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**APPENDIX Summary of Testimony**

## I. STATEMENT OF THE CASE

Filed on September 8, 2014, Petitioner Michael Chervnak, on behalf of Greencourt LLC, seeks a special exception to permit up to 50% of the a building on property in the I-4 Zone to be used for general office use, as authorized under §2.38.1 of the Zoning Ordinance.<sup>1</sup> The property is located at 12358 Parklawn Drive, Rockville, Maryland 20850. Petitioner also requests a waiver of the minimum parking requirements for this use under §59-E-5.4. By notice dated September 24, 2014, the Hearing Examiner scheduled a public hearing on the application for January 16, 2015. Exhibit 15. That hearing was postponed at the request of the Petitioner in order to permit additional time to work with Staff of the Montgomery County Planning Department (Technical Staff or Staff) on issues raised in Staff's review. Exhibit 16. Petitioner amended the petition on December 14, 2014, and the public hearing was rescheduled for April 14, 2015. Exhibits 19, 20.

Staff issued its report on March 13, 2015, recommending denial of the petition because it did not comply with the *2009 Twinbrook Sector Plan* (Sector Plan). Exhibit 23. In the event the application (along with the parking waiver) were approved, Staff recommended including a condition requiring the Petitioners to operate a shuttle bus service during the “weekday morning peak, midday, and evening peak periods to reduce the need for on-site parking...” Exhibit 19, p. 5.

The Planning Board disagreed with Staff's conclusion that the petition did not conform to the Sector Plan and recommended approval on April 1, 2015. Exhibit 20. The Planning Board did not recommend any conditions other than Staff's recommended condition requiring the Petitioner to provide private shuttle service. *Id.* The Petitioner amended its application again on

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<sup>1</sup> Because this petition was filed prior to October 29, 2014, it is governed by the 2004 Zoning Ordinance. All citations to the Zoning Ordinance in this Report are to the 2004 Zoning Ordinance.

April 2, 2015, to include a land use report, Local Area Transportation Review and Transportation Policy Area Review Study, and an amended Summary of Proof. Exhibit 25.

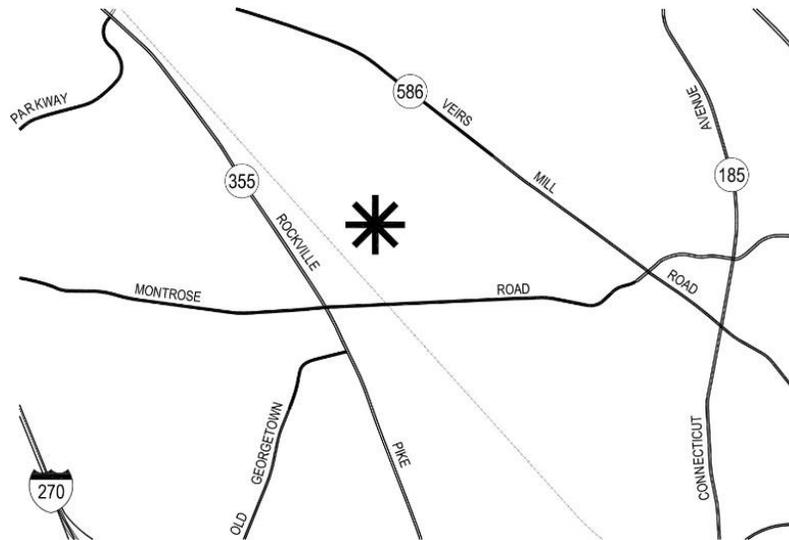
The public hearing proceeded as scheduled on April 14, 2015. No one appeared in opposition at the public hearing, although Ms. Jennifer Vargas, Code Enforcement Inspector assigned to this special exception, requested that all conditions of the special exception be placed on the site plan. T. 43-44. In response to Petitioner's argument that this was not required, the Hearing Examiner left the record open to April 29, 2015, to receive additional information from DPS on 1) the best method to enforce the 50% limit on general office, and 2) whether the conditions of special exception approval should be incorporated into the site plan. T. 94; Exhibit 38. DPS responded on April 18<sup>th</sup> and 20<sup>th</sup> and the Petitioners provided their responses on April 28, 2015. Exhibits 39-41. The record closed on April 28, 2015. The Hearing Examiner re-opened the record to admit a copy of the certified site plan. Exhibit 42. The record finally closed on May 15, 2015.

For the reasons that follow, the Hearing Examiner recommends approval of the petition, subject to a condition requiring the Petitioner to provide private shuttle service during the weekday morning and evening peak periods, to promote the shuttle service in the same manner as other transit options under its Trip Mitigation Agreement, and to amend its site plan and Trip Mitigation Agreement to reflect the conditions of approval of this special exception.

## **II. FACTUAL BACKGROUND**

### **A. Subject Property**

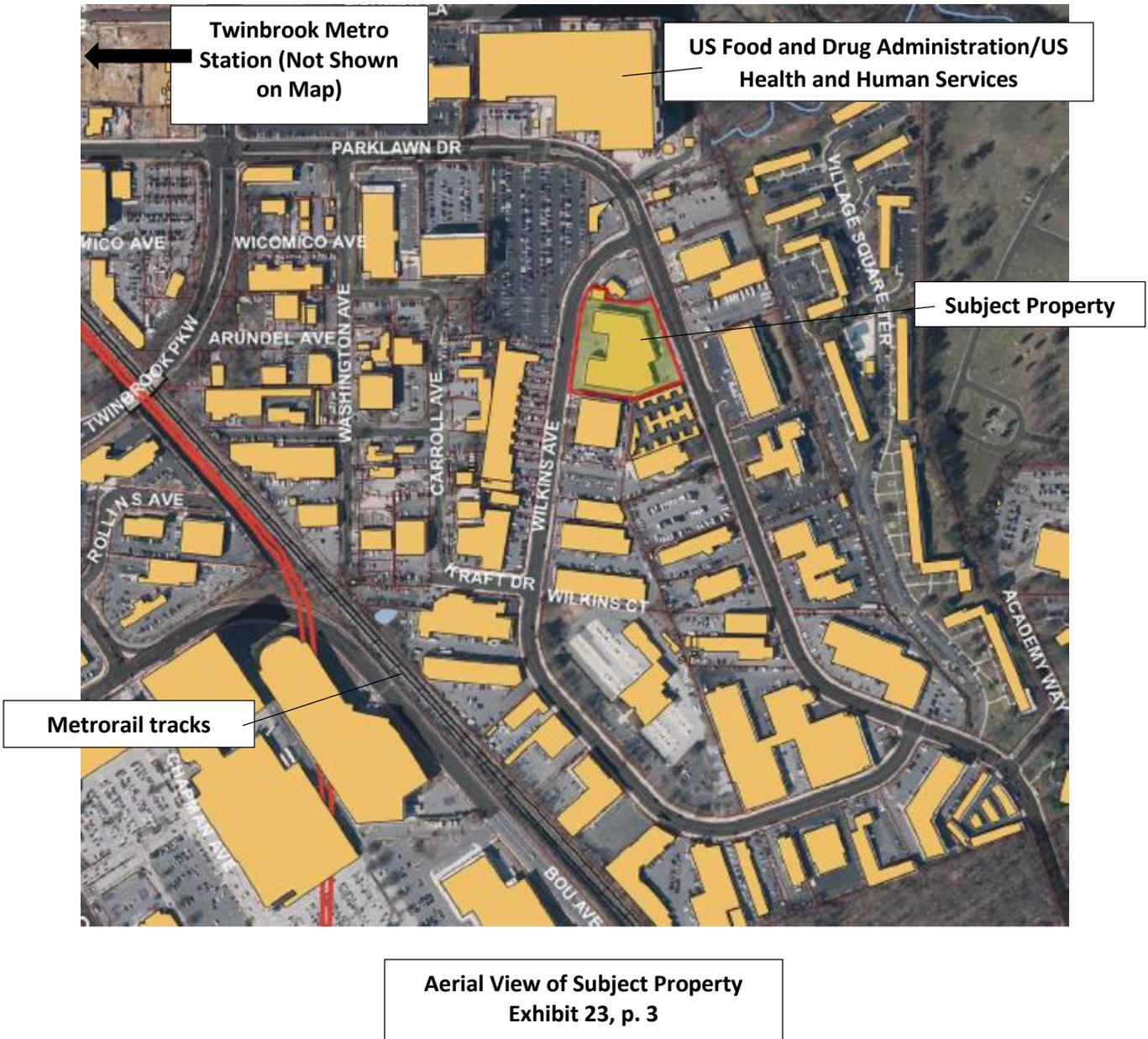
The subject property is located at 12358 Parklawn Drive in Rockville, Maryland, approximately ½ mile from the Twinbrook Metro Station. A vicinity map included in the Technical Staff Report shows the general location of the property (Exhibit 23, p. 1):



**General Vicinity Map  
Exhibit 23, p. 1**

Staff advises that the property is located on the east side of Parklawn Drive approximately 225 feet south of its intersection with Wilkins Avenue. Zoned I-4, the property consists of 2.04 acres within the Transit Station Development Area (TSDA) of the Twinbrook Sector Plan and is a through lot with frontage on both Wilkens Avenue and Parklawn Drive. Exhibit 23, p. 2. An aerial photograph showing the location of the subject property (outlined in green) is reproduced from the Staff Report on the following page (Exhibit 23, p. 3).

In November, 2013, the Planning Board approved a site plan that authorized consolidation of several existing buildings and an additional 24,727 square feet of gross floor area. The Planning Board's approved site plan requires the entire building to be used for research and development activities, a use permitted by right in the I-4 Zone. The site plan permits up to 110,000 square feet of "Industrial/Research and Development space," including a 1,305-square foot restaurant that is not part of this application. According to the Petitioner, the project is currently under construction. Exhibit 23, Attachment 1. During its review of the site plan, the Planning Board approved a



number of waivers available for I-4-zoned properties in TSDAs under Section 5.44(f) of the Zoning Ordinance. Waivers approved by the Planning Board include a 31% reduction in the minimum number of parking spaces required, a reduction of the minimum green area provided, the minimum parking setback from adjacent I-4 Zoned properties, and the minimum parking setback from adjacent streets. Exhibit 23, Attachment 1, p. 5 (MCPB No. 13-162; Site Plan No.

820130180.) For both the site plan and this petition, the Petitioner proposes to have 123 parking spaces located on the exterior and interior of the building. Exhibit 5(a).

### **B. Surrounding Area**

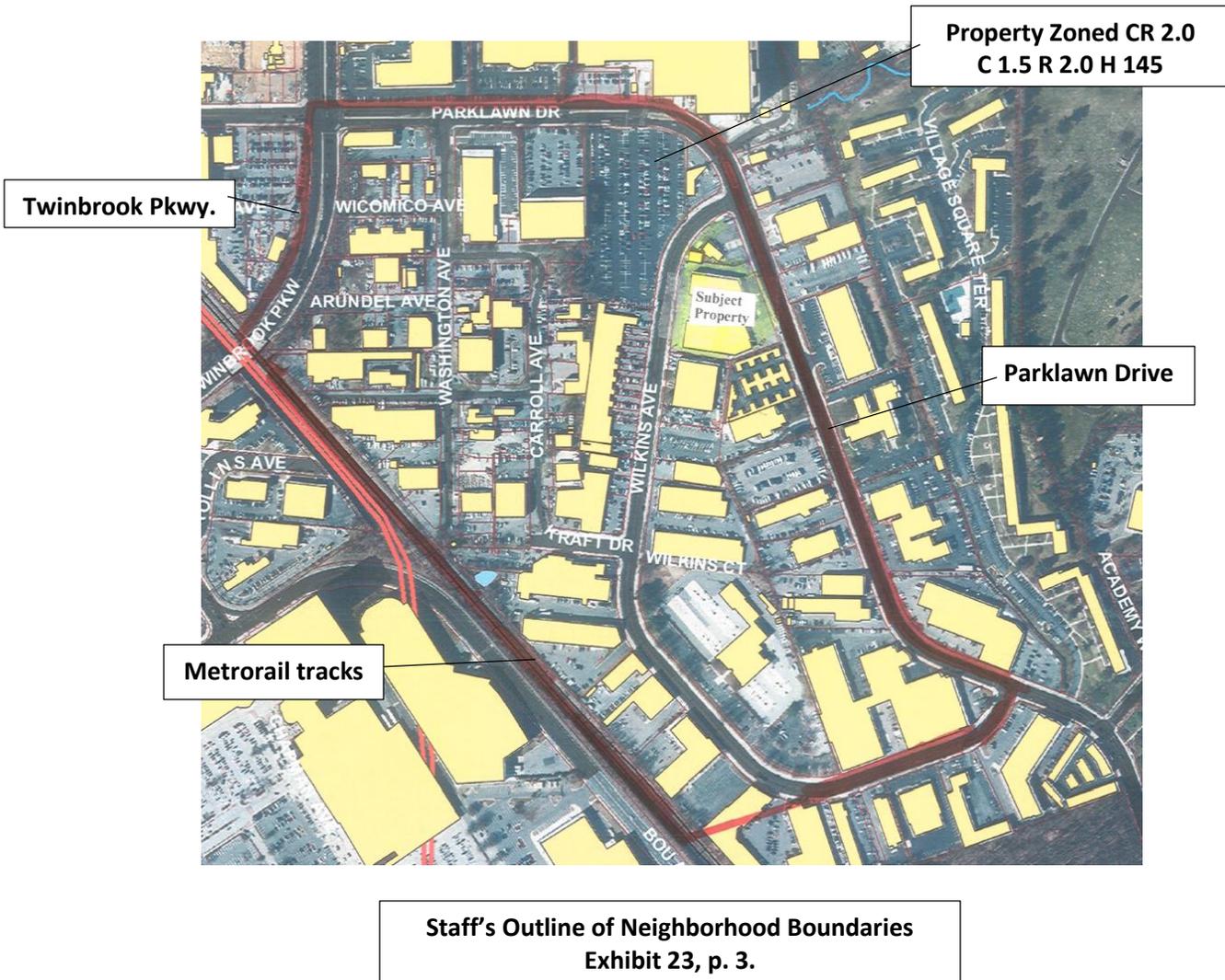
This report outlines the boundaries of the surrounding area for the purpose of comparing the compatibility of the proposed use with the existing character of the neighborhood. In this case, Staff defined the neighborhood boundaries as Parklawn Drive to the north and east, Twinbrook Parkway and the Metro train tracks/Bou Avenue to the northwest and west, and Wilkins Avenue to the south. A graphic illustration of these boundaries, included in the Staff Report, is shown on the following page.

Staff characterizes the area as having a mix of light industrial uses, service commercial uses, and restaurants, and notes that the proposed use “may contribute to the erosion of light industrial space in this industrial core area rather than preserve the light industrial uses and character as envisioned in the Sector Plan.” Exhibit 23, p. 3. At the public hearing, Petitioner’s expert land planner, Mr. David Ager, agreed with Staff’s general characterization of the neighborhood, but pointed out that properties immediately to the west of the subject property (across Wilkins Avenue) are zoned Commercial Residential 2.0 (CR 2.0) and may have densities up to 2.0 FAR and heights up to 145 feet.<sup>2</sup> In his opinion, this fact, along with the proximity to two large federal agencies (i.e., between 300 to 500 feet) and proximity to the Metro station (i.e., within ½ mile) make the neighborhood character unique.

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<sup>2</sup> Under the 2004 Zoning Ordinance, the CR Zone permitted a mix of commercial, residential, industrial and other uses in order to, “promote economically, environmentally, and socially sustainable development patterns where people can live, work, recreate, and have access to services and amenities while minimizing the need for automobile use.” *2004 Zoning Ordinance*, Section 15-2.

Because the two federal agencies are outside of the defined neighborhood, the Hearing Examiner characterizes the neighborhood as primarily light industrial and service commercial uses, with some higher density mixed uses closer to the Metro station.



### C. Master Plan

The Sector Plan announces its vision for Twinbrook as a “community of employment, residential, retail, and technology uses in an urban environment.” *Sector Plan, p. 1.* Noting its convenience to transit and employment, the Plan’s goal is to “integrate its land use, urban design, environmental, transportation, and community facilities to create a distinct community connected

to the resources of the Washington region...Redevelopment in Twinbrook has the opportunity to create a technology node that builds on existing government agencies and private business, make use of adjacent light industrial sites for incubator activities, develop a community profile with housing and retail near the Metro station..." *Id.*

A key land use and zoning goal for the entire Sector Plan area included:

- Establish and apply the Transit Mixed Use (TMX-2) Zone to facilitate mixed-use development in the Metro Core Area and Technology Employment Area.
- Amend the I-4 Zone in Transit Station Development Areas to facilitate an urban environment with standards appropriate to a transit-accessible area of light industrial uses.

The Sector Plan divided the Sector Plan area into nine "analysis areas." The subject property is included in Analysis Area 9, which is shown on the following page. The Plan's goal is to preserve the light industrial areas for uses permitted in the zone, noting that there are few locations within the County where these uses could relocate:

Of the County's nearly 2,500 acres of industrial land, approximately 109 acres (zoned I-1 and I-4) are located in Twinbrook. Because the County has a limited and decreasing amount of industrial land, this Plan seeks to preserve a portion of Twinbrook's industrial potential, as did the 1992 Plan. This land provides important services to the Twinbrook area and the central part of Montgomery County. The I-4 Zone's development standards should be amended for Transit Station Development Areas to recognize the realities of these small lots and allow business to evolve without relocating.

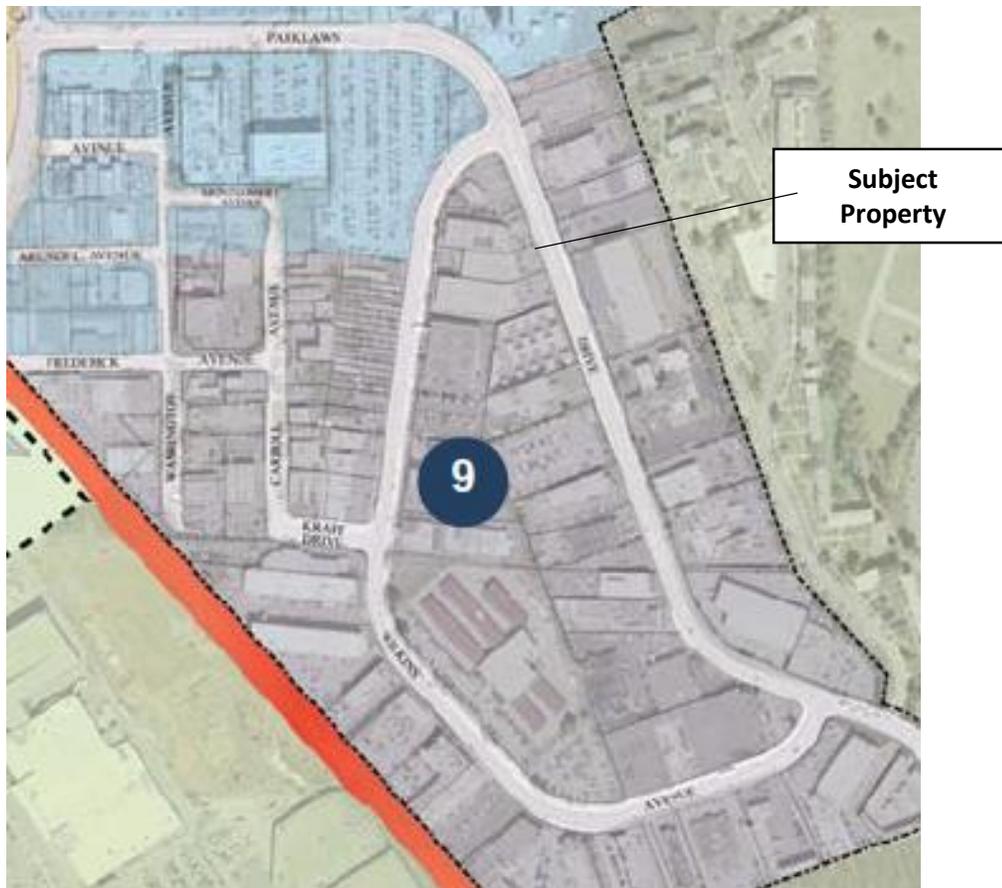
*Plan*, p. 42-43.

For Analysis Area 9 in particular, the Plan recommended eliminating the 1-acre minimum lot size requirement from the I-4 Zone to encourage redevelopment of small parcels as light industrial uses:

Similar commercial and industrial uses continue in the area around Wilkins Avenue, but on generally larger sites, oriented and connected to Randolph Road and the future Montrose Parkway. The area includes light industrial uses, construction companies, and wholesale business. These industrial areas are some of the few remaining in the County and provide useful jobs and services. As in the

1992 Plan, this Plan recognizes the value of these uses and the limited options they have for relocation in the County.

To help preserve them, the 1992 Plan rezoned the area south of Parklawn Drive from I-1 to I-4, which successfully limited office encroachment. But the owners of smaller properties have found that the I-4 Zone's development standards limit their ability to upgrade and even modestly expand their businesses. The I-4 Zone's requirement for a minimum one-acre lot size is oriented to creating a pattern of large lots in an "Industrial Park" setting. The setbacks, green space, and parking requirements further limit building potential in this area. Without development standards suitable for industrial uses on small sites, these light industrial uses may be forced to relocate. *Id.*



**Analysis Area 9 (in gray)  
Twinbrook Sector Plan  
Exhibit 8, p. 42**

To achieve its goals, the Plan specifically recommended amending the I-4 Zone to permit more urban development plans and approval of parking waivers because of the area's proximity to transit.

Relying on these recommendations, Technical Staff recommended denial of the petition because it did not preserve the light industrial zoning recommended in the Plan. Exhibit 23. The Planning Board disagreed with Staff because the use is permitted by special exception in the I-4 Zone and because the use was "reasonable and would not negatively impact the industrial core area." Exhibit 24. Before the Hearing Examiner, the Petitioner maintains that the use conforms to the Sector Plan because general office uses are permitted by special exception. Mr. Ager testified that, in order to receive special exception approval, the Petitioner is required to show that traffic from the proposed development will not usurp capacity needed for uses permitted by right in the zone. Second, Mr. Ager points out that the use does not change the underlying light industrial zoning, but only temporarily removes space that could otherwise be devoted to light industrial use. Finally, according to Mr. Ager, the Plan's goal to preserve the area for light industrial uses has already been successful by rezoning the area from I-1 to I-4 and making general office a special exception use. To his knowledge, there is limited general office intrusion into the area at present. T. 31-32. According to him, there will be no more requests for this large an amount of FAR to be used for general office because the 2014 Zoning Ordinance permits no more than 35% of a building in the I-4 zone to be used for general office.<sup>3</sup> T. 31-32. Mr. Ager also testified that the type of uses proposed in this building conform to the Sector Plan's recommendation to encourage incubator businesses; the type of uses to which the building will be put is described in the next subsection.

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<sup>3</sup> The 2014 Zoning Ordinance permits general office as a limited use in the Light Industrial (IL) Zone, subject to the requirement that it not exceed 35% of the mapped FAR for the property. *2014 Zoning Ordinance*, §3.5.8.a.

The Hearing Examiner agrees with the Planning Board and the Petitioner that a special exception for general office is consistent with the Sector Plan provided it meets the requirement that enough traffic capacity remains for uses permitted by right in the I-4 Zone. She disagrees with Mr. Ager that it conforms because it does not permanently change the zoning. This use may last for a long time, and the special conditions of the special exception (prohibiting general office from usurping traffic capacity for light industrial development) indicates that the Council intended to limit this use even for special exceptions. She agrees with Mr. Ager that the Plan also sought to encourage incubator uses, although it intended to do so by changing the minimum lot size requirement in the I-4 Zone. Even though this is a consolidation of three existing buildings on a larger lot, it furthers this purpose in the Plan. The Hearing Examiner finds that the use proposed is consistent with the Sector Plan, provided that the 50% limitation on general office space is carefully monitored, as explained in Part II.F of this Report.

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

The Petitioner proposes to use 54,347 square feet of the 108,695-square foot building (exclusive of the 1,305-square foot restaurant approved in the same site plan) for general office use, which requires this special exception, and 54,358 square feet (or approximately 50%) of the building for research and development activities that are permitted by right in the I-4 Zone.<sup>4</sup> Ms. Stephanie Yu, an owner of Greencourt LLC, explained the Petitioner's vision for the project. She has worked in real estate development in China and has assisted cities there to develop their plans. She reviewed the Twinbrook, White Flint, and Germantown plans and believe that planners

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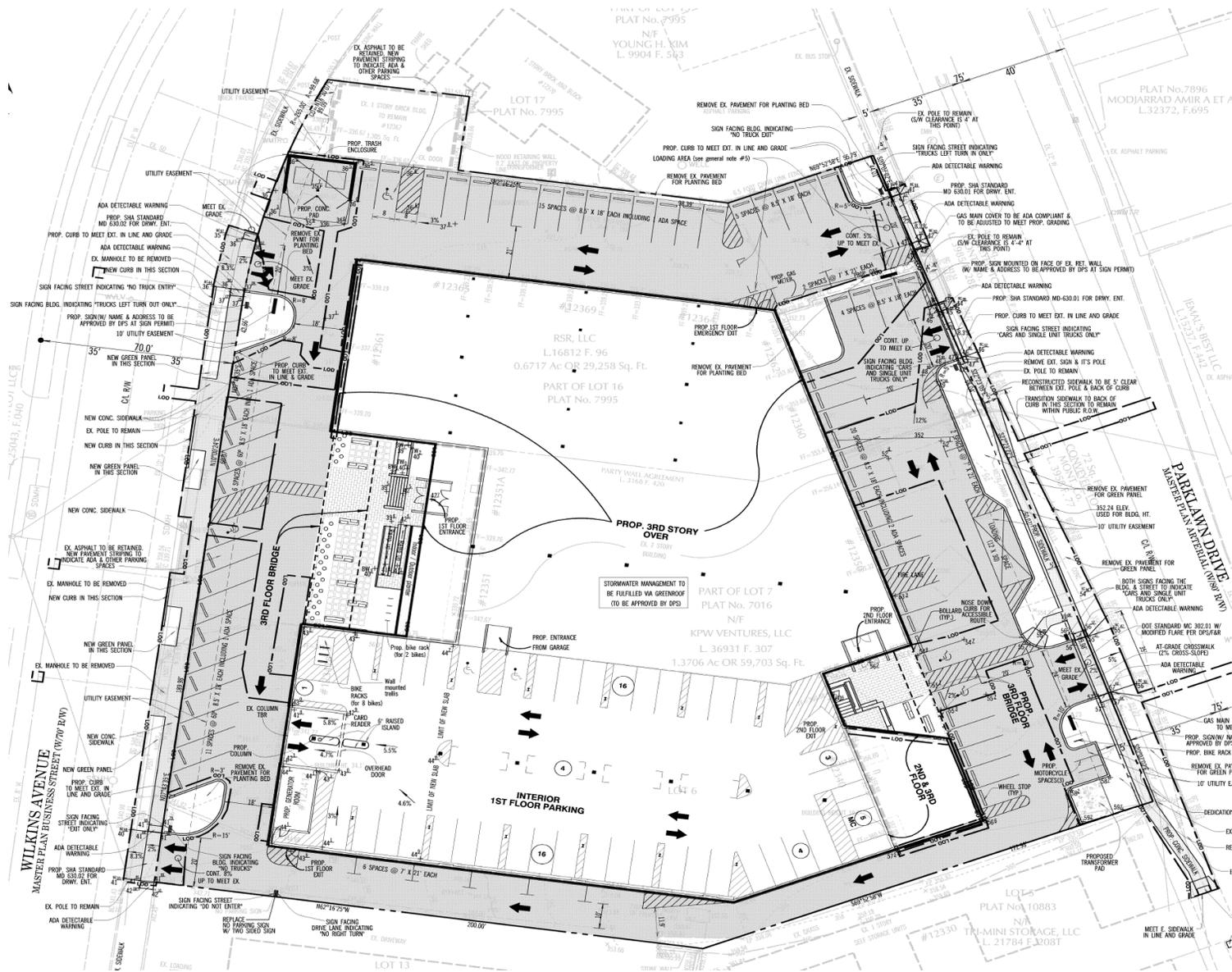
<sup>4</sup> The Staff Report reverses the square footage proposed as general office and research and development activities, stating that 54,348 square feet will be general office and 54,347 square feet will be research and development activities. Exhibit 23, p. 5. At the public hearing, Petitioner's counsel clarified that Petitioner is requesting 54,347 square feet to be used as general office. T. 7. Upon review, the Hearing Examiner finds that this makes no substantive change in Staff's or the Planning Board's recommendations, as the parking requirements and trip generation remain the same.

focused on planning for large employers, but not smaller, incubator companies. She wishes to create a system for smaller companies to let them grow as well. T. 48-50. Ms. Yu further explained she is seeking up to 50% general office use because they are trying to attract some companies that do not fall clearly within either use category. Her husband has a healthcare data company. She and her husband chose this location because of the hub of pharmacopeia industries near the FDA and wish to use this location to attract international investors to coordinate this service between the U.S. and Asia. T. 50-51. When they learned that the DPS would decide whether the businesses they seek to attract are research and development or general office uses, they decided to apply for a special exception to provide them more flexibility in attracting tenants.

As an example of the types of businesses they wish to attract, Ms. Yu testified that they are speaking with a company that is designing a mobile phone application for healthcare. It would assist with measuring blood pressure, sugar levels, etc. Another company is developing distance technologies monitoring for seniors. Because they do not know whether these will be classified as research and development or general office, they have filed this petition to provide more flexibility. T. 51-53. Mr. Ager testified that the Petitioner's propose no physical changes to the exterior of the building approved by the Planning Board at site plan. The interior has been designed for innovation and collaboration between businesses because it contains a lot of open space. It is not a traditional "cubicle" office building and suits smaller incubator businesses. T. 17.

### ***1. Site Plan***

Petitioner's proposed site plan (Exhibit 19(d)) and architectural elevations (Exhibit 7) are shown on the following pages, and are generally consistent with the site plan approved by the Planning Board, with the exception of the approved use and the amount of the parking waiver.



Site Plan  
Exhibit 19(d)

**DEVELOPMENT STANDARDS DATA TABLE <sup>1</sup>**  
**(I-4 Zone w/in a Transit Station Development Area (TSDA)):**

PLAN DATA	Required/Permitted	Provided
Maximum Height(59-C-5.31):	42 ft.	Up to 42 ft.
Minimum Building Setbacks:		
-From adjoining industrial zone (59-C-5.35(b)):	10 ft.	13 ft.
-From mixed-use zones (from TMX-2 Zone across Wilkins Ave.) (59-C-5.44(f)(3)):	50 ft.	107 ft. <sup>2</sup>
-From streets (Wilkins Avenue) (59-C-5.44(f)(4)(B)):	10 ft.	37 ft. <sup>3</sup>
-From streets (Parklawn Drive) (59-C-5.44(f)(4)(B)):	10 ft.	55 ft. <sup>4</sup>
Maximum Density (59-C-5.44(c)):	1.0 FAR or 110,623 sf. GFA	up to 0.99 FAR or or 110,000 sf. GFA
Minimum Green area % (59-C-5.32):	20% of GTA <sup>5</sup>	10%
Minimum Off-Street Parking Setback from the adjacent I-4 Zone along the north property line (59-C-5.44(d)(2)):	10 ft. <sup>6</sup>	0 (zero) ft.
Minimum Bicycle Parking Spaces (59-E-2.3)	6	12
Minimum Off-Street Parking Setback (from street) (59-C-5.44(d)(3)):	25 ft. <sup>7</sup>	0 (zero) ft.

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<sup>1</sup>All development standards as depicted on this Site Plan for Special Exception are as approved by MNCPPC in Site Plan # 820130180 and are proposed to remain unchanged under Special Exception Case No. S-2878.

<sup>2</sup>As measured from the closest corner of the building in relation to Wilkins Avenue (at the northwest corner).

<sup>3</sup>As measured from the western side of the building to the Wilkins Avenue right-of-way.

<sup>4</sup>As measured from the northeast corner of the building in relation to Parklawn Drive.

<sup>5</sup>Persuant to Section 59-C-5.44(f)(6), the Planning Board approved a reduction of the green area requirement to no less than 10% of the gross tract area.

<sup>6</sup>Persuant to 59-C-5.44(f), the Planning Board waived the minimum parking setback requirement of 59-E to achieve a better development design.

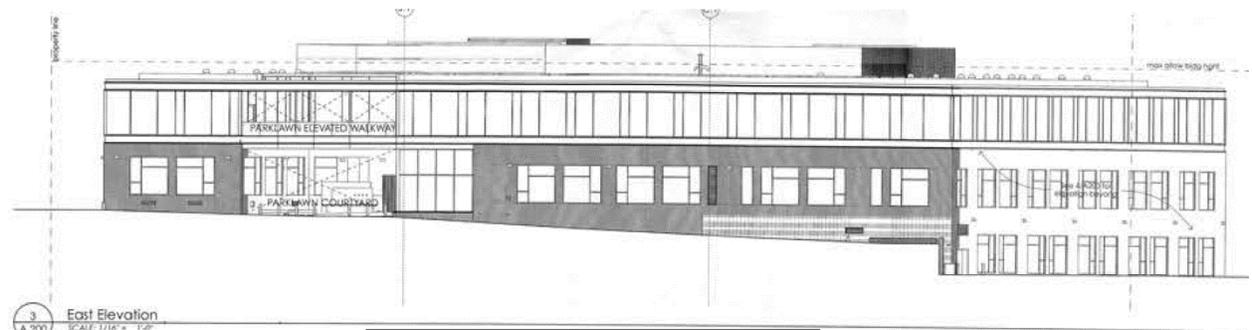
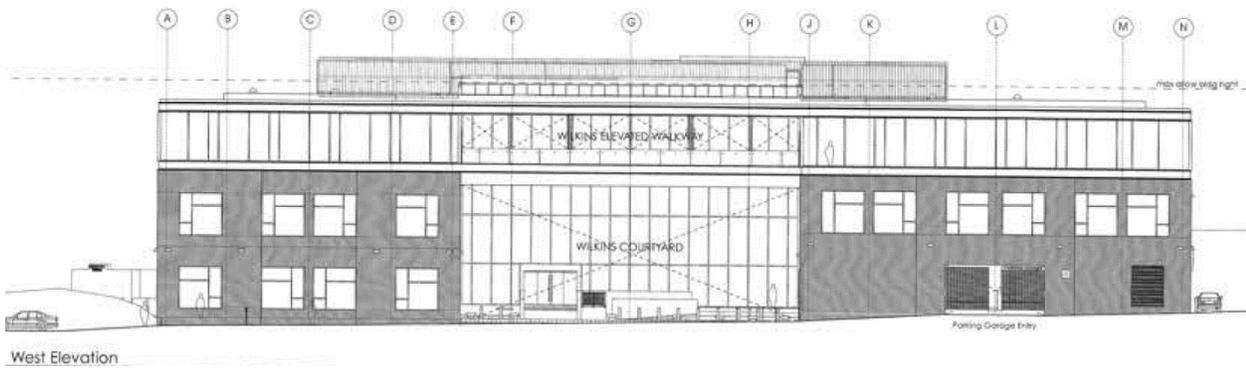
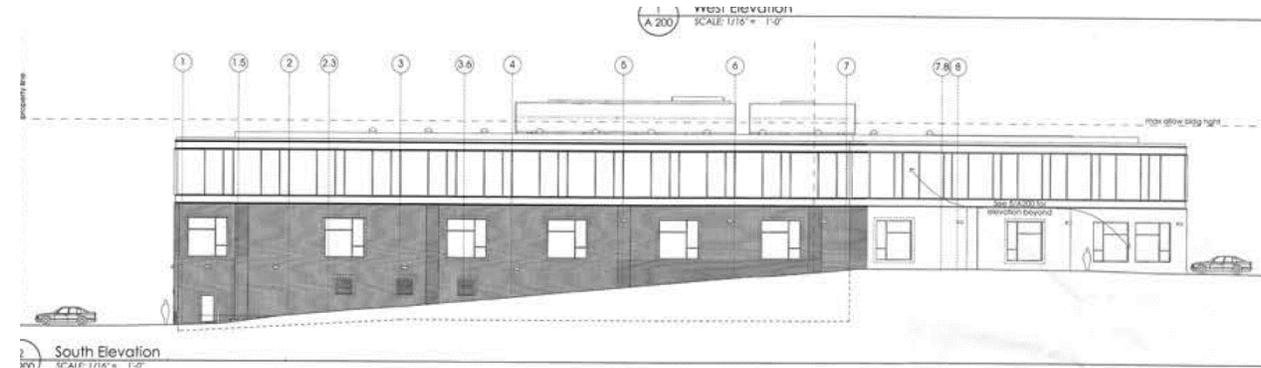
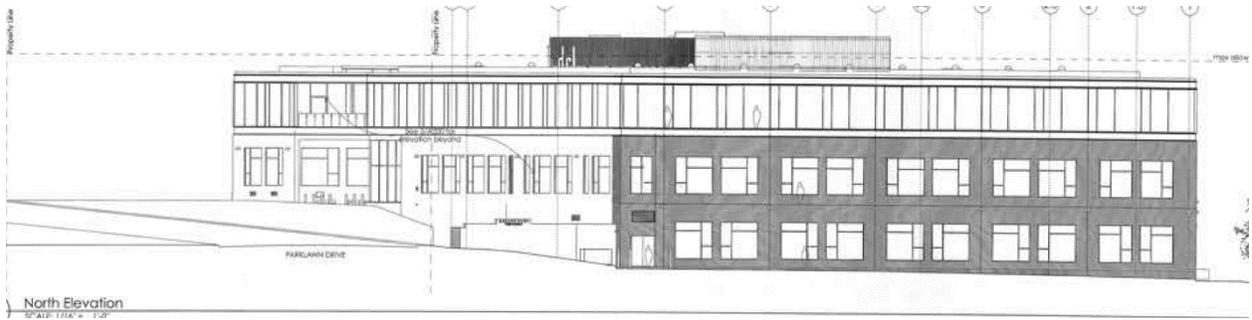
<sup>7</sup>Persuant to 59-C-5.44(f), the Planning Board waived the minimum parking setback requirement of 59-E to achieve a better development design.

## LEGEND

	EXISTING 2' TOPOGRAPHY
	PROPERTY LINE
	EX. STRUCTURE
	PROP. BUILDING
	PROPOSED WATER AND SEWER CONNECTIONS (WHC & SHC)
	PROPOSED SPOT ELEVATIONS AND TOP OF WALL (TW) AND BOTTOM OF WALL (BW) ELEVATIONS
	APPROVED LIMIT OF DISTURBANCE

## GENERAL NOTES

1. Boundary information from March 2012 field survey by Greenhorne & O'Mara, Inc. (now Stantec).
2. Topographic information from March 2012 field survey by G&O (now Stantec). 2-foot contour interval.
3. The plan is not for construction purposes. The locations of existing underground utilities are shown in their approximate locations per available utility company records. The exact location of all underground utilities should be verified by "Miss Utility" (1-800-257-7777) prior to any excavation. Greenhorne & O'Mara (now Stantec) does not express or imply any guarantee or warranty as to the location or existence of any underground utility.
4. Loading area size 14' x 55'. Loading area limited to after-hours only between 6:00pm and 7:00 am. The public ROW not to be utilized for loading and unloading at any time. The Declaration of Covenants for Loading Area was recorded among the Land Records of Montgomery County, Maryland in L. 48595 F. 452
5. All sidewalks within the ROW to be ADA compliant and 5' wide free and clear with the exception of two driveway entrances and one utility pole in the north east section of the property as indicated on plan and as accommodated by SHA's - Accessibility Policy & Guidelines dated June 2010.
6. All handicap ramps to be ADA compliant.
7. Lot 6, lot 17, part of lot 7 & part of lot 16 were consolidated to Lot 23 & any dedication along public right-of-way as shown on this Site Plan for Special Exception were incorporated per Plat 24809. Also, MNCPPC approved the Site Plan under the reference # 820130180. All site improvements including parking layout, vehicular/pedestrian circulation, streetscape etc. as depicted on this Site Plan for Special Exception are as approved by MNCPPC in Site Plan # 820130180 and are proposed to remain unchanged under Special Exception Case No. S-2878.
8. Minor modifications to the limits of disturbance shown on the site plan within the public right-of-way for utility connections may be done during the review of the right-of-way permit drawings at the Department of Permitting Services.



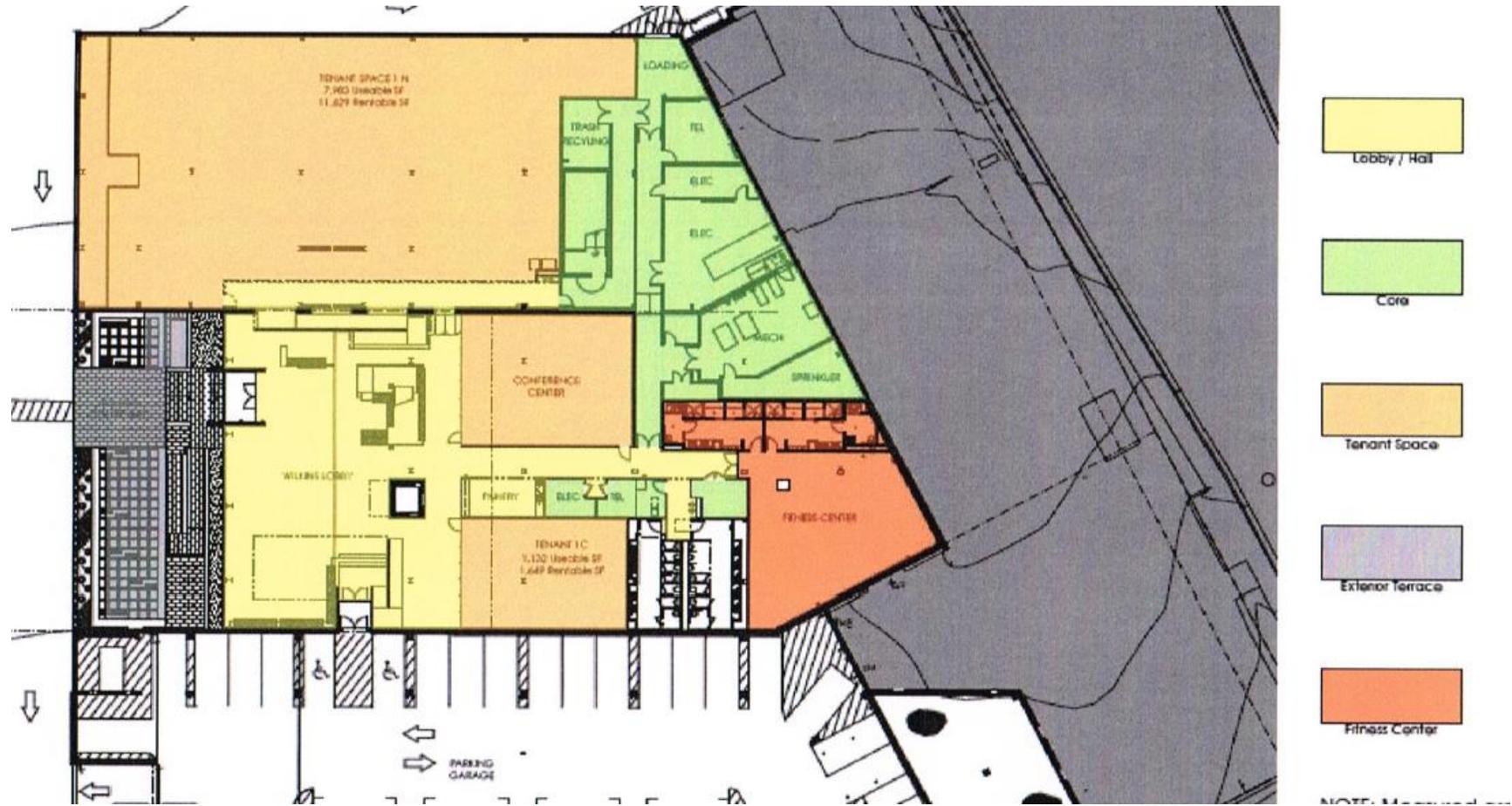
Elevations  
Exhibit 7(a)

## ***2. Operations***

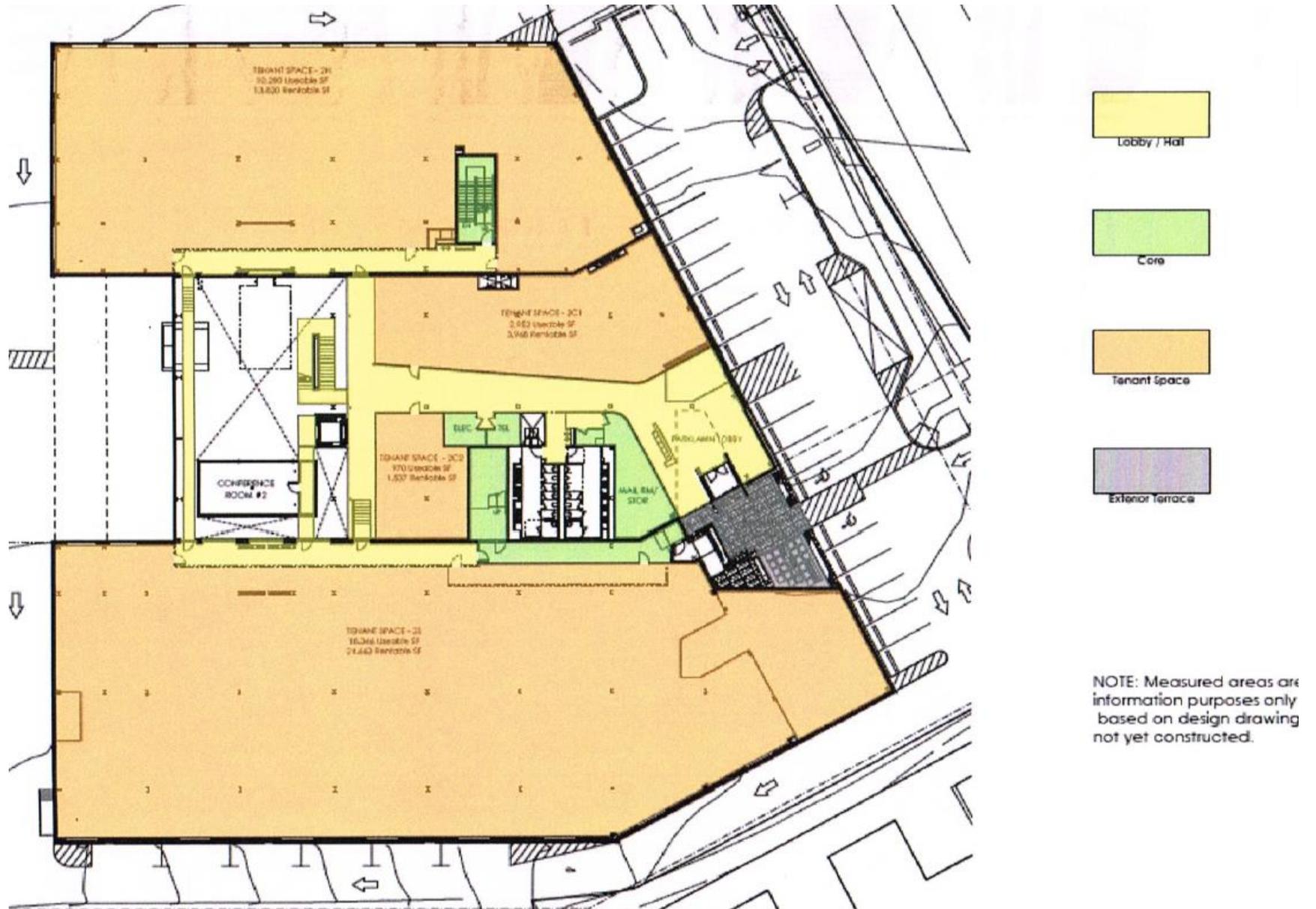
The Petitioner proposes to include both research and development activities and general office uses within the building and has designed the interior to create a collaborative work environment. The only condition on operations proposed by the Planning Board and Technical Staff is a requirement for a shuttle to run between the Metro and this property during peak hours and in the midday, which is discussed in Section II.E below. The site plan approving the building for research and development activities already contains requirements for community space, architectural details, landscaping details, etc., that apply regardless of whether the special exception is approved. An illustrative drawing of the building's interior and the building floor plans, taken from the Power Point presentation to the Planning Board, are shown below and on the next several pages (Exhibit 31):



**Illustrative Drawing of Interior  
Exhibit 31**



Illustrative First Floor Plan  
Exhibit 31(e)



Illustrative Second Floor Plan  
Exhibit 31(f)



**Illustrative Third Floor Plan  
Exhibit 31(g)**

### ***3. Landscaping***

Petitioner's landscape plan (Exhibits 5(a) and 5(b), shown on page 23 and the following pages) is consistent with the site plan for research and development activities approved by the Planning Board. Staff did not comment on the landscaping proposed, apparently because the site plan approved by the Planning Board already addressed that issue. At site plan, the Planning Board approved a waiver to the minimum green area required in the I-4 Zone (under Section 59-C-5.44(f)), from 20% to 10% of the gross tract area. According to the Planning Board's resolution approving the site plan, the project will include 11,063 square feet of green area, either as community or open space, as well as a new streetscape along both Parklawn Drive and Wilkins Avenue (MCPB No. 13-162, Exhibit 23, Attachment 1):

The proposed green area will provide a pleasing environment to mitigate the visual impacts of the surface parking on the subject Property. The green area will also mitigate the amount of impervious surface on the Subject Property and add landscaping where none currently exists.

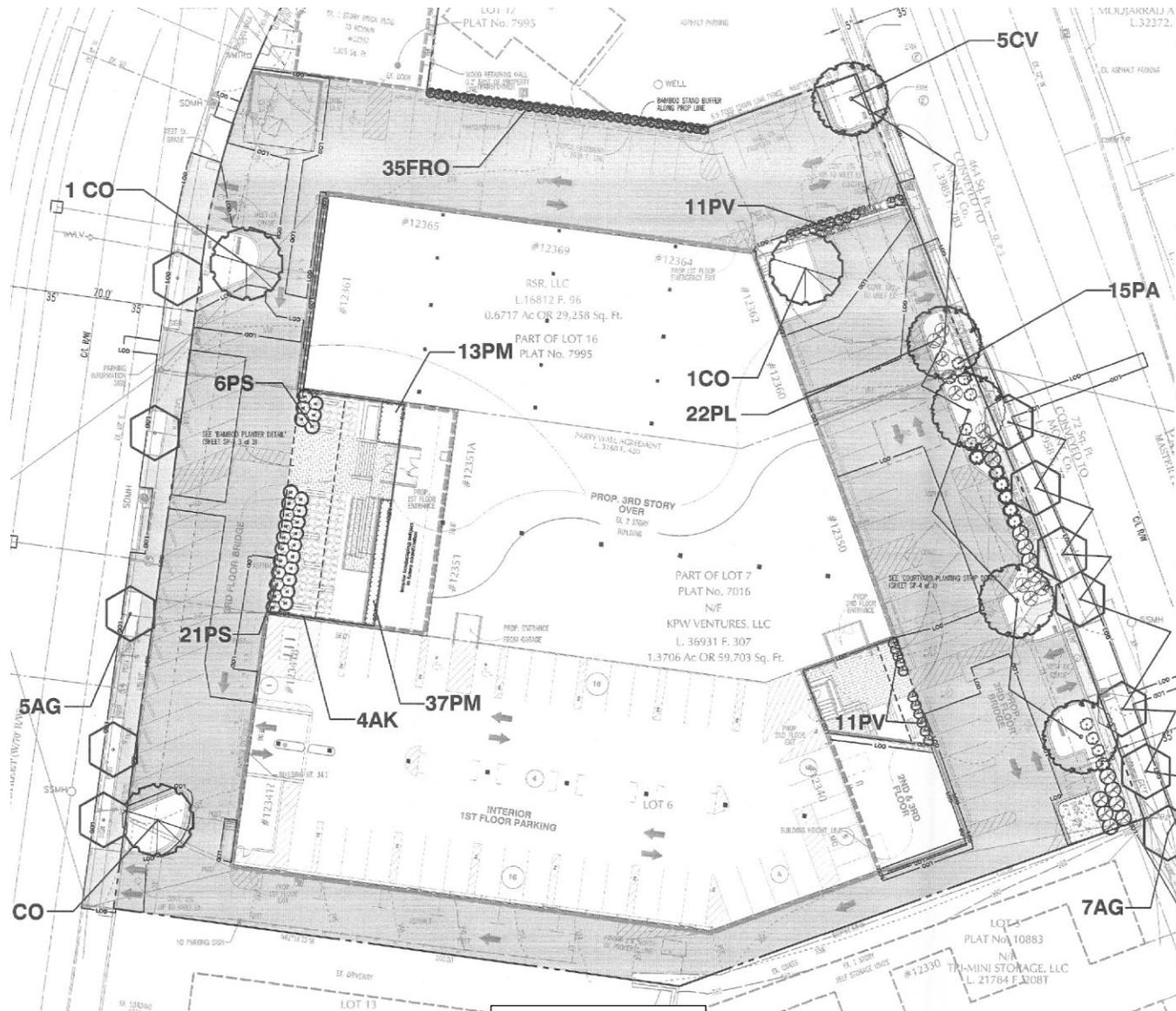
\* \* \*

The proposed landscaping and lighting provide an adequate, safe, and efficient environment complementing the site design and amenities. New trees will provide canopy for comfort and shade along Parklawn Drive and Wilkins Avenue where none currently exists. Proposed lighting will ensure a safe environment throughout the existing and proposed parking areas.

Exhibit 23, Attachment 1, pp. 8, 9. While the Board of Appeals must make its own findings of compatibility, there is nothing in this record to suggest that the Planning Board's determination was incorrect and the Hearing Examiner's recommends adoption of those findings.

### ***4. Signage***

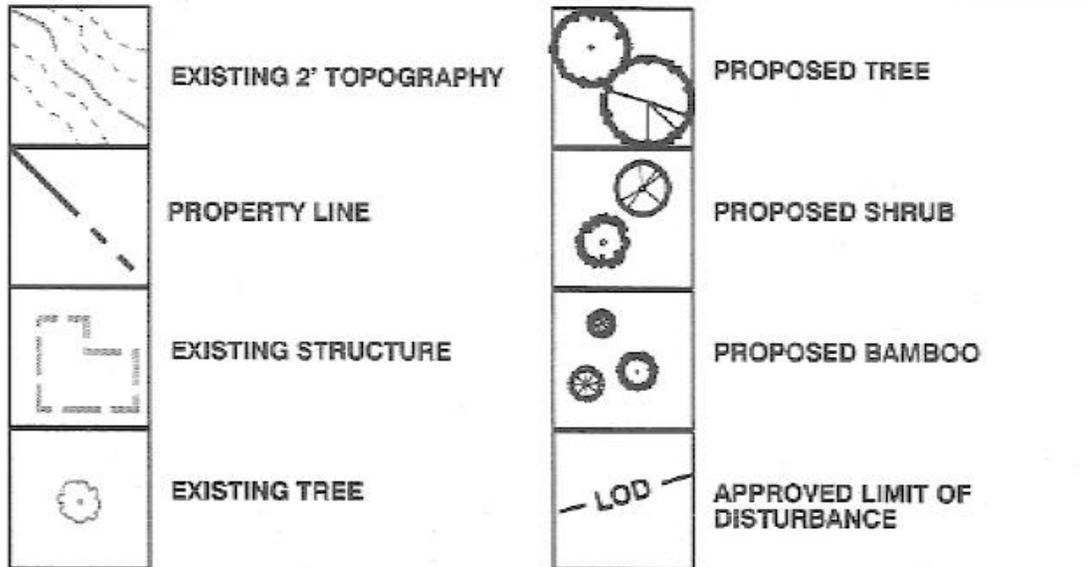
The project will have two monument signs (one along each of the street frontages). Staff advises that these signs meet the requirements of Section 59-F of the Zoning Ordinance. Exhibit 23, p. 16. An illustrative graphic of the monument sign fronting Parklawn Drive is included in the Landscape Plan (Exhibit 5(a)), on the following pages.



Landscape Plan  
Exhibit 5(a)

# LEGEND

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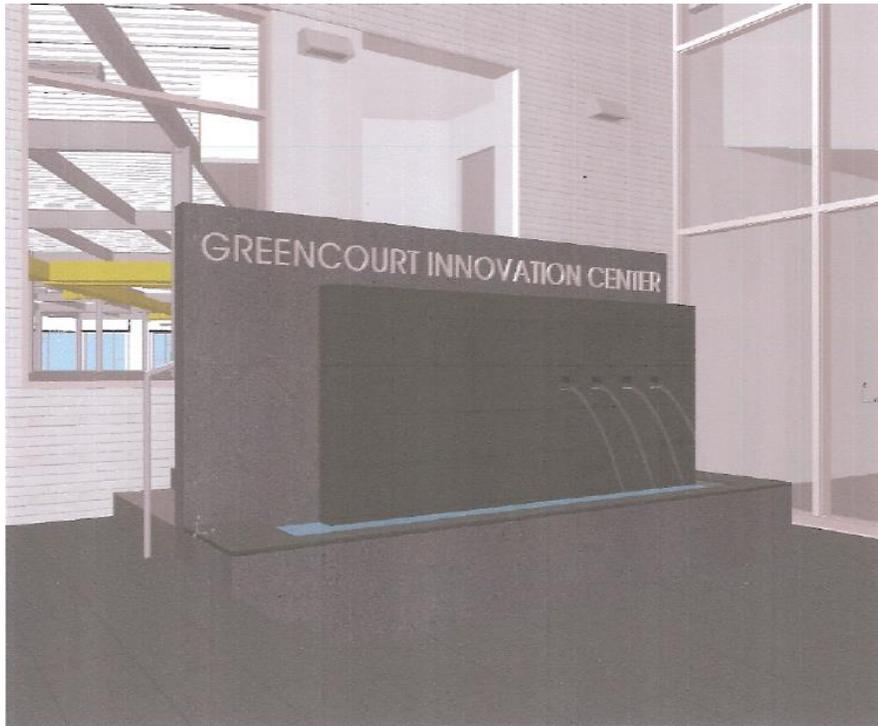
# PLANTING LIST

KEY	QTY	SPECIES	SIZE	TYPE	COMMENTS
<b>Deciduous Trees</b>					
CV	05	<i>Crataegus viridis</i> 'Winter King'/ Winter King Hawthorn	2½"-3" Cal.	B&B	AS SHOWN
CO	03	<i>Cotinus obovatus</i> 'Red Flame'/'	2½"-3" Cal.	B&B	AS SHOWN
AG	12	<i>Acer griseum</i> /Paperbark Maple	2½"-3" Cal.	B&B	AS SHOWN/ In ROW
<b>Ornamental Grasses</b>					
PA	15	<i>Pennisetum alopecuroides</i> /Fountain Grass	3 gal.	Cont.	AS SHOWN
<b>Evergreen Shrubs</b>					
PL	22	<i>Prunus laurocerasus</i> 'Otto Luyken'/' Otto Luken English Laurel	5 gal.	B&B.	AS SHOWN
<b>Bamboo</b>					
FR0	35	<i>Fargesia robusta</i>	5 gal.	Cont.	AS SHOWN/ 3' O.C.
PV	22	<i>Pleioblastus variegatus</i>	3 gal.	Cont.	AS SHOWN/ 3.0' O.C.
PM	50	<i>Pleioblastus distichus</i> 'Mini'	3 gal.	Cont.	AS SHOWN/ 1.5' O.C.
PS	30	<i>Phyllostachys aureosulcata</i> 'Spectabilis'	5 gal./ or largest specimen	Cont.	AS SHOWN
<b>Vines</b>					
AK	04	<i>Actinidia kolomikita</i> / Variegated kiwi vine (male)	5 qt.	Cont.	3' O.C.

Landscape Plan, Exhibit 5(a)



**WILKINS COURTYARD WATER FEATURE**  
NOT TO SCALE  
(Use as graphically represented or similar)



**PARKLAWN COURTYARD WATER FEATURE**  
NOT TO SCALE  
(Use as graphically represented or similar)

**Landscape Plan  
Exhibit 5(a)**

## ***5. Lighting Plan***

Staff did not comment on Petitioner's Lighting Plan (Exhibits 6(a) and (b), reproduced on the following page) apparently because of the Planning Board's approval of the site plan. Since the Board of Appeals is required to make an independent finding that the exterior lighting will not cause objectionable illumination or glare on neighboring property (*see*, §59-G-1.21(a)(6)), the Hearing Examiner includes a summary of the lighting proposed here. Lighting is incorporated along the streetscape and on the exterior building with a variety of fixtures, including bollards and wall mounted fixtures. The Planning Board concluded that lighting would provide an adequate, safe and efficient environment complementing the site design and amenities. Proposed lighting will ensure a safe environment throughout the existing and proposed parking areas. Exhibit 23, Attachment 1, p. 8.

### **E. Traffic Issues**

#### **1. Transportation Policy Area Review and Local Area Transportation Review**

Technical Staff and Petitioners' expert traffic planner, Ms. Nancy Randall, opined that the use satisfies the requirements of both Transportation Policy Area Review (TPAR) and Local Area Transportation Review (LATR). In 2013, the Planning Board, as part of the site plan approval, accepted a LATR traffic study based on 100% of the building utilized as research and development space. Exhibit 23, p. 7. For this petition, Ms. Randall testified that she originally assumed that 59,783 square feet of space would be general office (i.e., 55%) and 48,912 square feet (45%) would be devoted to research and development activities, and therefore, these assumptions are conservative.

Under the LATR Guidelines, Staff asked the Petitioner to test three nearby intersections: Wilkins Avenue (North), Wilkins Avenue (South) and the Parklawn Drive/Randolph Road

intersection. Exhibit 25(b). Her analysis (which assumed that 59,783 square feet would be office) demonstrated that all intersections would operate within the maximum permitted congestion standards for the North Bethesda police area. These conclusions are summarized in a table included in the Staff Report ((Exhibit 23, p. 10, below):

Analyzed Intersection	Weekday Peak Hour	Congestion CLV Standard	Traffic Condition		
			Existing	Background	Total
Parklawn Drive and Wilkins Avenue (North)	Morning	1,800	238	359	359
	Evening	White Flint	333	505	514
Parklawn Drive and Wilkins Avenue (South)	Morning	1,800	314	476	481
	Evening	White Flint	450	652	670
Parklawn Drive and Randolph Road	Morning	1,550	1,155	1,481	1,486
	Evening	North Bethesda	1,243	1,452	1,461

Ms. Randall explained that when the Petitioner readjusted the use of mixes to 50% research and development activities and 50% general office, she revised the traffic study and found that the site would generate fewer trips than in her original report. T. 65. Her amended site trip generation analysis (introduced at the public hearing) is shown below.

She testified that Mr. Axler confirmed his acceptance of the revised trip generation table. Because it reduced the amount of traffic, Ms. Randall testified that Mr. Axler did not require her to revise the actual traffic study. T. 66-67. At the public hearing, she presented a revised table showing the expected site trip generation based on 50/50 split of research and development and general office (Exhibit 35, shown on the following page). With the lesser amount of space, the site will generate three fewer trip morning peak hour trips and four fewer evening peak hour trips than the table shown above. Both Staff and Ms. Randall agree that all intersections will operate within the maximum congestion standards. Exhibit 23, p 9.

Table 3 Revised  
Greencourt at Parklawn  
Site Trip Generation

Development/Use	Rate Source	Amount	Units	AM Peak Hour			PM Peak Hour		
				In	Out	Total	In	Out	Total
<b>Existing<sup>1</sup></b>									
Smokey's		1,305	SF	6	4	10	2	1	3
General Light Industrial		83,968	SF	<u>29</u>	<u>20</u>	<u>49</u>	<u>16</u>	<u>23</u>	<u>39</u>
<b>Total Existing Trips</b>				<b>35</b>	<b>24</b>	<b>59</b>	<b>18</b>	<b>24</b>	<b>42</b>
<b>Background</b>									
Research & Development Center	ITE <sup>2</sup>	108,695	SF	110	23	133	17	99	116
<b>Total Existing Trips</b>				<b>35</b>	<b>24</b>	<b>59</b>	<b>18</b>	<b>24</b>	<b>42</b>
<b>Total Background Trips</b>				<b>75</b>	<b>-1</b>	<b>74</b>	<b>-1</b>	<b>75</b>	<b>74</b>
<b>Proposed</b>									
Research & Development Center	ITE <sup>2</sup>	54,348	SF	55	11	66	9	49	58
General Office	M-NCPPC <sup>3</sup>	54,347	SF	73	11	84	17	81	98
<b>Total Existing Trips</b>				<b>35</b>	<b>24</b>	<b>59</b>	<b>18</b>	<b>24</b>	<b>42</b>
<b>Total Proposed Trips</b>				<b>93</b>	<b>-2</b>	<b>91</b>	<b>8</b>	<b>106</b>	<b>114</b>
<b>Net New Trips (Proposed - Background)<sup>4</sup></b>				<b>18</b>	<b>-1</b>	<b>17</b>	<b>9</b>	<b>31</b>	<b>40</b>

Note: 1. Driveway counts taken directly from traffic study for Greencourt at Parklawn by Symmetra Design. Excerpts contained in Appendix A.  
 2. ITE Trip General Manual, 9th Edition. Land Use Code: 760  
 3. M-NCPPC LATR and TPAR Guidelines, January 2013. Table I-1.  
 4. Net new trips are the subject of the LATR and TPAR test.

**Revised Site Trip Generation Table  
Exhibit 33**

Because the property is located within the North Bethesda Policy area, the Petitioner must also satisfy TPAR by paying 25% of the impact tax for the North Bethesda Policy area. Because this project consolidated several existing buildings, the tax will be based only on the additional area added. At existing rates, the amount of tax is shown in a table included in the Staff Report (Exhibit 23, p. 10), reproduced below:

Non-Residential Use	Current* Rate per Sq. Ft.	Proposed Sq. Ft.	Development Impact Tax
Proposed R&D Office	\$12.30	54,347	\$668,474
Proposed General Office	\$12.30	54,348	\$668,474
Existing (Light) Industrial	\$6.15	-83,968	-\$516,403
<b>Net Increase</b>		<b>24,727</b>	<b>\$820,545</b>
<b>Estimated TPAR Mitigation Payment of 25% of the Net Increase</b>			<b>\$205,136</b>

\*Development Impact Tax for Transportation Improvements rates valid through June 30, 2015.

## 2. Parking, Circulation, and Traffic Safety

### *a. Parking Waiver*

Under the Planning Board's approved site plan (for exclusively research and development use, other than the restaurant), the Planning Board approved a waiver of the required number of minimum parking spaces under Section 59-C-5.44(f) of the Zoning Ordinance, which provides:

(f)(1) Review requirements. The following special standards may be applied by the Planning Board for a lot in a Transit Station Development Area through the site plan approval procedures of Division [59-D-3](#).

\* \* \*

(5) Off-street parking. Off-street parking must be provided as required under article 59-E, except that the Planning Board may waive the minimum setback requirement to achieve a better development design.

The then-existing development had only 82 spaces; under the Planning Board's approved site plan, the applicant increased the number of spaces to 123; 178 spaces were required for the research and development use. Exhibit 23, Attachment 1, pp. 4-5. The Planning Board concluded that a waiver of 31% of the required number of spaces was "sufficient to meet the requirements of the Subject Property, particularly because the Subject Property is within one half mile of the Twinbrook Metro Station," and because the proposed redevelopment "would not be possible" if the required minimum were provided. *Id.*

The new mix of uses proposed here (i.e., 50% research and development and 50% general office), however, increases the number of required parking spaces from 178 to 236, as shown in a table from the Staff Report, shown below:

General Office: (54,348 s.f.)	2.7spaces/1,000 sf	= 147 spaces
R&D Office: (54,347 s.f.)	1.5spaces/1,000 sf	= 82 spaces
Existing Restaurant: (548 s.f.)	25 spaces/1,000 sf	= 14 spaces
	with 50% reduction for shared use	= <u>7 spaces</u>

Total Required on Site:  $147 + 82 + \underline{7} = 236$  spaces

Total proposed: = 123 spaces (52% of the required spaces)

As a result, the Petitioner now requests a parking waiver of 48% of the required number of spaces, which they believe the Board of Appeals may grant under Section 59-E-5.4:

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

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

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

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

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

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

(3) After consideration of the recommendations of the planning board or planning board's staff.

Staff concluded that the waiver is justified because of the project's proximity to Twinbrook Metro Station and because the Petitioner has executed a Transit Management Agreement (TMAg) with the Planning Board's site plan approval. The TMAg requires the Petitioner's to subsidize Metro fares, provide an increased number of bicycle facilities on-site, as well as pedestrian friendly sidewalk improvements. Staff also pointed out that there is on-street parking along Wilkins Avenue. Exhibit 23, p. 5. Ms. Randall testified that other properties this close to a Metro station have similar parking reductions. The confronting CR-zoned property to the northwest has a parking maximum, which cannot be exceeded and is permitted to reduce the parking requirements by up to 60 percent of what is required because of its proximity to Metro. According to her, too much parking is contrary to the County's policy for properties this close to a station. T. 78.

To further address these concerns, the Petitioner proposes to operate a private shuttle service between the property and the Twinbrook Metro Station. In its Amended Parking Analysis, Ms. Randall states that, “provision of private shuttle service (programmed with consistent and predictable service runs, especially during the peak hours of commute) will greatly incentivize use of the Twinbrook Metro Station as a primary mode of transportation to/from the site.” Exhibit 21(b), *Amended Parking Analysis*, p. 2. Petitioner’s Amended Statement of Operations proposes to mitigate any parking deficiency by “providing a private shuttle that will transport the tenants to and from the Twinbrook Metro Station during the peak hours with possible shuttle service to local commercial retail centers during non-peak hours.” *Id.*

In recommending approval of the waiver, Staff relied in part on the private shuttle service proffered by the Petitioner:

In an effort to further mitigate any off-street parking concerns, the Applicant has indicated that operation of a shuttle bus service to transport tenants/employees will be provided between the Twinbrook Metrorail Station and the subject property. If the waiver is approved by the Hearing Examiner, Staff recommends requiring the Applicant to operate a shuttle bus service during the weekday morning peak, midday, and evening peak periods to reduce the need for on-site parking used by commuter’s vehicular trips, and commit to operating the shuttle bus service as long as the waiver is in effect.

Exhibit 23, p. 5.

Ms. Randall explained that the shuttle service proposed by the Petitioner will supplement an existing major bus route along Parklawn Drive that runs to the Metro station. Buses along this route have a headway of between 20 to 30 minutes, which is not as frequent as other lines. According to her, general office use lends itself to more traditional office hours than research and development activities, and thus a shuttle in addition to bus service would be able to capture the peak periods. T. 59-60.

At the public hearing, Ms. Randall testified that midday shuttle service is unnecessary at this time because it does not affect the peak hours and is very expensive. Rather than requiring midday service as part of the special exception, she recommended letting the market drive the demand for midday service. She also stated that she felt it necessary to run the shuttle during only two of the three morning peak hours because she anticipates that some of the business may operate during non-traditional office hours in order because they will do business with people in different time zones. Nor did she find it helpful to specify that the shuttle run during certain hours, as that may depend on the particular tenants in the building. Some tenants may start early, or if dealing with someone in a different time zone, may start later in the day. T. 61-62.

Staff provided no specific documentation of the need for a shuttle during the midday period, and the Petitioner proffered this only as a possibility. Nor is there evidence in the record indicating that parking will be a problem during this period. The Hearing Examiner notes that reduction of peak-hour parking is not the only reason for the shuttle. Mid-day shuttle service may incentivize individuals to commute by enabling them to reach restaurants and other retail during the day. Nevertheless, there is little evidence in the record as to Staff's rationale for adding the shuttle service during the mid-day, especially as there will be a restaurant next to this project, which was approved in the same site plan. Having no further evidence for Staff's position that midday service is critical, the Hearing Examiner finds that the Petitioner need only provide service during the peak periods.

The Hearing Examiner finds, however, that service should be provided for the entire morning and evening peak periods, as originally proposed by the Petitioner. If, as Ms. Randall stated, the type of businesses attracted here may operate during non-traditional hours because of the difference in time zones, the need for parking may be more extended than a one or two hour

time frame. Without more evidence that mitigation for parking during the full peak period is not required, the Hearing Examiner hesitates to curtail the service relied on by Staff when approving the waiver. Because the private shuttle service was critical to Staff's recommendation to approve the parking waiver, the Hearing Examiner also finds that a condition requiring the Petitioner to incorporate the private shuttle service into the site plan and promotional requirements of its Transit Demand Management Agreement, as described below, is appropriate to ensure its success.

***b. Transit Demand Management Agreement***

The property lies within a Transit Station Development Area (TSDA), which is defined as “[A]n area near a metro transit station, or along an existing or proposed transit right-of-way, which is not located within a central business district, which has been designated as a Transit Station Development Area by an approved and adopted master plan or sector plan.” These areas may qualify for setback and parking waivers. *See*, §59-A-2.1; §59-C-5.44(f). All of the properties within the Twinbrook Sector Plan were included in the Twinbrook TSDA. *Plan*, p. 46. The Sector Plan recommended that development within the TSDA must participate in the North Bethesda Transit Management District. As a condition of site plan approval, the Petitioner executed a Transit Management Agreement (TMAg) mandating this participation. Exhibit 35. Pertinent to this case, the TMAg requires the Petitioner to appoint a Transportation Benefits Coordinator to assist tenants and/or employees with commuting options and serve as a liaison with the County's Department of Transportation (MCDOT), which manages the District. Exhibit 35. The Petitioner must also promote non-auto commuting options and conduct surveys to determine employee participation in these options. Exhibit 35, p. 4. Other incentives that the Petitioner must provide or encourage include flexible work hours, participation in the Guaranteed Ride Home Program, providing car/van pool parking spaces, and charging above market rates for parking. *Id.*

The Hearing Examiner concludes that robust use of the shuttle is predicate to a finding that the waiver is justified, and that promoting use of the shuttle as one commuting option will contribute to its success. As a result, she recommends a condition of approval requiring the Petitioner to promote the shuttle service in the same manner as it promotes other commuting options according to the TMAg.

***c. Circulation and Traffic Safety***

During site plan review, the Planning Board concluded that the approved project would provide adequate, safe and efficient vehicular circulation, in part because the building eliminated two of the four existing access points along Wilkins Avenue. The three existing access points on Parklawn Drive remain the same. The Planning Board also found that elimination of the access points along Wilkens Avenue “will improve the vehicular circulation, and they have been reviewed by MCDOT and the Fire Marshal.” Exhibit 23, Attachment 1. The Hearing Examiner finds that access is safe, adequate and efficient.

***d. Remaining Capacity for Uses Permitted by Right in the I-4 Zone***

Under §59-G-2.38.1)(a)(2) of the Zoning Ordinance, one of the two criteria for approval of a special exception for general office in the I-4 Zone is:

The approval of the general office use will not increase traffic to the extent that other industrial, commercial, or residential uses that are permitted by right are precluded from development within the traffic analysis area.

Staff concluded that the application met this standard because it would leave 3.7% CLV capacity for other future developments. According to Staff, the change from 100% research and development activities to 50% research and development and 50% general office generates 13% more morning peak hour trips and 38% more evening peak hour trips, although this finding is based on the traffic study assuming that 55% of the building would be general office. Staff

concluded that this increase leaves the available CLV capacity at one of the studied intersections, Parklawn Drive/Randolph Road, at 3.7%. Staff found this amount of capacity acceptable, especially in light of a planned capital improvement (i.e., the Parklawn Drive/Montrose Parkway interchange) that, according to Staff, is a “high priority” County CIP project planned to start construction in 2019. Exhibit 23, p. 10.

At the public hearing, Ms. Randall opined that remaining capacity at the Parklawn Drive/Randolph Road intersection is actually closer to a CLV of between 4 and 5%. T. 57, 69. She explained that the traffic study she originally prepared included the original site plan approval (for 100% research and development space) as background traffic, and then added in only the increase generated by changing 50% of the space to general office. In her opinion, Staff miscalculated the percentage of remaining capacity at the intersection because the total future volume under her traffic study was 1,486 and the maximum congestion level is a CLV of 1,550. If one divides 1,486 by 1,550, there is a remaining capacity of almost four percent.<sup>5</sup> T. 57. According to her, Staff mistakenly subtracted out background traffic, when they should have added it, making the remaining capacity look worse than it is by approximately 0.3%. T. 69. She testified that this is important because Staff indicated at the Planning Board hearing that they would not recommend approval were the remaining capacity at the intersection less than three percent. She opined that the total future CLV for the intersection (with the proposed project), is actually closer to 5%. T. 69-70.

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<sup>5</sup> According to the traffic study (which assumed a higher amount of general office than is now proposed), total future CLV capacity will be slightly over 4% ( $1,486/1,550=9587$ .) Slightly more than this amount of capacity may be available because the traffic study assumed a larger amount of general office than is proposed in this special exception. Because Staff found 3.7% remaining CLV capacity acceptable, the Hearing Examiner does not find it necessary to resolve the exact amount of remaining capacity, although she agrees with Ms. Randall that it is greater than the 3.7% estimated by Staff.

**F. Amendment of Approved Site Plan and Traffic Mitigation Agreement/  
Enforcement of Approved Special Exception Site Plan**

In its Report, Staff advised that, “[I]f this special exception is approved by the Hearing Examiner, a site plan review by the Planning Board will also be required to seek approval of the change in use and the new waiver request.” Exhibit 23, p. 2.

The Petitioner here argues that it should not have to amend the approved site plan to reflect any differences between the special exception and the use described on the site plan approved by the Planning Board. They argue that to do so is expensive and unnecessary because the special exception does not change the exterior of the building. Exhibit 41. Petitioner also argues they need not amend the TMAg to incorporate the private shuttle service because the shuttle is a condition of the special exception only and not the project as a whole. Thus, Petitioner argues, it may lead to confusion if the special exception is abandoned.

The Hearing Examiner referred two questions to the Department of Permitting Services (DPS), the agency responsible for enforcing special exceptions: 1) what is the best method to enforce the 50% limitation on general office uses, and 2) whether the site plan before the Planning Board should be amended to reflect the conditions of the special exception. Exhibit 38. DPS responded that their policy has been to require the conditions of the special exception approval to be incorporated into the site plan because in the past applicants have argued that the special exception conditions may not be enforced when the applicant has complied with its site plan. DPS further states that amending the site plan to incorporate the special exception conditions eliminates any confusion over what agency and what conditions are enforceable. *Id.*

The Board of Appeals clearly has the authority to require site plan review of a special exception both under its general authority to impose conditions and explicit authority under Section 59-G-1.22(b), which states:

(b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:

(1) The property is in a zone requiring site plan approval, or

(2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

Because this property is zoned I-4 and within a Transit Station Development Area, site plan approval is required. *See*, §59-C-5.44(f)(1). The Hearing Examiner recommends that the Petitioner be required to amend its site plan approval to incorporate the conditions of the special exception for several reasons, discussed below. She takes no position, however, on whether the Planning Board has independent authority under Section 59-D-3 of the Zoning Ordinance or other law to require the Petitioner to amend the previously approve site plan.

The Hearing Examiner recommends amending the site development plan to reflect the conditions of approval because (1) the use approved in the site plan is significantly different than those proposed in this special exception, (2) the special exception directly affects conditions of site plan approval, and (3) enforcement of all conditions should be coordinated between agencies. While this petition may not affect the exterior of the building, it does impact the conditions of the site plan approval; in particular, it affects the parking waiver and the uses permitted. The Planning Board's approved site plan also does not reflect the added responsibility of providing private shuttle service and incorporating that service into its promotional activities under the TMAg. If the TMAg is *not* amended, and the Petitioner fails to fulfill its requirement for promotional activities under it, then two different agencies would have to enforce the violation; MCDOT could not enforce failure to promote the shuttle service and DPS could not enforce other promotional activities. Trying to parse through which agency could enforce different items in two separate

approvals could well be difficult and confusing. The Hearing Examiner finds that DPS' position is reasonable under the particular circumstances of this case and that it promotes coherent enforcement of the entire project as approved by different agencies of the County. The Hearing Examiner also finds from the record that enforcement of the use proposed here is especially important because the Sector Plan specifically discourages proliferation of the use proposed for this location (i.e., general office in the I-4 Zone). The Petitioner has not designated a specific geographic area of the building where the general office will be located. While this is understandable, it also complicates enforcement, as the Petitioner must track individual use and occupancy permits and "self-report" to the Board of Appeals, which must retain jurisdiction over the case for this enforcement purpose.<sup>6</sup>

#### **G. Community Response**

No person appeared in opposition to this special exception, nor is there any reference in the Staff Report to anyone opposing the application.

### **III. SUMMARY OF TESTIMONY**

Petitioners' witnesses included Ms. Stephanie Yu on behalf of the Petitioner who described the Petitioner's vision for the project, Mr. David Ager, an expert land planner who addressed compliance with the Sector Plan and other zoning issues, and Ms. Nancy Randall, an expert transportation planner, who addressed the parking waiver, the conditions of special exception approval and adequate public facilities. Their testimony is set forth in this report where relevant and summarized in full in the appendix attached hereto and incorporated herein.

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<sup>6</sup> Staff of the Planning Department and DPS agree that the best method to enforce the limitation on general office uses is to have the Petitioner track the square footage for general office use as designated by DPS on the Use and Occupancy Permit and to provide annual reports to the Board of Appeals. The Petitioner has agreed to this method. Exhibits 26, 39-41.

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

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*see* Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

##### **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 of the proposed use, at the proposed location, on nearby properties and the general neighborhood. 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 non-residential professional office. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered

inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must 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.

Physical characteristics associated with a non-residential professional office are a single-family structure to house the office use, a parking facility adequate to accommodate employees and visitors and an identification sign. Technical Staff found that typical operational characteristics of general office use includes: (1) a physical building; (2) traffic to and from the site by employees; (3) parking. Staff found that the size, scale, and scope of the proposed use is minimal and is not likely to result in any unacceptable noise, traffic, illumination or environmental impacts.

The Hearing Examiner agrees with Staff that there are no non-inherent adverse conditions that would justify the denial of the special exception. While the amount of the parking waiver is significant, Ms. Randall pointed out that it is consistent with parking waivers available in the CR Zone, located across the street, and other parking waivers permitted for properties this close to a Metro station. T. 78.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

(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: General office is permitted by special exception in the I-4 Zone under Section 59-C-5.21 of the Zoning Ordinance.

(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 would comply with the standards and requirements set forth for the use in Code §59-G-2.38, as detailed in Part IV.B, 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 an approved and adopted 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: Staff concluded that the use proposed was not consistent with the recommendations of the 2009 *Twinbrook Sector Plan* because it “recognized the importance of the limited amount of industrial land in the County and recommended zoning changes to preserve the industrial area.” The Planning Board disagreed, because it is permitted as a special exception and limited by the amount of capacity remaining for uses permitted by right in the I-4 Zone. For the reasons set forth in Part II.C of this Report, the Hearing Examiner agrees with the Planning Board and finds that

the use is consistent with the Twinbrook Sector Plan, provided that Petitioner complies with the conditions of approval recommended.

- (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: Staff concluded that the proposed use will be in harmony with the character of the neighborhood considering the design, scale and bulk of the structure shown in the site plan approved by the Planning Board. The Hearing Examiner has no evidence to the contrary regarding the physical structure. The evidence supports a finding that the intensity and activity relating to traffic and parking will be compatible with the neighborhood, again as long as the Petitioner complies with the conditions imposed relating to the private shuttle service.

- (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: Staff concluded that the petition meets this standard. The Hearing Examiner agrees, provided that the Petitioner complies with the conditions of approval to mitigate any potential problems relating to parking.

- (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: Staff concluded that this standard has been met because there will be no outdoor activity related to the use. Again, however, the Hearing Examiner notes that the waiver of 50% of the required number of parking spaces could create adverse negative activity at the site, but finds that the conditions of approval requiring the petitioner to operate a private shuttle service during

the morning and evening peak periods and promote the private shuttle as part of its responsibilities under the TMAg will mitigate this possibility.

- (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: Staff did not provide information on whether any other special exceptions exist in the area, but concluded that the proposed use will not intensify the concentration of special exception uses. The Hearing Examiner notes that the Planning Department's Zoning Map (at <http://mcplanning.maps.arcgis.com/home>) shows three special exceptions in the defined neighborhood. Board of Appeals staff reports that two of the special exceptions have expired. The remaining special exception, a gasoline station, is adjacent to the property. Because only one special exception remains valid, the Hearing Examiner finds that this standard has been met.<sup>7</sup>

- (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. Concerns relating to parking waiver may be addressed with the recommended conditions. The Hearing Examiner finds that this standard has been met.

- (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.*

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<sup>7</sup> OZAH's Rules of Procedure require advance notification when the Hearing Examiner takes official notice of public records. Because this information supports Technical Staff's finding, which is already in the record, the Hearing Examiner does not take official notice of these facts and instead relies on Staff's finding.

- (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 granting 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: Staff advises that a preliminary plan of subdivision is not required, but concluded that the adequate public facilities review will occur at site plan. Exhibit 23, p. 14. The Hearing Examiner disagrees because the plain language of the above section requires the Board of Appeals to decide the adequacy of public facilities when the special exception use will increase traffic generated from the site and when no preliminary plan is required, which is the case here.

The Petitioner submitted a Traffic Study that was accepted by Planning Staff, MCDOT and SHA. The study concluded that transportation facilities will be adequate to serve the proposed use. Ms. Randall testified, and the traffic study reflects, that two of the intersections studied (i.e., Wilkens Avenue and Parklawn Drive North and Wilkens Avenue and Parklawn Drive South) will operate well below the maximum congestion levels for the North Bethesda policy area. The intersection of Parklawn Drive and Randolph Road will operate at a much higher congestion level, but still within the maximum limits. Exhibit 25(b). Both Staff and the Petitioner also point out that construction of a new interchange at Parklawn Drive and Montrose Parkway in 2019 will alleviate congestion levels at this intersection in the future.

The Petitioner will satisfy the TPAR test by paying the amount of tax due for the additional development (above the amount that previously existing on the site) in the North Bethesda Policy

Area. Based on this evidence, the Hearing Examiner finds that both the LATR and TPAR tests will be met.

As to public facilities other than roads, the use is not subject to the schools test because it is entirely commercial and approval of the site development plan serves as evidence that stormwater, electric and other utilities are adequate. *See*, Exhibit 23, Attachment 1.

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

Conclusion: Staff found that the proposed use will not reduce the safety of vehicular or pedestrian traffic, that access to the site and circulation within the site will be safe and efficient, although Staff provided no specific rationale for this. The Planning Board Resolution contains a finding that, “[T]he locations of the buildings and structures, the open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.” Exhibit 23, Attachment 1, p. 7. The Resolution notes that the building as approved reduces the number of vehicular access points from four to two along Wilkins Avenue, which will improve vehicular circulation. Based on this evidence, the Hearing Examiner finds that this standard has been met.

### **C. Specific Standards**

The specific standards for a non-resident professional office are found in §59-G-2.38. The provisions of this section and the Hearing Examiner’s findings with respect thereto are as follows:

#### **Sec. 59-G-2.38.1 Offices, general.**

Section 2.38.1(a) of the Zoning Ordinance imposes two standards that must be met.

The first standard is set forth below:

- (1) *The location of such proposed use is adequately accessible by means of existing and proposed roads and public transportation facilities, and the proposed use will not have an unacceptably adverse effect on nearby roads. The location shall be deemed adequately accessible via roads and public transportation facilities if any of the following conditions are present:*
- (i) *Existing publicly maintained, all-weather roads are adequate to accommodate the traffic that would be generated by the proposed use, in addition to existing traffic and traffic that will be generated by other development on existing recorded lots; or*
  - (ii) *Any additional roads, necessary in combination with existing roads to accommodate the additional traffic that would be generated by the proposed use, are proposed on an adopted master plan and are programmed for completion in the first 3 years of either the current adopted Montgomery County capital improvements program or the state highway administration's 5-year program for construction with public or private financing; or*
  - (iii) *Public bus, rail, or other forms of mass transportation are available or programmed within the area affected or within one-third mile of the application under consideration so that the roads under (1) and (2) above will provide adequate road capacity to meet existing and future traffic demand.*
  - (iv) *In its determination of the adequacy of a road to accommodate traffic, the Board shall consider the recommendation of the state highway administration or County Department of Transportation, the applicable levels of traffic service, peak hour use and average use, and any other information presented.*

Conclusion: Staff and the Petitioner agree, based on the Traffic Impact Study (Exhibit 25(b)) that the proposed use meets both LATR and TPAR requirements, thus meeting the standard in 59-G-2.38.1(a)(1)(i). The record also demonstrates that MCDOT and SHA reviewed and accepted the traffic study. Based on this evidence, the Hearing Examiner finds that this standard has been met.

The second special standard for approval, contained in Section 59-G-2.38.1 of the Zoning Ordinance, states:

- (2) *The approval of the general office use will not increase traffic to the extent that other industrial, commercial, or residential uses that are permitted by right are precluded from development within the traffic analysis area.*

Conclusion: Staff concluded that Petitioner met this standard because the Traffic Impact Study demonstrated that two of the studied intersections (i.e., Wilkens Avenue North and South) would still have a significant amount of capacity. Staff further concluded that total future conditions for the intersection at Parklawn Drive and Randolph Road would leave 3.7% capacity for that intersection, and pointed out that the capital project for an interchange at Montrose Parkway and Randolph Road would begin construction in 2019. Ms. Randall testified that the total future conditions for the two Wilkens Avenue intersections would utilize only 35% of the available capacity, and that remaining capacity at the Parklawn Drive/Randolph Road intersection would be between four and five percent.

The special exception standards do not permit consideration of the capital project for the Montrose Parkway interchange because it is not scheduled for completion within three years. Nevertheless, Staff found that 3.7% capacity at the Parklawn Drive/Randolph Road intersection was sufficiently adequate for future uses permitted by right in the I-4 Zone. Ms. Randall testified that the actual capacity of that intersection under future conditions will be between four and five percent. The Hearing Examiner agrees with Ms. Randall's estimate of future capacity and, as it is above the level Staff found acceptable, concludes that this standard has been met.

#### **D. Development Standards of the Zone**

In addition to the general and specific special exception standards, special exception uses must also meet all requirements of the underlying zone, in this case, the I-4 Zone, as required by

Section 59-G-1.23. These standards, along with the Hearing Examiner's findings on each standard, are set forth below:

**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: Technical staff concluded that the improvements on the property meet all of the requirements of the I-4 Zone, summarized in the following table from the Technical Staff Report (Exhibit 23, p. 15, below), shown on the following page.

Because the Planning Board validly approved a waiver of the green space under its authority in Section 5.44(f) of the Zoning Ordinance, the Hearing Examiner concludes that the Board of Appeals need not independently review this as a variance from the development standards. For this reason, the Hearing Examiner finds that the proposed use meets the development standards of the I-4 Zone.<sup>8</sup>

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

Conclusion:

1. *Number of Spaces:* Petitioner seeks a waiver of the minimum number of parking spaces under Section 59-E-5.4, which permits the Board to waive the required minimum number of spaces for new uses in existing buildings:<sup>9</sup>

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<sup>8</sup> The Board of Appeals could, of course, require the Petitioner to provide full amount of green space if it concluded that the waiver, when combined with the proposed special exception, would adversely affect the neighborhood. There is no evidence in this record that it does so.

<sup>9</sup> The Board also has the authority to waive *any* of the parking requirements under Section 59-E-4.2. That section specifically requires notice to adjoining and confronting property owners and community associations. Since that notice was not provided, the Board must proceed under Section 59-E-5.4. See, *Zoning Ordinance*, §59-E-4.2.

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

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

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

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

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

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

*(3) After consideration of the recommendations of the planning board or planning board's staff.*

To mitigate the impact of the parking waiver, the Petitioner proposed to operate a private shuttle service during the peak periods and possibly during the mid-day period. Transportation Staff recommended that the shuttle service operate during the mid-day period as well, but did not explain why it added the midday to the Petitioner's original proffer.

The Hearing Examiner concludes that there is insufficient evidence to impose a condition requiring the Petitioner to provide mid-day shuttle service, particularly if tenants are working staggered hours, as suggested by Ms. Randall.

The Petitioner also now argues that it need not provide shuttle service during the entire peak period, but rather provide shuttle service for only two hours during the peak period that would not be specified. The Hearing Examiner disagrees with this finding for several reasons. First, it is difficult to enforce an unspecified time period for operation of the shuttle. Second, the Petitioner originally proffered providing the service during the entire peak period to mitigate the parking

waiver and Staff based their recommended approval of the parking waiver on this proffer. Also, Ms. Randall's testimony that the two hour period is justified because tenants could work with clients in other time zones is somewhat speculative at this stage and could just as well support a finding that the entire peak period needs to be covered, depending on which time zones are applicable. For these reasons, the Hearing Examiner recommends a condition of approval requiring operation of the private shuttle during the entire morning and evening weekday peak periods.

To maximize ridership on the shuttle, the Hearing Examiner also recommends a condition requiring the Petitioner to amend its TMAg to incorporate the shuttle service and to include it as part of its promotional activities under the TMAg while the special exception remains valid. The Petitioner expressed concern about combining the permanent activities required by the site plan with the special exception requirements, which may be temporary. The Hearing Examiner concludes that this concern may be easily addressed by clarifying in the agreement that responsibilities relating to the shuttle must be exercised only while the special exception is operational. Amendment of the TMAg is also desirable to simplify enforcement of the condition requiring shuttle service, as explained previously.

## *2. Parking Setback Waivers:*

When it approved the site plan for exclusively research and development activities, the Planning Board granted waivers from the setback required from adjacent I-4 Zoned property and from the street, as shown on the following page. As these waivers have already been granted by the Planning Board, the Hearing Examiner finds that the Board need not independently revisit them because the building design has not changed.

PLAN DATA	Required/Permitted	Shown on the proposed Site Plan	Approved
<b>Minimum Off-Street Parking Spaces</b> (59-E-3.7) 1.5 spaces/1,000sf GFA	178 <sup>6</sup>	123	123 <sup>7</sup>
<b>Minimum Off-Street Parking Setback</b> from the adjacent I-4 Zone along the north property line (59-C-5.44(d)(2))	10 ft. <sup>8</sup>	0 <sup>9</sup> (zero) ft.	0 (zero) ft.
<b>Minimum Off-Street Parking Setback (from street)</b> (59-C-5.44(d)(3))	25 ft. <sup>10</sup>	0 <sup>11</sup> (zero) ft.	0 (zero) ft.
<b>Minimum Bicycle Parking Spaces</b> (59-E-2.3)	6	12	12

**Exhibit 23, Attachment 1**

*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) Equestrian facility.
- (7) Heliport and helistop.

Conclusion: This standard is inapplicable to this petition.

*(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: Staff concluded that the proposed use is not subject to this requirement but did not explain its rationale and the Petitioner has provided a Forest Conservation Exemption letter approved by Staff of the Planning Department. Exhibit 9(a). The Planning Board's resolution approving the site plan states that the project is exempt from having to provide a forest conservation plan because it is a modification to an existing developed property. *Id.*, Attachment 1, p. 9. The Hearing Examiner finds that standard has been met.

*(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: Staff concluded that this is not applicable to the proposed development, presumably because it is not in a special protection area and therefore no water quality plan is required. Having no evidence to the contrary, the Hearing Examiner so finds.

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

Conclusion: Both monument signs proposed were included in the approved site plan. Staff advises that the signs meet the requirements of Section 59-F of the Zoning Ordinance.

*(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: As the property is not within a residential zone, this requirement is 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: Staff concluded that this requirement is not applicable, presumably because the property does not adjoin any residential zones. The Hearing Examiner so finds.

## V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2878, which requests a special exception under the I-4 Zone for 54,347 square feet of general office use to be located at 12358 Parklawn Drive, Rockville, Maryland, be *granted* with the conditions listed below and that the requested parking waiver be *granted* to permit the applicant to provide 123 parking spaces as shown on the site plan (Exhibit 19(d)):

1. Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. Petitioner must comply with the terms of its revised Site Plan (Exhibit 19(d)), Landscape Plan (Exhibit 5(a) and 5(b)), Lighting Plan (Exhibit 6(a)).
3. Petitioner must operate a shuttle bus service for tenants and employees who work in the building during the weekday morning and evening peak periods until this special exception is formally abandoned by the Board of Appeals.
4. General office use is limited to 50% of the floor area of the building as determined by Use and Occupancy Certificates issued by the Montgomery County Department of Permitting Services.
5. The Board of Appeals shall retain jurisdiction of this case for the purpose of enforcing the amount of floor area permitted to be used for general office uses.

6. No later than one year from the date of the Board of Appeals resolution approving this special exception, and annually thereafter, the Petitioner must submit a report to the Board of Appeals, with a copy to the Department of Permitting Services, including the following information:
  - a. A list of all tenants currently occupying the building under a Use and Occupancy Certificate that classifies the use as general office; and
  - b. The gross floor area attributable each tenant of the building, regardless of use.
7. Petitioner must amend the site plan approved by the Planning Board (Site Plan No. 820130180) to show the Board of Appeals' resolution approving the special exception, including all conditions of approval.
8. Petitioner must amend its Traffic Mitigation Agreement (Exhibit 35) to include Condition No. 3 (above) and to require the Petitioner to promote the shuttle in the same manner as other non-auto commuting options until this special exception has been formally abandoned by the Board of Appeals.
9. A sign permit must be obtained for the proposed signs shown on the Landscape Plan (Exhibits 5(a) and 5(b)), and a copy of the permit for the approved sign must be submitted to the Board of Appeals before the sign is installed.
10. Pursuant to Zoning Ordinance §59-E-5.4, a waiver is hereby granted from minimum number of spaces required for the proposed use to the limit stated on the site plan (Exhibit 19(d)).
11. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to, building permits and use and occupancy permits necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: May 28, 2015

Respectfully submitted,



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Lynn A. Robeson  
Hearing Examiner

**APPENDIX**

**Summary of Testimony**

1. Mr. David Ager:

Mr. Ager qualified as an expert in land planning. T. 10. He opined that the boundaries of the surrounding area were Parklawn Drive to the north and east, Wilkins Avenue to the south, and Twinbrook Parkway to the west. He did not completely agree with Staff's characterization of the area, because Staff failed to mention that the properties immediately to the west of the subject property are zoned CR 2.0. Staff's report indicates that all properties adjacent to the site are in the I-4 Zone. T. 12. The CR 2.0 zone permits higher density; there is a building proposed for the CR site that is planned to be approximately 145-feet high and a 2.0 FAR.

In his opinion, this and other aspects of the area make the neighborhood unique. The property is within one-half mile of the Twinbrook Metro Station and is within 300 to 500 feet of two major employers, the Department of Health and Human Services and the Federal Drug Administration, which are immediately confronting this property. T. 12-13. Thus, while this particular property is industrially zoned, there are significant office users in close proximity. T. 14.

Mr. Ager opined that the use is consistent with the Master Plan, and disagreed with Staff's finding to the contrary. The 2004 Zoning Ordinance specifically permits general office as a special exception and the general office proposed here could support the light industrial uses. Some of the uses in this building may have a research component or they may be startup or incubator companies. The space is designed for innovation and collaboration between businesses because it contains a lot of open space. It is not a traditional "center hall cubicle" office building. T. 17. This type of space is attractive to high tech companies, which, according to Mr. Ager, is a goal of the Sector Plan. He explained that high tech companies could fall under the general use category of general office because they do not have a manufacturing component, but would be supportive of a light industrial use. T. 17-18.

Mr. Ager opined that he distinguished between "general office" and "light industrial" uses based on the definitions in the 2004 Zoning Ordinance. The term "general office" means office for the use of A) professional persons such as doctors, lawyers, accountants, or B) general business offices such as insurance companies, trade associations, manufacturing companies, investment concerns, banks and trust companies, real estate companies, etc. General office does not include any kind of retail or wholesale sales or warehouse.

"Light industrial" uses are included in the definition of "research, development, and related activities," according to Mr. Ager. This includes study, research and experimentation in one or more scientific fields, such as life sciences, biomedical, research, communications, chemistry, computer science, electronics, medicine, and physics. It also includes the development of prototypes and the marketing of resultant products. Activities related to light industrial uses include manufacturing, mixing, fermentation, treatment, assembly, packaging, and servicing of products, with supporting services such as administrative offices, educational facilities, libraries and data services. T. 20-21.

In Mr. Ager's opinion, there are some "gray areas" between the two definitions and the use table. According to him, the general difference is that "research, development, and related

activities” includes a research or experimentation component. These activities could be accommodated in the same type of physical space and could “look” the same as general office uses. He testified that 20 or 30 years ago, the administrative office would be on the same site as the research and development activities. Today, the administrative office could be here but the manufacturing or research could be anywhere in the world. Nevertheless, the administrative office would still be a “research and development” use. T. 22.

Another change in the traditional model of the “research and development” use is the fact that much of the research, even in health care, is done on computers, Mr. Ager opined. For instance, research and development of the human genome is done on computers, rather than the classic “test tube” research on human biology. In an effort to attract the most talented and entrepreneurial type of business, the building has been designed to attract incubator or small users that can operate more efficiently in this space than traditional general office space. T. 22.

Mr. Ager acknowledged that incubator businesses could be either research and development or general office uses. Companies that serve the general public may or may not have research and development components, but could support research and development uses. T. 23. The “goal and vision” of the owner, according to Mr. Ager, is to attract business that essentially furthers the goals of the Sector Plan because it may serve and meet Sector Plan goals. T. 24. In his opinion, the proposed “general office” use provides flexibility in the market place because of the “graying” between this use and research and development activities. T. 25.

Mr. Ager also pointed out that the site plan has already been approved and there are no physical changes to the building. Any changes needed to accommodate the interior uses will not impact the exterior of the building. T. 24.

In response to a question from the Hearing Examiner, Mr. Ager stated that the 50% limit on general office uses could be enforced by tracking the use and occupancy permits, which would determine whether the use is general office or research and development based on the definitions in the 2004 Zoning Ordinance. T. 26.

Mr. Ager testified that they requested a special exception under the 2004 Zoning Ordinance because there was no specific limitation on the amount of general office. Under the 2014 Zoning Ordinance, the property would have the ability to have up to 35% general office uses by right. There is no specific limit on the amount of general office imposed by the Sector Plan. T. 29-30. Even though the Sector Plan generally spoke of limiting general office uses, it made no specific recommendation on where the limits should be set. T. 30-31.

Mr. Ager testified that the goal of the Sector Plan to preserve the area for light industrial uses has been successful by rezoning the area from I-1 to I-4 and making general office a special exception use. To his knowledge, there is limited general office intrusion into the area. T. 31-32. He also pointed out that the 2014 Zoning Ordinance has removed the potential to use more than 35% of a building for general office use. T. 31-32.

According to Mr. Ager, this building is more suited to general office use than other buildings in the area. It is proximate to large general office users and within walking distance of

a Metro station. The site is located along a bike route designated in the Sector Plan and will have a major pedestrian connection to the station. The existing and proposed buildings in the surrounding area are not all light industrial. T. 36-37.

Mr. Ager agreed with other findings made by Staff, except for Staff's finding on Sector Plan compliance, a typographical error in the proposed square footage of the general office use, and the fact that CR 2.0 Zoning is within the defined neighborhood. T. 40-41.

2. Ms. Stephanie Yu:

Ms. Yu testified that she is the owner of Greencourt, LLC. She described her background and why she chose this project. Ms. Yu was born in China and moved to the United States in 1990. She finished her undergraduate and master's degrees in China and in 1995, travelled back to China to start her own business there. In 1997, she began in real estate development, and in 1999, has helped Chinese local governments to develop city plans. Eventually, she and her husband, who is originally from Maryland, moved here and studied the Germantown, Twinbrook, Rockville, and White Flint plans. She believes that there are mistakes in these plans because they do not address how to attract businesses to provide jobs and a better living environment.

In her opinion, the White Flint plan is the best of the four she studied because there is more emphasis on attracting an anchor company. Her focus is to create an equal system for smaller companies to let them grow as well. None of the plans focus on what types of jobs the anchor employer will need. T. 48-50.

Ms. Yu further explained she is seeking up to 50% general office use because they are trying to attract some companies that do not fall clearly within either use category. Her husband has a healthcare data company, which he believes will be able to assist with the health care industry with data transparency. She and her husband chose this location because it is a hub of pharmacopeia industries near the FDA. They wish to use the space in this building to attract a lot of international investors to coordinate provision of this service between the U.S. and Asia. T. 50-51. When they learned that the Department of Permitting Services would decide whether the businesses they seek to attract are research and development and general office, they decided to apply for a special exception to provide them some flexibility.

As an example of the type of company they are seeking, she testified that she and her husband are trying to attract a company that is designing a mobile phone application for healthcare. It would assist you with measuring your blood pressure, sugar levels, etc. Another company is a design company developing distance technologies monitoring for seniors. Again, they are not sure how DPS will classify that, so they wish to have up to 50% as general office to provide some flexibility to have these newer uses. T. 51-53.

3. Ms. Nancy Randall:

Ms. Randall qualified as an expert in transportation planning. She testified that she prepared the LATR study for the application. Staff requested that they study the intersections at Wilkins Avenue and Parklawn Drive, Wilkins Avenue south of Parklawn Drive, and Randolph

Road and Parklawn Drive. A total of nine projects were in the pipeline (approved but not yet built), including this site, which was previously approved for research and development space. T. 54-56.

After identifying the pipeline projects, they assigned background trips to the three study intersections to determine the existing levels of service, background levels of service, and added this site's trips to get total future levels of service. T. 56.

Ms. Randall opined that both intersections along Wilkins Avenue operate well below the acceptable maximum congestion standard of 1,800 CLV. According to her, all background traffic plus trips generated by this project will use only 35% of the total capacity available to the two intersections. T. 57.

The highest congestion levels, according to Ms. Randall, are found at the intersection of Parklawn Drive and Randolph. The maximum CLV for that intersection is 1,550; with all future conditions, the intersection has a remaining capacity of 4%. This will be alleviated in the future, however, with a capital project to extend Montrose Parkway East, although construction will not start until 2019. The capital project calls for a complete redesign of the intersection, and she opined that the volume of traffic will be greatly reduced. T. 57-58.

Ms. Randall explained that the original traffic study was done when the petitioner proposed a mix of 55% office and 45% research and development. When they readjusted the mix to 50/50, they revised their traffic study and found that they were generating fewer trips than in the original traffic study. T. 65. She testified that Mr. Axler confirmed his acceptance of the revised trip generation table. Because it reduced the amount of traffic, Ms. Randall testified that Mr. Axler did not require her to revise the actual traffic study. T. 66-67.

In her opinion, Staff miscalculated the percentage of remaining capacity at the Randolph Road/Parklawn Drive intersection. The total future volume of the intersection under her traffic study was 1,486 and the maximum congestion level is a CLV of 1,550. If one divides 1,486 by 1,550, there is a remaining capacity of almost five percent. Staff then subtracted out the background, but they should have added it, making the remaining capacity look worse than it is by approximately 0.3%. T. 69. The conclusions of the traffic study have been accepted by the State Highway Administration and the Montgomery County Department of Transportation. T. 70. This is important because Staff indicated at the Planning Board hearing that the limit they would recommend is 3% remaining capacity. The total future CLV for the project, however, is actually closer to 5%.

Ms. Randall testified that the property is located on a major bus route that runs along Parklawn to the Metro station. The buses have a headway of between 20 to 30 minutes, which is not as speedy as other lines. General office use lends itself to more traditional office hours and research and development activities, and thus a shuttle in addition to bus service would be able to capture the peak periods. T. 59-60.

Ms. Randall opined that operation of the shuttle during the mid-day period is not necessary because it won't impact the peak hours, although it may be a benefit to some workers. In her

opinion, it is better to let the market resolve whether a mid-day shuttle is helpful, as it can become a very onerous expense. In her opinion, any condition on the special exception should require the shuttle run at least for a two-hour window in the morning and afternoons. She didn't think it was necessary to run for three hours in each peak period and didn't think it was helpful to specify certain hours, as that may depend on the particular tenants in the building. Some tenants may start early, or if dealing with someone in a different time zone, may start later in the day. T. 61-62.

The shuttle is proposed to run between the Twinbrook Metro station and the subject property. That provides the quickest headway, supports the Metro station, and may ultimately serve other employers in the area, although in her opinion, the latter option should be a business decision at some point in the future. T. 63-64.

Ms. Randall opined that the application would meet the requirements of Transportation Policy Area Review (TPAR) upon payment of 25% of the impact tax for the uses. T. 64.

Finally, Ms. Randall stated that she did not believe that the traffic management agreement had to be amended to include the shuttle service. The approved TMAg executed for the site plan does not depend on the ownership of the property or the particular uses permitted in the property. Rather, it contains standard provisions such as encouraging transit ridership, providing discounted fare cards, etc. These apply regardless of what use is made of the building. If the special exception lapses and the shuttle service has been incorporated into the TMAg, it would be superfluous because the use no longer exists. She stated that the petitioner had taken no reduction in trip generation because of the TMAg, unlike the CR Zone where they would be able to do that. For this reason, she did not believe it necessary to update the TMAg. T. 66-76.

Ms. Randall also addressed the parking waiver requested for the project. The approved site plan has 123 parking spaces; they do not propose to modify that even though the parking requirements are higher than they were when the project was 100% research and development. According to the 2004 Zoning Ordinance, a minimum of 236 parking spaces are required, they are providing only 52% of that requirement. In her opinion, it's important to remember that the CR Zone across the street has a parking *maximum*, which cannot be exceeded. CR-zoned property is permitted to reduce the parking requirements by up to 60 percent of what is required. This is because of the proximity of the Metro station, and too much parking is contrary to the County's policy for properties this close to a station. In her opinion, parking will be adequate not only due to the proximity of the Metro, but also the shuttle service in the morning and evening peak hours. She also stated that there is on-street parking along Wilkins for guests and visitors that may come in the middle of the day. T. 76-80.

4. Jennyffer Vargas:

Ms. Vargas is a Code Enforcement Inspector with the Department of Permitting Services (DPS), focusing primarily on enforcement of special exceptions.<sup>10</sup> She testified that DPS requests that any conditions of approval on the special exception should be placed on the site plan for

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<sup>10</sup> Ms. Vargas did not anticipate participating at the public hearing; rather, she testified at the Hearing Examiner's request about DPS's position on whether an amendment to the site plan would be necessary. T. 36-37.

enforcement purposes. When asked what would happen if the special exception approval expired or was abandoned, she stated that the conditions would no longer be enforceable. T. 44-45.