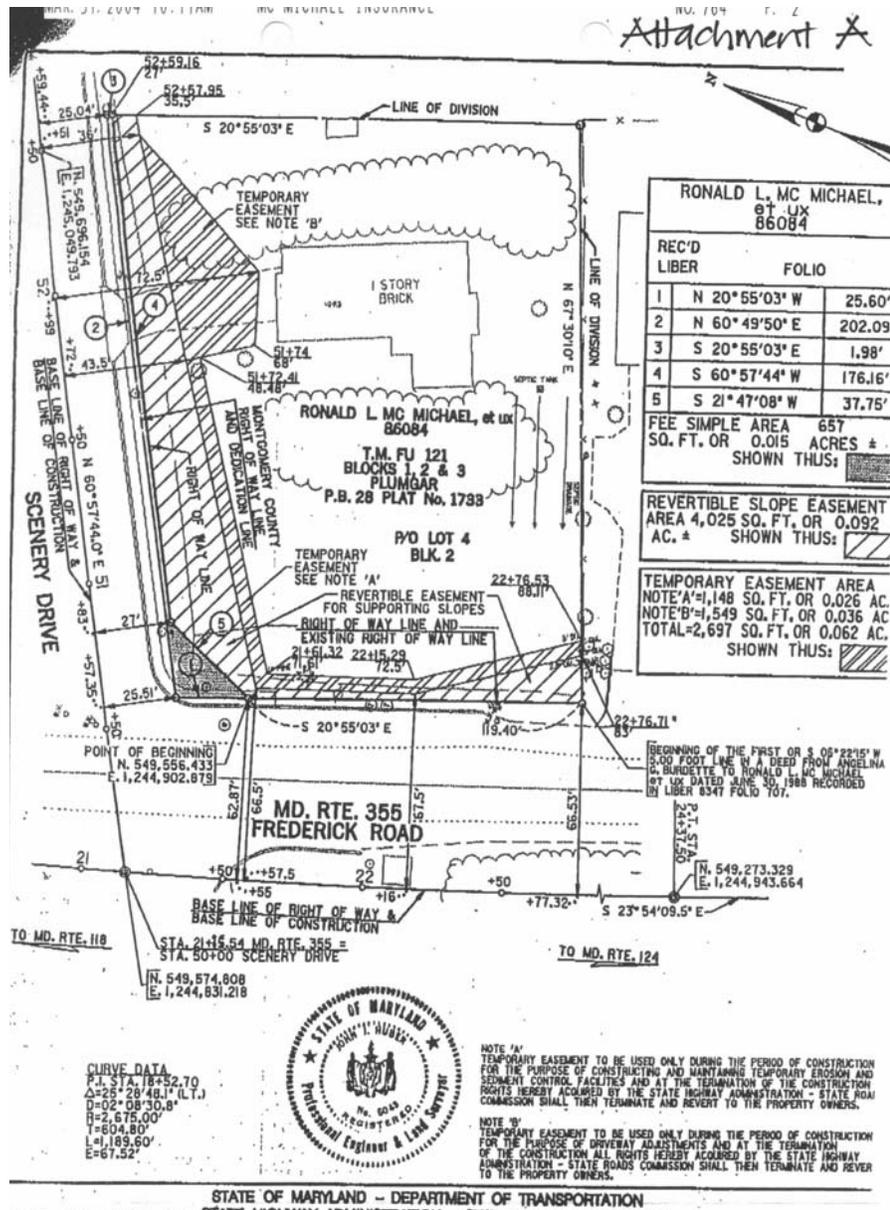


The location of lights and the landscaping pattern are depicted below in Petitioner’s revised Lighting and Landscaping Plan (Exhibit 25(b)):



Petitioner crossed out the landscaping he was proposing on the northern (Scenery Drive) side of his driveway because he thought it would violate a temporary State Highway Administration easement on his land. Technical Staff determined that Petitioner’s concerns were unfounded since the area in question is controlled by “Note B” on the survey shown below, and that note specifies that the temporary easement was to be used only during construction, which has now terminated, and following construction, the easement would terminate. Based on their conclusion that easement had terminated and that four cars could be safely parked in driveway, Technical Staff recommended in its second supplemental report (Exhibit 31) that Petitioner be required to make the plantings depicted on the north side of the driveway, taking care not to block

the view of drivers emerging from the driveway onto Scenery Drive. Depicted below is the survey showing the temporary easements and controlling notes.



The reason Petitioner is applying for a special exception is that he needs to add a second non-resident employee to his operation, in order to give him the flexibility to go away on vacation and for business (Exhibit 3). He does not plan to expand the business. Tr. 16. He usually averages slightly over one client a day visiting his independent insurance agency, but on rare

occasions ( four times over a one year period) he may have up to five visitors in a day, never all at one time. Tr. 45. Graphs of the frequency of client visits are in the record as part of Exhibit 3, and a chart of the visits over a one year period is attached to the Technical Staff report (Exhibit 19), and shown below.

**Special Exception #2594**

19413 Frederick Road  
Germantown, MD

	Owner	Employee	Visitor(s)	Total
Ave. Day	1	1	1.26	3.26
Proposed	1	2	1.26	4.26

Date	Total weekdays	Total visitors	Total weekday visitors	Total weekend visitors	Days with 1 visitor	Days with 2 visitors	Days with 3 visitors	Days with 4 visitors	Days with 5 visitors
2002 Nov	21	33	31	2	7	5	4	1	0
2002 Dec	22	29	29	0	10	3	3	1	0
2003 Jan	23	34	34	0	6	6	4	1	0
2003 Feb	20	24	24	0	10	3	1	0	1
2003 March	21	21	21	0	9	3	2	0	0
2003 April	22	26	26	0	6	7	2	0	0
2003 May	22	29	28	1	8	5	1	2	0
2003 June	21	26	26	0	9	5	1	1	0
2003 July	23	27	27	0	7	7	2	0	0
2003 Aug	21	20	20	0	5	6	1	0	0
2003 Sept	22	37	37	0	7	6	1	0	3
2003 Oct	23	26	26	0	13	2	3	0	0
<b>Total</b>	<b>261</b>	<b>332</b>	<b>329</b>	<b>3</b>	<b>97</b>	<b>58</b>	<b>25</b>	<b>6</b>	<b>4</b>
<b>Average Month</b>	<b>21.75</b>	<b>27.67</b>	<b>27.42</b>	<b>0.25</b>	<b>8.08</b>	<b>4.83</b>	<b>2.08</b>	<b>0.50</b>	<b>0.33</b>

None of Petitioner's business is conducted out of doors, nor would the addition of an employee add significantly to the traffic, according to Technical Staff, which estimates one additional peak-hour trip during both morning and evening peak periods (Exhibit 20).

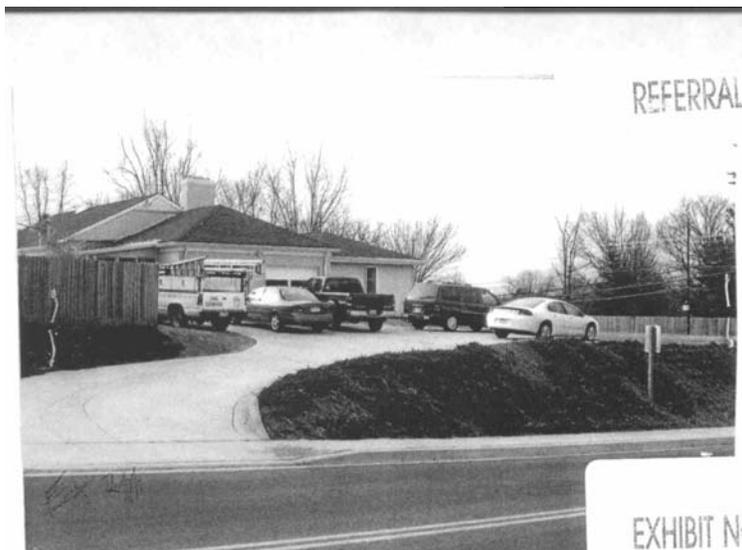
### E. Community Response

Two letters indicating lack of any objection from adjacent property owners, Larry Anderson (Exhibit 22) and Benjamin Lewis (Exhibit 25(c)), were put into the record by Petitioner. Petitioner also submitted a favorable letter from neighbors who live across Frederick Road from Petitioner, Mr. and Mrs. Sluger, of 19417 St. Johnsbury Lane (Exhibit 26). As noted above, the

adjacent properties owned by Messrs. Anderson and Lewis, do not appear to be the principal residences of the owners; however, the Slugers' property is listed as their principal residence. The initial opposition came from neighbor Otis E. Smith, who lives across Scenery Drive from Petitioner. After the hearing, opposition letters were received from two other neighbors, J. Michael Galway and Alton and Patsy Elder, raising traffic and commercialization concerns similar to those mentioned by Mr. Smith.

Mr. Smith testified that he opposes the Petition for three reasons. The most important is his concern about safety, specifically that when there are too many cars parked in Petitioner's driveway, they cannot turn around to get out and have to back out onto busy Scenery drive. Moreover, when they double park on the street it creates a safety hazard for fast moving traffic and children walking in the area. His second concern was for the commercialization of the neighborhood wrought by adding this business use with its sign in front, and his third complaint was with regard to the design and look of the addition Petitioner built to house his business. Tr. 50-56.

Since the design and look of Petitioner's previously constructed addition is not an issue before the Hearing Examiner, we will address only the safety and commercialization issues raised by Mr. Smith. Mr. Smith introduced a photograph (Exhibit 24) showing Petitioner's driveway crowded with five vehicles. The photo is shown below:



Although Petitioner testified that the white truck was there only for the day to complete some construction work (Tr. 46), the Hearing Examiner finds that Mr. Smith raised a valid concern that the number of cars parked in Petitioner's driveway made it impossible to turn around and exit safely onto Scenery Drive. This problem would of course be exacerbated if the number of vehicles parked in the driveway were increased to seven.

In response to the safety concerns expressed by Mr. Smith, Petitioner proposes, in his revised Landscaping/Lighting Plan, to extend the driveway to allow vehicles to turn around and exit safely onto Scenery Drive. The Hearing Examiner will also recommend a condition limiting the number of vehicles parked in the driveway to four at a time to permit space for turning around. Petitioner testified he would agree to such a condition. Tr. 45. The Hearing Examiner will also recommend limits on the number of client visits, and require a sign to be posted in Petitioner's waiting room, advising clients to park in his driveway, and not in the street, and to exit the driveway facing forward. These conditions should alleviate Mr. Smith's concerns about unsafe backing out onto Scenery Drive and hazardous double parking on the street.

As to Mr. Smith's complaint about over-commercialization in a residential neighborhood, the Hearing Examiner is sensitive to Mr. Smith's concerns, but finds that the proposed major home occupation, conducted entirely within Petitioner's residential-appearing property does not constitute an over-commercialization of the neighborhood. This is especially true since the subject property fronts on Frederick Road (MD 355), a major arterial. Moreover, there is an empty lot zoned commercial (C-2) right next to Mr. Smith's property and commercial development diagonally across the corner from Petitioner's home. In other words, the change in Petitioner's already existing home occupation use, adding one additional employee, would have negligible effect on the balance of residential versus commercial development in the area. Moreover, according to Technical Staff, it will not adversely affect the surrounding roadway system (Mr. Galway's concern).

### III. SUMMARY OF THE HEARING

Two witnesses testified at the hearing, the Petitioner, Ronald McMichael, and a neighbor, Otis Smith. Martin Klauber, the People's Counsel, participated in the hearing, but did not testify. At the outset of the hearing, the motion to amend the petition which had been filed and noticed on February 17, 2004, was granted, without objection.

#### Petitioner's Testimony:

Petitioner owns and manages a small insurance agency in his home. Petitioner testified that he is seeking a special exception because he needs to add a second employee so that he can take time off. He does not plan to grow his business. Tr. 16. In response to comments by the People's Counsel, Petitioner indicated that he would submit a revised landscaping and lighting plan showing the precise number, type and location of lights and the vegetation to screen the parking area in his driveway.

Petitioner averages one client per day, but occasionally has up to a maximum of five in one day. Tr. 11-12.

Petitioner testified that the special use occupies 846 square feet; is subordinate to the residential use; occupies less than 33% of the floor space (even after subtracting the 846 square feet of floor space constructed in April of 2003); is conducted within the dwelling; does not involve exterior storage of goods or equipment; is the only special exception use on the property; will be conducted by himself with a maximum of two nonresident employees; will serve clients by appointment only (though there might be an occasional unanticipated drop-in; has an indoor waiting room; will use no equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference detectable at or beyond the lot line; will not involve use, storage or disposal of petroleum or other hazardous material; will use equipment only for general office purposes; will not sell, display or store goods on the premises; will provide off-street

parking for up to seven cars in addition to his own two-car garage; will be screened by landscaping in accordance with the code; and will not involve any commercial vehicles or truck deliveries (except the occasional Fed Ex delivery). Tr. 18-30.

Petitioner further testified that the major home occupation use is, he has been advised by Technical Staff, consistent with the Germantown Master Plan. Moreover, according to Petitioner, the use will be in harmony with the general character of neighborhood, and he submitted a letter from one of his neighbors indicating that he did not object to it (Letter of Larry Anderson of 19409 Frederick Road, Gaithersburg, Maryland - Exhibit 22).

Petitioner also testified that the use would not be detrimental to the use, peaceful enjoyment, value or development of the surrounding properties because there is a mix of residential and commercial nearby; there would be no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity; the use would not alter the residential nature of the area, nor would it adversely affect the health, safety, security, morals or general welfare of the residents; and finally, it would be served by adequate public facilities and would not reduce the safety of vehicular or pedestrian traffic. Tr. 30-34.

Petitioner indicated he would agree to conditions limiting parking in his driveway to 4 vehicles at a time to permit safe exits from the driveway; limiting the clients visiting his home office to no more than two at a time so that the two parking spaces they would occupy, plus the two employee spaces, would not result in more than four non-residential cars parked in his driveway at any given time; and limiting the number of client visitors on any given weekday to five and on weekend days to two client visitors, with an average monthly number of visits of 30. He agreed to keep a log of all visitors, as he has been doing and to post a sign in his waiting room asking his clients to park in his driveway, rather than on the street. Tr. 45-50.

Opposition Testimony from Otis Smith:

Mr. Smith testified that he opposed the Petition for three reasons. The most important is his concern about safety, specifically that when there are too many cars parked in Petitioner's driveway, they cannot turn around to get out and have to back out onto busy Scenery drive. Moreover, when they double park on the street it creates a safety hazard for fast moving traffic and children walking in the area. His second concern was for the commercialization of the neighborhood wrought by adding this business use with its sign in front, and his third complaint was with regard to the design and look of the addition Petitioner built to house his business. Tr. 50-56.

At the conclusion of the hearing, Petitioner asked to be able to file a revised landscaping/lighting plan by March 15, 2004, showing the way in which the parking area would be screened and where lights would be placed. The Hearing Examiner instructed him to file it with the Hearing Examiner, the Technical Staff and all parties by that date. March 31, 2004, was set as the date to receive Technical Staff's supplemental report, and the record would be kept open till April 12, 2004 to receive any further public comments.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record

under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a major home occupation use. Characteristics of the proposed major home occupation use that are consistent with the “necessarily associated” characteristics of major home occupation uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with major home occupation uses, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the physical and operational characteristics necessarily associated with a major home occupation use include:

a residence occupied by the business owner, signage to indicate the presence of the home occupation, an entry to the business portion of the residence, defined hours of operation, and a parking area for employees and visitors. Delivery of materials other than mail service may or may not be an inherent home occupation condition.

Technical Staff noted that the subject application includes all of these conditions except for delivery service. Technical Staff also found that “the physical and operational characteristics of the proposed home occupation are no different than what is typically encountered with a residential home occupation,” and therefore concluded that there were no non-inherent conditions arising from the subject major home occupation use.

The Hearing Examiner agrees with this conclusion, with the possible exception of the use by Petitioner of an addition, built to house his office space. There is nothing in the record from which the Hearing Examiner can conclude that major home occupations characteristically employ additions built for the office use. On the other hand, there is really nothing about the addition in question which makes it adverse to the neighbors. It may not precisely coincide with Mr. Smith’s taste, as he made clear at the hearing, but it is not so large or unusual as to adversely impact upon the neighborhood. In fact, it is clearly designed to blend in with the main residential structure to which it is attached. (See Exhibit 9(a), on page 5 of this report.)

The operational characteristics of the proposed use seem quite normal for a home office, and the visits averaging slightly over one client per day, even with accompanying traffic, light and noise, are unlikely to produce any significant adverse effects on the community, especially given the conditions being recommended by the Hearing Examiner.

In sum, based on the evidence in this case, and considering size, scale, scope, light, noise, traffic and environment, I conclude that there are no non-inherent adverse effects from the proposed use which would require denial of the Petition.

### **B. General Conditions**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report, the exhibits and the testimony of the witnesses provide ample evidence that the general standards would be satisfied in this case.

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

**§5-G-1.21(a)** -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

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

Conclusion: A major home occupation use is a permissible special exception in the R-200 Zone, pursuant to Code § 59-C-1.31.

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

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.29 for a major home occupation use as outlined in Part C, below.

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

*the special exception must include specific findings as to master plan consistency.*

Conclusion: The property is located within the area covered by the *Germantown Master Plan*, approved and adopted in July 1989. The area containing Petitioner's house is called "Middlebrook Village" in the Master Plan, but it does not fall within any of the six "Analysis Areas" designated for Middlebrook Village in the Plan. The Plan does not explicitly address the question of major home occupation special exceptions, but it does emphasize "providing opportunities for employment land uses for a variety of businesses and enterprises." (p.1) Moreover, Petitioner's employment in his own home certainly reduces use of the transportation system regarding his employment, a goal mentioned in regard to other areas covered by the Plan. Thus, it is fair to say that the planned use, a major home occupation use in a single family detached home, is not inconsistent with the applicable Master Plan.

(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.*

Conclusion: The proposed use will be in harmony with the general character of the neighborhood because the level of activity from the home office will hardly distinguish it from other residences in the area. Moreover, no additional structural change to the house is proposed, the number of client visitors and the hours of operation will be limited by condition, and the driveway will be extended to insure that all cars involved in the use can fit on, and safely exit, the driveway. The proposed use also will not generate any significant change in traffic conditions.

Thus, there should be no impact on the neighborhood as far as parking or other operational characteristics.

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

Conclusion: The Hearing Examiner concludes that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties at the site. Both adjacent landowners have written letters stating that they do not object to the special exception. Even though they may not be actual residents of those properties, their lack of opposition indicates that they do not feel the proposed use will adversely affect the economic value or development of their properties. The lone opposition witness, Otis Smith, lives across the street, and the Hearing Examiner believes that the conditions recommended in Part V, below, will satisfy his safety concerns, as well as the concerns of the two other neighbors who wrote letters of opposition.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the nature of the proposed use (*i.e.*, an office), the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. To the extent that the parking area is viewable from the street, appropriate landscaping can operate as a sufficient buffer.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.*

*Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: According to the Technical Staff, there are no other special exceptions in the neighborhood, as they defined it (Exhibit 30). The only neighbors who opposed the subject petition live within the neighborhood defined by the Technical Staff. Their objection stems from the nature of the special exception use itself and from the additional traffic and parking they believe it will cause, not from the number of special exceptions in the area. Neither the scope, nor the intensity of the special exception use will be significantly increased if the subject petition is granted, since Petitioner is already running the business as a registered home office pursuant to Zoning Code §59-A-3.41, and seeks merely to add one employee, and not to expand his business. Tr. 16. Thus, the evidence supports the conclusion that the major home occupation use proposed in this case will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

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

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Tr. 34

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities Tr. 34.

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

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision. Therefore, the public facilities review must include analysis of both the Local Area Transportation Review (“LATR”) and the Policy Area Transportation Review (“PATR”). The Technical Staff did do such a review, and it is contained in Transportation Planning Staff’s Memorandum of February 19, 2004 (Exhibit 20). Technical Staff estimates that the addition of one employee will generate one additional peak-hour trip during both morning and evening peak periods. Since the proposed major home occupation use would generate fewer than 50 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. See the July 2002 LATR Guidelines, of which the Hearing Examiner takes official notice.

Turning to the PATR, the Technical Staff states that the Germantown East Policy Area has “sufficient job staging ceiling capacity available” (Exhibit 20). Therefore, the Transportation Staff concludes, as does the Hearing Examiner, that the instant petition meets the PATR test, as well as the LATR test.

- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Conclusion: The Transportation Staff concluded that the proposed special exception “will not adversely affect the surrounding roadway system.” (Exhibit 20). That is the only expert evidence on the issue. The testimony of Mr. Smith and statements in letters from other neighbors all expressing a concern about traffic safety do not prove that granting the requested special exception will result a traffic hazard, especially since we are talking about only one additional car trip in the morning and one in the evening and we are recommending conditions in Part V of this report which should avoid unsafe entry onto Scenery Drive and double parking by Petitioner’s clients. Thus, the evidence of record supports the finding that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic.

### **C. Specific Standards**

The testimony and the exhibits of record [including the Technical Staff Report (Ex. 19)] provide sufficient evidence that the specific standards required by Section 59-G-2.29 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.29. Home occupation ,major.***

*The use of a dwelling for a major home occupation, including a professional or home health practitioner's office that is not in accordance with Sections 59-A-3.4 and 59-A-6.1, may be allowed, subject to the following provisions:*

- (a) *The use must be clearly subordinate to the use of the dwelling for residential purposes. The amount of floor area used for the major home occupation must not exceed 33 percent or 1,500 square feet, whichever is less, of the total floor area of the dwelling unit and any existing accessory building on the same lot or parcel. Any enlargement*

*of the total floor area resulting from construction completed on or after the date of application for the special exception or within 18 months immediately preceding the application must be excluded from the total floor area on which this calculation is based.*

Conclusion: The proposed office use is subordinate to the use of the dwelling for residential purposes. The addition housing the special use is 846 square feet, so it is under the 1,500 square foot maximum. It is also under the 33% maximum. The total floor space is approximately 3,477 square feet (2,631 sq.ft. of residence + 846 sq.ft. of addition), but since the addition was completed in April of 2003 (*i.e.*, within 18 months of application), the 846 square feet is not included in the total floor area denominator for purposes of this calculation, pursuant to the directions in this provision. We therefore divide 846 square feet by 2,631 square feet, and the result is that 32.15% of the floor space is devoted to the home occupation use, just under the 33% maximum.

- (b) *The use must be conducted within the dwelling unit or any existing accessory building and not in any open yard area of the lot or parcel on which the dwelling is located. Exterior storage of goods or equipment is not permitted. No separate detached building may be constructed on the lot or parcel for the express purpose of specifically operating the home occupation. No more than one existing accessory building may be used for this purpose. The use may, however, involve off-site activities such as sales, client contact and other matters related to the home occupation.*

Conclusion: All office operations are conducted within the dwelling unit and its attached addition; there is no accessory building. No goods or equipment will be stored outdoors; nor is there any separate detached building involved.

- (c) *The Board may grant a special exception for a major home occupation on the same property as a registered home occupation, if it finds that both together can be operated in accordance with the provisions of this section and Section 59-G-1.2, title "Conditions for Granting." The*

*Board must not grant a special exception for more than one major home occupation on the same property or approve such a use if the property is also approved for a different special exception in accordance with this Division 59-G-2.*

Conclusion: The proposed home occupation is the only non-residential use of the property.

- (d) *The home occupation office must be conducted only by members of the family, as defined in Section 59-A-2.1, residing in the dwelling and a maximum of 2 nonresident employees or associates to be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic. The Board may allow more than 2 nonresident employees for a health practitioner's practice; however, no nonresident health practitioner is allowed. In any case where customers, clients or patients visit the dwelling, there must be no more than 2 resident operators of the home occupation or 2 resident health practitioners or other professionals practicing in the dwelling; abuse of this exemption may lead to revocation of the Certificate of Registration.*

Conclusion: The only resident of the dwelling who will be conducting business is the

Petitioner. No more than two non-resident employees will be present at any time.

- (e) *Clients, customers, patients or other visitors in connection with the home occupation must visit by appointment only. The Board may specify the hours during which they may visit and may limit the number of clients, customers, patients, or other visitors during those periods. An indoor waiting room must be provided. In the case of a home health practitioner, as defined in Section 59-A-2.1, emergency patients may visit outside the specified hours or without appointment; abuse of this exemption may lead to revocation of the special exception.*

Conclusion: Conditions are recommended by the Hearing Examiner specifying the hours of

operation, the number of visitors and the fact that all visits must be by

appointment. There is an indoor waiting room.

- (f) *No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference detectable at or beyond the lot line is allowed as part of the special exception activity, nor is it allowed to involve use, storage or disposal of:*

- (1) *A quantity of a petroleum product sufficient to require a special license or permit from the fire marshal; or*
- (2) *Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated as provided in Maryland State Laws and Regulations.*

Conclusion: There will be no equipment or process involved in this small insurance agency capable of producing the prohibited effects; nor does the use involve petroleum products or hazardous material.

- (g) *The only allowable equipment or facilities are those needed for:*
  - (1) *Domestic or household purposes;*
  - (2) *General office purposes, such as but not limited to a personal computer, calculator, word processor, or typewriter; or*
  - (3) *Art or handicraft equipment, such as but not limited to a hand loom, spinning wheel, kiln, or woodworking tools.*
  - (4) *In the case of a home health practitioner, as defined in Section 59-A-2.1, medical equipment may also be used, subject to the provisions of Paragraph (f), above.*

Conclusion: Only general office equipment will be used.

- (h) *The sale of goods on the premises is prohibited, except for:*
  - (1) *The products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or handicrafts performed by a resident of the dwelling; or*
  - (2) *No more than 5 sales per month of items customarily ordered for delivery to customers at off-site locations.*

Conclusion: There will be no sale of goods on the premises; only services.

- (i) *Display or storage of goods is prohibited except for:*
  - (1) *Such handmade items as are enumerated in paragraph (h)(1) above; or*
  - (2) *Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.**The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.*

Conclusion: There will be no storage of goods on the premises.

(j) *Except as provided in Paragraph (2), off-street parking must be provided on-site in accordance with the relevant provisions of Article 59-E, as follows:*

- (1) For a home health practitioner, the Board may require the number of spaces specified in Section 59-E-3.7 for “office, medical practitioner.” Alternatively, and for any other use encompassed by this Section 59-G-2.29, there must be one parking space for each nonresident employee or associate plus one parking space for every client or customer allowed by the conditions of the special exception to visit in any one-hour period. These spaces must be in addition to the number of spaces required for the residential use of the property.*
- (2) In determining the necessary amount of on-site parking, the Board may take into account the availability of on-street parking spaces, but on-street parking must not be allowed in connection with the home occupation or professional office if it will have an adverse impact on neighboring residences.*
- (3) Screening must be provided in accordance with Section 59-E-2.83. The required spaces must be located in the side or rear yard, except that the Board may approve parking in a driveway traversing the front yard if it finds that there is inadequate space for the parking or necessary screening in the side or rear yard, and the front-yard driveway can be screened in accordance with Section 59-E-2.83. If an applicant can establish, to the satisfaction of the Board, that a front-yard parking area was constructed prior to February 5, 1990, in order to satisfy the parking requirements for a residential professional office as a permitted use, the Board may waive the requirement for side or rear yard parking if it finds that such action will not have an adverse impact on neighboring residences.*

Conclusion: All parking for the special exception will be on Petitioner’s paved driveway on the side of the house. It will be extended to permit vehicles to turn around and safely exit onto Scenery Drive. No more than four vehicles will be parked in the driveway at any time, and Petitioner’s personal vehicles will be parked in his two-car garage. Appropriate screening will be provided.

(k) *In the Residential One-Family Zones regulated by Section 59-C-1.3 and in recorded residential subdivisions in the Agricultural Zones*

*regulated by Division 59-C-9, any commercial vehicle that is parked or garaged on-site in connection with the home occupation must comply with the regulations for commercial vehicles in section 59-C-1.31, title "Land Uses." In the Townhouse and Multiple-Family Zones regulated by Sections 59-C-1.7 and 59-C-2.3, respectively, one commercial vehicle may be parked on-site in connection with the home occupation if parked in a garage.*

Conclusion: There are no commercial vehicles involved in the subject use.

- (l) *The Board may restrict deliveries by truck in volume and frequency and may limit them to deliveries by public or private services that also deliver to private homes.*

Conclusion: There are no deliveries for the special exception except mail.

- (m) *Reserved.*

Conclusion: Not applicable.

- (n) *A special exception for a major home occupation is granted for a two-year period and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies the compliance procedures specified by Section 59-G-1.3. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the conditions established by the Board of Appeals and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.*

Conclusion: Noted.

- (o) *In those zones where a professional office for a resident of a dwelling was permitted by right prior to February 5, 1990, and if a use-and-occupancy permit for the professional office was issued prior to February 5, 1990, the office may be continued as a nonconforming use, as provided in Division 59-G-4. (See Section 59-C-1.31, 59-C-2.3 or 59-C-9.3.)*

Conclusion: Not applicable.

### D. Additional Applicable Standards

#### *59-G § 1.23. General development standards*

- (a) *Development Standards.* Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: The subject lot is approximately 30,840 square feet in size. The following chart from pages 3-4 of the Technical Staff Report (Exhibit 19) demonstrates compliance with all development standards:

Development Standard	Required in R-200 Zone	Provided
<b>59-C-1.322 Lot Area and Width</b>		
(a) Minimum net lot area (in square feet)	20,000 square feet	30,800
(b) Minimum lot width (in feet)	100 feet	Greater than 100 feet
<b>59-C-1.323 Yard Requirement</b>		
(a) Minimum setback from street	40 feet	Greater than 40 feet
(1) Side-one side	12 feet	Greater than 12 feet
Sum of both sides	25 feet	Greater than 25 feet
(2) Rear	35 feet	Greater than 35 feet
<b>59-C-1.327 Maximum Building Height</b> (in feet)	50 feet	Approx 12 feet (one story)
<b>59-C-1.328 Coverage:</b> Maximum percentage of net lot area that may be covered by buildings including accessory buildings	25%	Approx 11 percent

- (b) *Parking requirements.* Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: As discussed above, Petitioner meets all parking requirements.

- (c) *Minimum frontage.* In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if

*the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*

- (1) Rifle, pistol and skeet-shooting range, outdoor.*
- (2) Sand, gravel or clay pits, rock or stone quarries.*
- (3) Sawmill.*
- (4) Cemetery, animal.*
- (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
- (6) Riding stables.*
- (7) Heliport and helistop.*

Conclusion: Not applicable.

- (d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: According to the Technical Staff, Petitioner is exempt from the forest conservation requirements because no modification to the existing structure is required and no forest or individual trees will be disturbed. The Hearing Examiner agrees.

- (e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Not applicable.

- (f) **Signs.** The display of a sign must comply with Article 59-F.*

Conclusion: Technical Staff determined that the single sign used to identify the home occupation use is appropriate and consistent with that ordinarily used for such purposes. As such, Technical Staff characterized the signage as an inherent

characteristic. The Hearing Examiner agrees that a small sign, compliant with the Zoning Code, is appropriate.

- (g) ***Building compatibility in residential zones.*** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: Not applicable.

- (h) ***Lighting in residential zones.*** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:
- (1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*
  - (2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Technical Staff notes that the residential portion of the property is lighted by building-mounted security lights that activate by a motion detector. According to Technical Staff, this lighting does not create glare on Scenery Drive, nor is it a nuisance to the adjoining residences. Therefore, the Hearing Examiner concludes that Petitioner's lighting does not violate applicable standards.

Based on the testimony and evidence of record, I conclude that the major home occupation use proposed by Petitioner, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition should be granted, subject to the conditions set forth in Part V of this report.

## **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2594, seeking a special exception for a major home occupation use located at 19413 Frederick Road, Germantown, Maryland, be GRANTED, with the following conditions:

1. The Petitioner is bound by his testimony, representations and exhibits of record;
2. The Petitioner must limit the number of vehicles parked in his driveway to four at a time to permit space for turning around and safe exit;
3. The Petitioner, in accordance with his revised Landscaping/Lighting Plan (Exhibit 25(b)), must extend his driveway to allow vehicles to turn around and exit safely onto Scenery Drive;
4. The Petitioner must establish and maintain the landscaping to shield the parking area in accordance with his revised Landscaping/Lighting Plan (Exhibit 25(b)), and such landscaping must include all the plantings shown in the revised Landscaping/Lighting Plan on all sides of his driveway (*i.e.*, including those on the north, *i.e.*, Scenery Drive, side, labeled “optional” and then crossed out);
5. The Petitioner must plant and maintain such landscaping so as not to obstruct the visibility of vehicles seeking to enter Scenery Drive from the parking area;

6. The Petitioner must limit the number of client visitors to no more than 5 on any weekday and 2 on any weekend day; nor may Petitioner have more than 2 client visitors at any one time or average more than 30 client visitors per month;
7. The Petitioner must keep a log of the number of client visitors each day available for inspection by the Department of Permitting Services;
8. The Petitioner is bound to the hours specified in his Exhibit 3, 9 a.m. to 5 p.m. weekdays, and an occasional visit on evenings and weekends, but all client visits (not just evening and weekend visits) must be by appointment under Zoning Code §59-G-2.29(e); and
9. The Petitioner must post a sign in his waiting room advising clients that they should park in his driveway, not in the street, and that they should turn around in the driveway so that they can exit onto Scenery Drive facing forward.

Dated: April 15, 2004

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner