

MEMORANDUM

July 7, 2011

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, ^{JZ} Legislative Attorney
SUBJECT: City of Rockville Annexation Petition (ANX2011-00140) Burgundy Park Associates Limited Partnership

Staff Recommendation:

Approve the request to rezone the property from I-2 to Rockville's Mixed Use Employment (MXE) zone.

Background

The City of Rockville is proposing to annex approximately 3.12 acres of land located east of the intersection of Southlawn Drive, 1300-1314 East Gude Drive and 14803, 14805 and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park (BP); known as Burgundy Park Center. The Council is asked to approve the City's Mixed Use Employment (MXE) zone, which is consistent with its current use.¹ The site is currently classified in the I-2 zone in Montgomery County. The proposed zoning would allow substantially different uses than allowed in the I-2 zone.

The BP Property is partially in Rockville. The portion in Rockville is zoned Light Industrial (I-L). Neither zone is consistent with the current retail, office and restaurant use of the property.² No additional development is proposed. The petitioner is also asking the Mayor and Council of Rockville to rezone the I-L portion of the site to the MXE zone.

The Upper Rock Creek Master Plan is the applicable plan. The Plan noted that the BP property did not reflect the general industrial character of the area and may be an area appropriate for annexation by Rockville.

¹ The purpose of the MXE zone is as follows:

Intended for areas that are either currently developed or recommended for development primarily for office, light industrial, and industrial park uses, this zone allows medium density development of office, retail, and residential uses. A mix of office and residential uses including live/work and work/live units is encouraged.

² The Center was developed when a range of retail uses was permitted.

Article 23A, Section 9(c) of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan, without express approval of the County Council. The Council cannot prohibit the annexation.

The Rockville City Council will conduct a public hearing on July 11, 2011. Rockville Staff will ask the Mayor and Council to keep the record open to allow for the Council's comments.

Planning Board Recommendation

On June 2, 2011, the Planning Board agreed with the Planning Staff's recommendation of approval.

The Planning Staff memorandum noted a special study in 1999. That study indicated where the County's interest in maintaining industrial land uses was critical. The BP Property was outside the critical industrial area. The annexation would place a property currently in 2 different zones into 1 zone. It would also allow the existing retail uses to conform to zoning.

Staff recommends that the Council approve the MXE zone.

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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIRMAN

June 21, 2011

Ms. Phyllis Marcuccio
Mayor
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

SUBJECT: City of Rockville Annexation Petition ANX2011-00140

Dear Mayor Marcuccio:

At the Planning Board's regular meeting of June 2, 2011, we reviewed the City of Rockville annexation petition, ANX2011-00140, for the property located at the northeastern intersection of Southlawn Lane and East Gude Drive in the Upper Rock Creek Master Plan area.

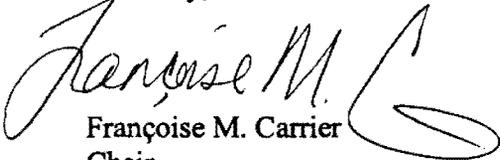
Annexation of this property will reclassify the property from the County's Heavy Industrial (I-2) zone to the City's Mixed Use Employment (MXE) zone, and it will remove a split zoning of the property between both the jurisdictions. The proposed MXE zone represents the existing commercial uses on the property rather than the existing industrial zone.

There are substantial differences between the County's I-2 zone and the City's MXE zone; therefore, the County Council must approve this annexation, which is consistent with the State of Maryland Annotated Code, Article 23A.

The Planning Board voted unanimously to recommend approval of the annexation and the corresponding rezoning with the following comments:

The Montgomery County Council must review this annexation petition prior to action by the City because the Mixed Use Employment (MXE) zone permits uses that are different from the County's Heavy Industrial (I-2) zone. To meet the requirements of Article 23A of the Annotated Code of Maryland, the County Council must approve the proposed zoning change.

Sincerely,


Françoise M. Carrier
Chair

Attachment

①

8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org



May 25, 2011

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief
Area 2 Planning Division

Shahriar Etemadi, Planning Supervisor, I-270 Corridor Team
Area 2 Planning Division

FROM: N.Y. Nkosi Yearwood, Senior Planner, I-270 Corridor Team (301.495.1332)
Area 2 Planning Division

SUBJECT: City of Rockville Annexation Petition ANX2011-00140 located at the northeastern quadrant of East Gude Drive and Southlawn Lane in the Upper Rock Creek Master Plan area; reclassification from the County's Heavy Industrial (I-2) zone to the City's Mixed Use Employment (MXE) zone.

STAFF RECOMMENATION: Approval to transmit of the following comments to the City of Rockville's Mayor and City Council to be included as part of the public hearing record:

1. The Montgomery County Council must review this annexation petition prior to action by the City since the Mixed Use Employment (MXE) zone permits uses that are different than the County's Heavy Industrial (I-2) zone. To meet the requirements of Section 23-A of the Annotated Code of Maryland, the County Council must approve the proposed zoning change.
2. Staff recommends that the County Council should grant specific approval of the new zoning classification. Further, annexation will rectify the property's zoning anomaly where the property is split zoned between the County and City.

BACKGROUND AND LOCATION

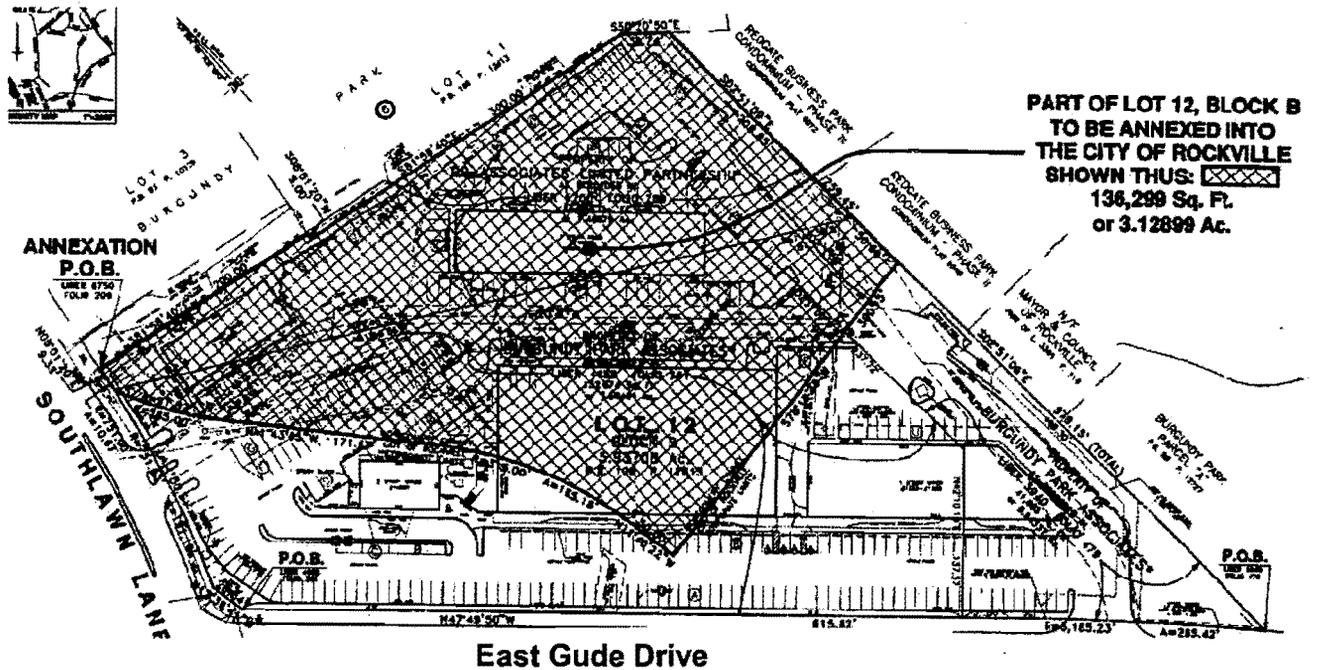
The subject property is located at 1300-1314 East Gude Drive and 14803, 14805, 14809 Southlawn Lane at the northeastern quadrant of intersection of Southlawn Lane and East Gude Drive. It is identified as "Part of Lot 12, Block B, Burgundy Park, as recorded in Plat Book 108, at Plat 12613" in Montgomery County land records. There are several commercial uses on the property, including a restaurant and an office on the property. The annexation will encompass 3.12 acres of the 3.5-acre property. A portion of the property is in the County's Heavy Industrial (I-2) zone, while another segment is within the City limits.

Properties to the northwest and northeast of the subject property are mostly light industrial uses in the County's Heavy Industrial (I-2) zone, while the property at 1298 Gude Drive, an Exxon Gas station, is in the City's Light Industrial (I-L) zone.

The southeastern quadrant of Southlawn Lane and Gude Drive is in the City limits with several automotive uses, and a large segment of the southwestern area between Dover Road and Southlawn Lane is also in the City's I-L zone. Properties that front Gude Drive, between Southlawn Lane and Dover Road, are in the County's Heavy Industrial (I-2) zone.

ANNEXATION PETITION

The City of Rockville Mayor and Council, on March 28, 2011, introduced a resolution to expand the City's limits by annexing a portion of Lot 12, Block B, Burgundy Park, which is located at 1300-1314 East Gude Drive and 14803, 14805, 14809 Southlawn Lane in the Upper Rock Creek Master Plan area. This petition will classify the subject property from the County's Heavy Industrial (I-2) zone to the City's Mixed Use Employment (MXE) zone. The existing property is split zone between the two jurisdictions. This annexation will allow the entire property to be located within the City limits. No new development is associated with the annexation petition, and the petition is within the City's Maximum Expansion Limits (MEL). The annexation area is indicated on the map below.



MASTER PLAN AND ZONING

The subject property is located in the Upper Rock Creek Master Plan area. The Approved and Adopted (2004) Upper Rock Creek Master Plan identified concentrations of "heavy industrial activities are concentrated in an area around the intersection of Gude Drive and Southlawn Lane, near the City of Rockville" (p.33).

The Upper Rock Creek Master Plan acknowledges annexation of heavy industrial zoned properties from the County into the City's industrial zone. It notes that:

The proximity of the Gude Drive-Southlawn Lane area to the City of Rockville has in recent years prompted annexation requests from owners of property zoned for heavy industry, who wanted to take advantage of the city's Service Industrial Zone, which allows a wider array of light industrial and service uses than the County's heavy industrial (I-2) zone. These requests raised concerns about the impact of reductions in the overall inventory of heavy industrial land on the County's ability to provide these important but sometimes unattractive land uses. (p.33)

The Master Plan also notes that segments of Gude Drive and Southlawn Lane area are "...generally light industrial in character, even though parts of the area are classified in the I-2 zone" (p.33). The subject property has commercial and retail uses that do not reflect the general industrial character of the I-2 zone.

The Master Plan supports annexation requests "...west of Gude Drive and along Southlawn Lane, because the area was predominantly light industrial in character. Areas east of Gude Drive should retain their heavy industrial character" (p.33). The submitted annexation is along Southlawn Lane and it will remove a split zoning designation between the County and the City.

Gude Drive-Southlawn Lane Special Study

In 1999, the Montgomery County Planning Board, County Council and City of Rockville established a policy when reviewing annexations of heavy industrial zoned properties in the Gude Drive-Southlawn Lane area. The study concluded that the County and City industrial zones are dissimilar in the ranges of permitted use, and "that it is essential to maintain as much of the current I-2 land as possible in the study area because most land in the I-2 Zone outside the study area is devoted to a narrow range of uses that, in most cases, is likely to continue for some time" (Special Study, p.14).

The Study identified the subject property as retail land use. It stated that:

The southeast quadrant of the intersection of Gude Drive and Southlawn Lane contains the Burgundy Park retail center, which is partially located in the City of Rockville and partially in Montgomery County. The City's portion of the center is in the I-1 Zone, which permits retail uses. The County's portion is in the I-2 Zone, which does not. The center was developed at a time when the I-2 Zone included a range of permitted retail uses. (p.6)

City of Rockville Ordinance No. 36-83

The City in 1983 adopted an Ordinance No. 36-83 that permitted several commercial uses when Burgundy Park Center expanded by 12,512 square feet (see Attachment 2 for Ordinance No. 36-83). Some of the commercial uses allowed are:

- Branch office banks and savings
- General and professional offices, including medical practitioners
- Restaurants

Also, in 1983, the Montgomery County Department of Environmental Protection-Division of Construction Codes Enforcement indicated to the property owner that the commercial uses on the property were grandfathered in the I-2 zone. The letter stated that "...since the older zoning provisions are also grandfathered, the Burgundy Park Center, as situated in the County, can accommodate commercial uses which would not be permitted under the current zoning ordinance" (see Attachment 3 for the County's letter).

Shifting from an industrial zone designation to a mixed-use zone does reduce the overall amount of industrial zoned properties in Upper Rock Creek Plan area. However, the existing uses on the property are commercial in nature and do not reflect the typical uses that are allowed in the I-2 zone. The City's 1983 Ordinance, description in the Special Study, and the Master Plan confirm the existence of commercial uses on this industrial zoned property. Therefore, the request to place the property within the City's Mixed Use Employment (MXE) acknowledges the existing conditions of the site.

ANNOTATED CODE OF MARYLAND

Annexation rules and procedures are established in Annotated Code of Maryland, Article 23A, Section 19. The Code states that:

The legislative body, by whatever name known, of every municipal corporation in this State may enlarge its corporate boundaries as provided in this subheading; but this power shall apply only to land:

- (1) Which is contiguous and adjoining to the existing corporate area; and
- (2) Which does not create any unincorporated area which is bounded on all sides by real property presently within the corporate limits of the municipality, real property proposed to be within the corporate limits of the municipality as a result of the proposed annexation, or any combination of such properties.

This annexation has met these two requirements of the Annotated Code since the property is contiguous and adjoining the City's boundary, and property will be within the corporate limits of the municipality. Further, the subject property is within the maximum expansion limits.

Section 19 (o) of Annotated Code requires the municipality to create an annexation plan. The Annotated Code states that an annexation plan should have the following elements:

- (1) In addition to, but not as a part of the resolution, the legislative body of the municipal corporation shall adopt an annexation plan for the area proposed to be annexed.
- (2) The annexation plan shall be open to public review and discussion at the public hearing, but amendments to the annexation plan may not be construed in any way as an amendment to the resolution, nor may they serve in any manner to cause a reinitiation of the annexation procedure then in process.
- (3) (i) A copy of the annexation plan shall be provided to the governing body of the county or counties in which the municipal corporation is located, the Department of Planning, and any regional and State planning agencies having jurisdictions within the county at least 30 days prior to the holding of the public hearing required by this section.

The City's Planning Commission has approved an annexation plan and recommended approval to the City's Mayor and Council. The Mayor and Council public hearing is scheduled for June 20, 2011.

Different Zoning and Land Use

The State Annotated Code places some restrictions of changes in land use and zoning when a property is annexed into a municipality. Article 23 A, Section 9 (C) (1) states that:

...no municipality annexing land may for a period of five years following an annexation, permit development of the annexed land for land uses substantially different than the use authorized, or at a substantially higher, not to exceed 50%, density than could be granted for the proposed development, in accordance with the zoning classification of the county applicable at the time of the annexation without the express approval of the board of county commissioners or county council of the county in which the municipality is located.

Section 9 (2) of the Annotated Code further states that:

- (2) If the county expressly approves, the municipality, without regard to the provisions of Article 66B, § 4.05(a) of the Code, may place the annexed land in a zoning classification that permits a land use or density different from the land use or density specified in the zoning classification of the county or agency having planning and zoning jurisdiction over the land prior to its annexation applicable at the time of the annexation

The land uses permitted in the City's Mixed Use Employment (MXE) zone are different than the County's I-2 zoning of the property. However, the MXE zone does permit commercial and industrial uses, including light industrial and service industrial uses that

are also in the I-2 zone. Residential development is permitted in the MXE zone, including multifamily dwellings and townhouses, while residential development is excluded from the I-2 zone. There are special regulations, Section 25.13.07 (6) (a) of the City's Code, that govern residential development in the MXE zone.

Development density in each zone is established via building heights, instead of Floor Area Ratio (FAR). The maximum height in the I-2 zone is 70 feet or five stories, while the maximum height in the MXE zone is 120 feet. Other development standards, including setbacks and green area are different. The total open area or green area required for the MXE is 20 percent, while I-2 requirement is 10 percent.

Even though there are common land uses between both zones, there are also differences between the zones. Staff recommends that the County Council should grant specific approval of the new zoning classification. Further, annexation will rectify the property's zoning anomaly where the property is split zoned between the County and City.

TRANSPORTATION

The property fronts onto both East Gude Drive and Southlawn Lane. East Gude Drive (M-23) is classified as a major highway with a 120-foot right-of-way between the CSX Railroad to Southlawn Lane, and Southlawn Lane is classified as an industrial street with a 70 foot right-of-way, between Gude Drive and Avery Road. The Master Plan made no other specific recommendations for either East Gude Drive or Southlawn Lane. A Share Use Path (Class I)-SP51- is recommended for East Gude Drive from the CSX tracks to Southlawn Lane. There are no bikeway recommendations for Southlawn Lane. Future redevelopment of the property will be subject to the transportation procedures established in the City.

ENVIRONMENT

The Master Plan notes the environmental significance of Upper Rock Creek since the "entire area is considered the headwaters of the larger Rock Creek watershed that extends into the District of Columbia, and the northern portion of the Upper Rock Creek Planning Area contains the headwaters of two large tributaries, the Mainstem of Rock Creek and the North Branch of Rock Creek. The Planning Area contains exceptionally healthy aquatic ecosystems. In addition, most of the streams flow into Lakes Needwood and Frank in Rock Creek Regional Park" (p.45).

There are no streams, wetlands or forest on the subject property. A large portion of the property consists of asphalt surface parking. The Master Plan identified the area around Southlawn Lane and East Gude Drive as an Urban Watershed Management Area. This means that the stream conditions in the immediate area are poor; there is a significant percentage of imperviousness in the area; and a significant portion of the drainage is piped.

Future redevelopment of the site should make efforts to minimize the amount of imperviousness through the use of Environmental Site Design (ESD) and other low impact development techniques. Water and sewer service is provided to the site by the Washington Suburban Sanitary Commission (WSSC).

COMMUNITY CONCERNS

Staff has received no letters, emails or phone calls on the proposed annexation.

CONCLUSION

Staff supports the annexation petition since it will remove the split zoning between the County and the City of Rockville. Although the proposed Mixed Use Employment (MXE) zone permits different land uses than the County's Heavy Industrial (I-2) zone, staff believes that the MXE zone reflects a variety of commercial uses that exist on the property, and it does not preclude future light industrial uses that are in the East Gude and Southlawn Lane area.

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Attachments:

1. City of Rockville Annexation Plan
2. City of Rockville Ordinance No. 36-83
3. Montgomery County (1983) Letter

ATTACHMENT 1

**City of Rockville Department of Community Planning and Development Services
Annexation Plan**

May 4, 2011

Subject: Annexation ANX2011-00140

Property Owner: BP Associates Limited Partnership
c/o Robert Eisinger
Promark Real Estate Service, LLC
16220 South Fredrick Avenue, Suite 325
Gaithersburg, MD 20877

Location of Property: East of the intersection of Southlawn Lane and East Gude Drive, 1300-1314 East Gude Drive and 14803, 14805, and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park; known as Burgundy Park Center.

Pursuant to Article 23A, Section 19(o) of the Annotated Code of Maryland, the Annexation Plan shall include a description of the land use pattern proposed for the area to be annexed; demonstrate the available land for public facilities; describe the schedule and anticipated means of financing the extension of services. Herewith is a proposed outline for extension of services and public facilities into the areas proposed to be annexed.

The area proposed for annexation is within the City's Maximum Expansion Limits, as established in the Municipal Growth Element, adopted in December 2010, of the City's Master Plan.

Land Use Patterns of Areas Proposed to be Annexed

The area of annexation is approximately 3.12 acres, which is a portion of Lot 12, Block B of the Burgundy Park subdivision.

The project site is a developed site that is split between the City of Rockville and Montgomery County. Each jurisdiction has established a zoning classification for their respective portions of the site. The zoning is I-2 (Heavy Industrial) within the County, and I-L (Light Industrial) within the City. Neither of these zoning districts is consistent with the current use of the property, which includes office, retail and restaurant uses.

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The property is governed by the County's Upper Rock Creek Master Plan, and is located within the Southlawn/Redgate Planning Area (16) of the City's Comprehensive Master Plan. The recommended land use designation in both documents is Service Industrial. As referenced above, the implementing zoning districts for these use designations applied to the property is I-2 (Heavy Industrial) within the County and I-L (Light Industrial) within the City. However, given the unique nature of the property, there are other adopted studies intended to govern the future use of the site.

Ordinance No. 36-83

In 1983 the Mayor and Council of Rockville adopted Ordinance 36-83 (see Attachment 3), which allowed specific uses to be implemented in conjunction with the development of a 12,512 square foot addition on the site. This application was authorized by a provision within the Zoning Ordinance which allowed improved properties "within and without the corporate limits of the City" to implement certain uses which were allowed at the time of the initial improvements in the County to also be allowed in the portion of the property in the City. Under this provision, the applicant sought permission to allow retail, restaurants, offices and banks with drive-through facilities. These uses were approved for the portion of the property in the City with the adoption of the above-referenced ordinance on October 24, 1983.

Prior to this action, in correspondence dated April 8, 1983 (see Attachment 4), Montgomery County agreed with the proposed uses for the property. In summary, the County stated that the area of the property "in the County is not regulated by the current provisions of the County's I-2 zone....", which did not permit retail, restaurant and office use, but is grandfathered and subject to the I-2 regulations as they existed in 1971. Further the letter states that:

"The cited zoning provisions, which are grandfathered allow commercial uses that are not permitted under the I-2 Zone's current provisions. Since the older zoning provisions are also grandfathered, the Burgundy Park Center, as situated in the County can accommodate commercial uses which would not be permitted under the current zoning ordinance."

Both of these documents support the future use of the property for uses other than light and/or heavy industrial use. Staff feels that the requested



ATTACHMENT 1

MXE zoning district is consistent with the allowed uses identified in the above-referenced documents. The MXE district allows for the underlying light industrial use without precluding the use of the property for office and retail. The Zoning Ordinance provides the following description of the MXE district:

“Intended for areas that are either currently developed or are recommended for development primarily for office, light industrial, and industrial park uses, this zone allows for medium density development of office, retail, and residential uses. A mix of office and residential uses, including live/work and work/live units, is encouraged.”

1999 Gude Drive – Southlawn Lane Special Study

In 1999 the Montgomery County Planning Board approved a special study of the Gude Drive – Southlawn Lane area. The purpose of the study was the establishment of a policy regarding annexations in the study area for properties zoned for heavy industrial use. The study concluded that it was important to maintain as much of the current I-2 zoned land as possible, which is generally along Southlawn Lane north of East Gude Drive. However for the subject property the study concludes that:

“The existing retail center in the southeast quadrant of the intersection of Gude Drive and Southlawn Lane is suitable for light industrial or other service industrial activities.”

The study acknowledges that the City’s service industrial zoning (which was the I-1 Zone at that time) allowed for certain retail functions, while prohibiting heavy industrial uses allowed in the County’s I-2 zone. Based on the study’s concurrence that service industrial use is appropriate for this property, and the fact that the MXE Zone permits service and light industrial uses but not heavy industrial uses, staff is supportive of the requested zoning. The proposed MXE zoning is appropriate for allowing the continuation of the existing uses of the center as permitted uses, as well as providing for the future development of light and service industrial activities in combination.



Adequacy of Public Facilities

Water and Sewer

The Washington Suburban Sanitary Commission (WSSC) currently provides water and sewer services to the properties within the annexation area. Service will continue to be provided by WSSC.

Roads:

The existing public roads are adequate to serve the properties within the annexation area. The site is currently improved and occupied by 5 buildings. No additional development is proposed for the site at this time.

Police Services:

Police protection will primarily be provided by the Rockville Police Department in conjunction with the Montgomery County Police Department. County Police District 1 serves Rockville, though the resources of the entire County Department are available if needed.

Fire, EMS and Rescue Services:

No significant impacts on emergency services are anticipated as result of this annexation since there are no proposed changes to existing uses. The Montgomery County Fire and Emergency Services (MCFRS) provides fire and disaster protection. Rockville does not provide this service as part of municipal government. There are two fire stations in Rockville, and Station 3 serves this area, although other stations are available to supplement service (such as Stations 28 and 25).

School Services:

No impacts on Montgomery County public schools system are anticipated as a result of this annexation since there are no existing residential units and no proposed change to existing uses. The buildings that currently occupy the property are commercial and industrial.

Parks and Recreational/Public Libraries:

Similarly, parks and recreation facility expansion are not proposed for this annexation since no additional impact is anticipated as a result. With no additional residential units proposed, there are no impacts to the Montgomery County Public Library system.

ATTACHMENT 1

Stormwater Management:

If annexed, all properties must pay an annual Stormwater Management Utility Fee in accordance with Section 19-36 of the Rockville City Code. The City Stormwater Management Utility Fee will replace the Water Quality Protection Charge, an annual fee assessed by the Montgomery County Department of Environmental Protection. City of Rockville properties are exempted from the Montgomery County Water Quality Protection Charge.

Impact on Sensitive Environmental Areas:

Since there is no development planned on the site, there are no impacts to the environmental resources on or immediately adjacent to the site.

Cost to the City on having to provide such services:

The City will not incur any significant increases in operational costs as result of the annexation.

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Ordinance No. 36-83ORDINANCE: To grant, in part, Application
SL-1-83, Burgundy Park Associates,
Applicant

WHEREAS, Burgundy Park Associates, c/o William J. Chen, Jr., Esquire, 200A Monroe Street, Rockville, Maryland 20850, filed Application SL-1-83, requesting permission to implement certain additional uses on a 12,512 sq.ft. addition to the Burgundy Park Center located on East Gude Drive and Southlawn Lane, pursuant to Section 1-201(d) of the Zoning and Planning Ordinance; and

WHEREAS, pursuant to Sections 1-201(d)(4) of the Zoning and Planning Ordinance, the Planning Commission, at its meeting of August 31, 1983, reviewed the subject application and forwarded its recommendations thereon to the Mayor and Council; and

WHEREAS, pursuant to Section 1-201(d)(3) of the Zoning and Planning Ordinance, the Mayor and Council gave notice that a public hearing on said application would be held by the Mayor and Council of Rockville in the Council Chamber at Rockville City Hall on September 12, 1983, at 8:30 p.m., or as soon thereafter as may be heard, at which parties in interest and citizens would have an opportunity to be heard; and

WHEREAS, on September 12, 1983, the said application came on for hearing at the time and place indicated in the said notice; and said matter having been fully considered by the Mayor and Council, the Mayor and Council having decided that the approval of this application, in part, as hereinafter described, would promote the health, safety and general welfare of the citizens of the City of Rockville, the Mayor and Council specifically finding, pursuant to Section 1-201(d)(1), based upon the information submitted by the Applicant, the staff report dated August 26, 1983, the Planning Commission report dated September 2, 1983, the public hearing of September 12, 1983, as well as the remaining matters contained in the record on said application, that some of the uses requested by the Applicant, as more particularly

Ordinance No. 36-83

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hereinafter described would not:

1. Adversely affect the health and safety of residents or workers in the area; or
2. Overburden existing public services, including water, sanitary sewer, public roads, storm drainage and other public improvements; or
3. Be detrimental to the use and development of adjacent properties or the neighborhood; or
4. Change the character of the neighborhood in which the uses are proposed considering service currently required, population density, character and number of similar uses.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, as follows:

1. That application SL-1-83, Burgundy Park Associates, be granted, in part, and that the applicant is hereby authorized to implement the following uses, as listed in the Table of Commercial Office and Industrial Uses of the Zoning Ordinance, on the 12,512 square foot addition to the Burgundy Park Center:

- (1) Branch office of banks and savings and loan associations not having drive-in facilities for the transaction of business from motor vehicles;
- (2) Branch office of banks and savings and loan associations having drive-in facilities for the transaction of business from motor vehicles;
- (3) General and professional offices including medical practitioners;
- (4) Restaurants, Class I and Class II, provided that this use shall not be allowed in a free standing building and further provided that no single restaurant either Class I or Class II may occupy more than twenty five percent of the gross floor area of the building on the subject property;

Ordinance No. 36-83

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(5) Retailing of household appliances, provided that no single such use may occupy more than fifteen percent of the gross floor area of the building on the subject property;

(6) Retailing of home furniture and furnishings, provided no single such use may occupy more than fifteen percent of the gross floor area of the building on the subject property;

(7) Retailing of office furniture and furnishings;

(8) Retailing of groceries, provided that not more than five thousand (5,000) square feet of floor area be devoted to each such use;

(9) Retailing of books, magazines and newspapers;

(10) Alcoholic beverages for consumption on the premises of any restaurant or delicatessen;

(11) Alcoholic beverages for consumption off the premises.

2. That the applicant shall submit for approval to the Director of Planning a revised use permit.

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of October 24, 1983.

Nelson M. Neugebauer
City Clerk



Montgomery County Government

April 8, 1983

William J. Chen, Jr., Esq.
Chen, Walsh, and Tecler
200A Monroe Street
Suite 300
Rockville, Maryland 20850

Re: Burgundy Park Center

Dear Mr. Chen:

This letter is to respond to your request that I clarify my letter of January 12, 1983, to Mr. Larry Owens, Zoning Administrator for the City of Rockville. The matter pertains to the proposed addition to 1300 East Gude Drive at Southlawn Lane which is part of a local facility known as the Burgundy Park Center.

Since my letter of January 12, 1983, I have had an opportunity to further review this matter with my staff and the County Attorney's Office. The review indicates that the portion of the Center that is located within Montgomery County is, as to zoning, regulated through Section 59-C-5.422 of the County's Zoning Ordinance. At the time the Center was constructed in 1972 the area located in the County was classified in the County's I-2 zonal district. By virtue of Section 59-C-5.422 the land in the County is deemed to still be classified in the I-2 zone as that zone existed prior to its re-codification on March 16, 1971. In other words, the area in the County is not regulated by the current provisions of the County's I-2 Zone, but is "grandfathered" and regulated by the I-2 Zone's provisions as they existed in 1971. See Section 111-23, Montgomery County Code 1970, as amended.

The cited zoning provisions, which are grandfathered allow commercial uses that are not permitted under the I-2 Zone's current provisions. Since the older zoning provisions are also grandfathered, the Burgundy Park Center, as situated in the County, can accommodate commercial uses which would not be permitted under the current zoning ordinance.

Department of Environmental Protection
Division of Construction Codes Enforcement

Executive Office Building, 101 Monroe Street, Rockville, Maryland 20850, 301/251-2700

William J. Chen, Jr., Esq.
Page Two

Section 111-23, as amended, appears to establish that O'Brien's Barbeque restaurant (including its expansion), a pizza parlor, a seafood restaurant, a fried chicken carryout, an insurance office, and a 7-11 store are permitted uses on the land area of the Burgundy Park Center located in the County, assuming all other ordinance requirements are satisfied.

I hope this clarifies the County's position.

Sincerely,


James M. Hicks, Jr.
Chief

JMH:mc



City of
Rockville
Get Into It

111 Maryland Avenue | Rockville, Maryland 20850-2364 | 240-314-5000
www.rockvillemd.gov

June 9, 2011

The Honorable Valerie Ervin
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

RECEIVED
MONTGOMERY COUNTY
GOVERNMENT

JUN 21 AM 9:19

Re:	Annexation Application No.	ANX2011-00140
	Property	East of the intersection of Southlawn Lane and East Gude Drive, 1300-1314 East Gude Drive and 14803, 14805, and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park; known as Burgundy Park Center.
	Applicant	BP Associates Limited Partnership

Dear Council President Ervin:

Enclosed is the City of Rockville Annexation Plan regarding the above referenced Annexation Petition that is scheduled for public hearing before the Mayor and Council of Rockville on August 1, 2011. A Copy of the Notice of Hearing is also enclosed. Since the petition proposes to place the annexed land in a zoning classification that permits a land use or density different from the land use or density specified in the zoning classification of the county, the County Council must provide express approval, per Article 23A of the Annotated Code of Maryland. The City therefore requests a decision on the proposed zoning from the County Council before the August 1, 2011 public hearing, or as soon as it may be scheduled.

A copy of the Annexation Plan has been provided to the following governing bodies: Montgomery County Council, the Maryland Department of Planning, and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (M-NCPPC) at least 30 days prior to holding the public hearing, as required by state law.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Brenda Fitzpatrick Bean
Deputy City Clerk

Cc: Rollin Stanley, Planning Director, Montgomery County
Enclosures

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City of Rockville Department of Community Planning and Development Services
Annexation Plan

June 7, 2011

Subject: Annexation ANX2011-00140

Property Owner: BP Associates Limited Partnership
c/o Robert Eisinger
Promark Real Estate Service, LLC
16220 South Fredrick Avenue, Suite 325
Gaithersburg, MD 20877

Location of Property: East of the intersection of Southlawn Lane and East Gude Drive, 1300-1314 East Gude Drive and 14803, 14805, and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park; known as Burgundy Park Center.

Pursuant to Article 23A, Section 19(o) of the Annotated Code of Maryland, the Annexation Plan shall include a description of the land use pattern proposed for the area to be annexed; demonstrate the available land for public facilities; describe the schedule and anticipated means of financing the extension of services. Herewith is a proposed outline for extension of services and public facilities into the areas proposed to be annexed.

The area proposed for annexation is within the City's Maximum Expansion Limits, as established in the Municipal Growth Element, adopted in December 2010, of the City's Master Plan.

Land Use Patterns of Areas Proposed to be Annexed

The area of annexation is approximately 3.12 acres, which is a portion of Lot 12, Block B of the Burgundy Park subdivision.

The project site is a developed site that is split between the City of Rockville and Montgomery County. Each jurisdiction has established a zoning classification for their respective portions of the site. The zoning is I-2 (Heavy Industrial) within the County, and I-L (Light Industrial) within the City. Neither of these zoning districts is consistent with the current use of the property, which includes office, retail and restaurant uses.

The property is governed by the County's Upper Rock Creek Master Plan, and is located within the Southlawn/Redgate Planning Area (16) of the City's Comprehensive Master Plan. The recommended land use designation in both documents is Service Industrial. As referenced above, the implementing zoning districts for these use designations applied to the property is I-2 (Heavy Industrial) within the County and I-L (Light Industrial) within the City. However, given the unique nature of the property, there are other adopted studies intended to govern the future use of the site.

Ordinance No. 36-83

In 1983 the Mayor and Council of Rockville adopted Ordinance 36-83 (see Attachment 3), which allowed specific uses to be implemented in conjunction with the development of a 12,512 square foot addition on the site. This application was authorized by a provision within the Zoning Ordinance which allowed improved properties "within and without the corporate limits of the City" to implement certain uses which were allowed at the time of the initial improvements in the County to also be allowed in the portion of the property in the City. Under this provision, the applicant sought permission to allow retail, restaurants, offices and banks with drive-through facilities. These uses were approved for the portion of the property in the City with the adoption of the above-referenced ordinance on October 24, 1983.

Prior to this action, in correspondence dated April 8, 1983 (see Attachment 4), Montgomery County agreed with the proposed uses for the property. In summary, the County stated that the area of the property "in the County is not regulated by the current provisions of the County's I-2 zone....", which did not permit retail, restaurant and office use, but is grandfathered and subject to the I-2 regulations as they existed in 1971. Further the letter states that:

"The cited zoning provisions, which are grandfathered allow commercial uses that are not permitted under the I-2 Zone's current provisions. Since the older zoning provisions are also grandfathered, the Burgundy Park Center, as situated in the County can accommodate commercial uses which would not be permitted under the current zoning ordinance."

Both of these documents support the future use of the property for uses other than light and/or heavy industrial use. Staff feels that the requested

MXE zoning district is consistent with the allowed uses identified in the above-referenced documents. The MXE district allows for the underlying light industrial use without precluding the use of the property for office and retail. The Zoning Ordinance provides the following description of the MXE district:

"Intended for areas that are either currently developed or are recommended for development primarily for office, light industrial, and industrial park uses, this zone allows for medium density development of office, retail, and residential uses. A mix of office and residential uses, including live/work and work/live units, is encouraged."

1999 Gude Drive – Southlawn Lane Special Study

In 1999 the Montgomery County Planning Board approved a special study of the Gude Drive – Southlawn Lane area. The purpose of the study was the establishment of a policy regarding annexations in the study area for properties zoned for heavy industrial use. The study concluded that it was important to maintain as much of the current I-2 zoned land as possible, which is generally along Southlawn Lane north of East Gude Drive. However for the subject property the study concludes that:

"The existing retail center in the southeast quadrant of the intersection of Gude Drive and Southlawn Lane is suitable for light industrial or other service industrial activities."

The study acknowledges that the City's service industrial zoning (which was the I-1 Zone at that time) allowed for certain retail functions, while prohibiting heavy industrial uses allowed in the County's I-2 zone. Based on the study's concurrence that service industrial use is appropriate for this property, and the fact that the MXE Zone permits service and light industrial uses but not heavy industrial uses, staff is supportive of the requested zoning. The proposed MXE zoning is appropriate for allowing the continuation of the existing uses of the center as permitted uses, as well as providing for the future development of light and service industrial activities in combination.

Adequacy of Public Facilities

Water and Sewer

The Washington Suburban Sanitary Commission (WSSC) currently provides adequate water and sewer services to the properties within the annexation area. Adequate service will continue to be provided by WSSC.

Roads:

The existing public roads are adequate to serve the properties within the annexation area. The site is currently improved and occupied by 5 buildings. No additional development is proposed for the site at this time.

Police Services:

Police protection will primarily be provided by the Rockville Police Department in conjunction with the Montgomery County Police Department. County Police District 1 serves Rockville, though the resources of the entire County Department are available if needed.

Fire, EMS and Rescue Services:

No significant impacts on emergency services are anticipated as result of this annexation since there are no proposed changes to existing uses. The Montgomery County Fire and Emergency Services (MCFRS) provides fire and disaster protection. Rockville does not provide this service as part of municipal government. There are two fire stations in Rockville, and Station 3 serves this area, although other stations are available to supplement service (such as Stations 28 and 25),

School Services:

No impacts on Montgomery County public schools system are anticipated as a result of this annexation since there are no existing residential units and no proposed change to existing uses. The buildings that currently occupy the property are commercial and industrial.

Parks and Recreational/Public Libraries:

Similarly, parks and recreation facility expansion are not proposed for this annexation since no additional impact is anticipated as a result. With no additional residential units proposed, there are no impacts to the Montgomery County Public Library system.

Stormwater Management:

If annexed, all properties must pay an annual Stormwater Management Utility Fee in accordance with Section 19-36 of the Rockville City Code. The City Stormwater Management Utility Fee will replace the Water Quality Protection Charge, an annual fee assessed by the Montgomery County Department of Environmental Protection. City of Rockville properties are exempted from the Montgomery County Water Quality Protection Charge.

Impact on Sensitive Environmental Areas:

Since there is no development planned on the site, there are no impacts to the environmental resources on or immediately adjacent to the site.

Cost to the City on having to provide such services:

The City will not incur any significant increases in operational costs as result of the annexation.

Metes and Bounds Description

**Part of the Property of
BP ASSOCIATES LIMITED PARTNERSHIP,
a Maryland limited partnership**

**For Annexation Into
The City of Rockville, Montgomery County, Maryland**

All that piece, parcel or tract of land situate, lying and being in the Rockville, Election District, Montgomery County, State of Maryland and being more particularly described as follows:

Being part of Lot 12, Block B as shown on a plat of subdivision entitled "Lots 10, 11, 12 & 13, A Resubdivision of Lots 6, 7, & 9, Burgundy Park" recorded September 10, 1979 in Plat Book 108 as Plat 12613 among the Land Records of Montgomery County, Maryland, said part of Lot 12, Block B being part of the three (3) following conveyances: (1) from WAVERLY ASSOCIATES, INC., a Maryland Corporation to BURGUNDY PARK ASSOCIATES by a deed dated June 23, 1975 and recorded June 26, 1975 in Liber 4655 at Folio 361, (2) from WAVERLY ASSOCIATES, INC. to BURGUNDY PARK ASSOCIATES, a Maryland Limited Partnership by Corporate Deed dated October 4, 1982 and recorded October 6, 1982 in Liber 5940 at Folio 479 and (3) from WAVERLY ASSOCIATES, INC. to BP ASSOCIATES LIMITED PARTNERSHIP, a Maryland limited partnership by Corporate Deed dated May 23, 1985 and recorded May 31, 1985 in Liber 6750 at Folio 209, all among the aforesaid Land Records, said Burgundy Park Associates now known as BP Associates Limited Partnership by virtue of amended and restated limited partnership agreement dated September 11, 1984 and recorded among the corporation records at WMS 565-445.

Beginning for the same at the point of beginning of the aforementioned conveyance recorded in Liber 6750 at Folio 209, being the northwesterly most corner of the aforementioned Lot 12, Block B and being the westerly most common corner of Lots 11 and 12, Block B as shown on the aforementioned Plat 12613 on the westerly right of way line of Southlawn Lane, 80 feet wide, as shown on said plat, thence leaving said westerly right of way line and running with the outlines of said Lot 12, Block B with the first (1st) through fourth (4th) lines of said conveyance and with the common dividing lines of said Lots 11 and 12, Block B the following four (4) courses, in the datum of the Washington Suburban Sanitary Commission as shown on said Plat 12613.

1. South 81°58'40" East, 200.00 feet; thence
2. South 08°01'20" West, 5.00 feet; thence
3. South 81°58'40" East, 300.00 feet; thence

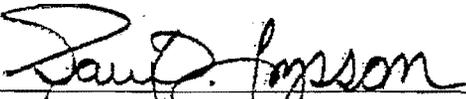
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4. South $50^{\circ}20'50''$ East, 39.74 feet to the end of said fourth (4th) line where the outlines of the aforementioned Lots 11 and 12, Block B cease to be common and the outlines of Lot 12, Block B begin to be common with the southwesterly most line of Lot 15, Block B as shown on a plat of subdivision entitled "Lot 15 Block B, Burgundy Park" recorded in Plat Book 134 as Plat 15578 among the aforementioned Land Records, said southwesterly most line of Lot 15, Block B also being shown on Condominium Plats 5048 through 5050 and 5072 through 5074 entitled "Redgate Business Park Condominium" all recorded among the aforementioned Land Records; thence still with the outline of Lot 12, Block B, with part of said southwesterly line of Lot 15, Block B and with all of the fifth (5th) line of the aforementioned conveyance recorded in Liber 6750 at Folio 209
5. South $02^{\circ}51'09''$ East, 208.85 feet to the end of said fifth (5th) line, also being the beginning of the sixth (6th) line of the aforementioned conveyance recorded in Liber 5940 at Folio 479; thence with part of said sixth (6th) line and the aforementioned common dividing line of Lots 12 and 15, Block B, continuing
6. South $02^{\circ}51'09''$ East, 50.60 feet to a point at the end of the sixteenth (16th) line of a parcel of land annexed into the City of Rockville, Maryland as described in Resolution No. 74-61 adopted by the Mayor and Council of Rockville November 13, 1961; thence leaving the outline of the aforementioned Lot 12, Block B to cross and include a part of said Lot and parts of the first three (3) aforementioned conveyances running with the existing corporate boundaries of the City of Rockville with all of said sixteenth (16th) line, reversed
7. South $78^{\circ} 19' 38''$ West, 300.15 feet to the end thereof at a point on the westerly margin of a previous right of way for a road, thirty (30) feet wide, as shown on a plat of subdivision entitled "Burgundy Park" recorded in Plat Book 1 as Plat 25 among the aforementioned Land Records, abandoned by decree of the Circuit Court of Montgomery County, Maryland in Equity Case 34179; thence with said westerly margin and continuing with the existing corporate boundaries of the City of Rockville and all of the fifteenth (15th) through thirteenth (13th) lines and part of the twelfth (12th) line, of the aforementioned annexed parcel described in Resolution No. 74-61, reversed the following four (4) courses
8. North $11^{\circ} 40' 22''$ West, 50.00 feet to a point; thence

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9. 165.18 feet along the arc of a tangent curve deflecting to the left with a radius of 315.00 feet and having a chord bearing and distance of North 26° 41' 44" West, 163.30 feet to a point; thence on a line tangent to the previously described curve
10. North 41° 43' 05" West, 171.67 feet to a point; thence
11. 91.87 feet along the arc of a tangent curve deflecting to the right with a radius of 285.00 feet and having a chord bearing and distance of North 32° 28' 59" West, 91.48 feet to intersect the aforementioned westerly right of way line of Southlawn Lane, an arc distance of 180.51 feet from the southerly end of curve number two (2) as shown on the aforementioned Plat 12613, said point being the end of the fourth (4th) line of the aforementioned conveyance recorded in Liber 4655 at Folio 361 and the end of the sixth (6th) line of the aforementioned conveyance recorded in Liber 6750 at Folio 209; thence leaving the aforementioned twelfth (12th) line of the annexed parcel, the existing corporate limits of the City of Rockville and the aforementioned westerly margin of the road abandoned by Equity Case 34179 and running with said westerly right of way line of Southlawn Lane and all of the seventh (7th) and eighth (8th) lines of said conveyance recorded in Liber 6750 at Folio 209, the following two (2) courses
12. 10.67 feet along the arc of a curve deflecting to the left, non-tangent to the previously described curve, with a radius of 751.00 feet and having a chord bearing and distance of North 08° 25' 45" East, 10.67 feet; thence on a line tangent to the previously described curve
13. North 08° 01' 20" East, 9.33 feet to the **Point of Beginning** containing 136,299 square feet or 3.12899 acres of land.

I hereby certify that I was in responsible charge over the preparation of the metes and bounds description contained herein and the surveying work reflected in it, all in compliance with the requirements set forth in regulations 09.13.06.08 and 09.13.06.12 of the Code of Maryland Regulation (COMAR) as enacted or amended.


 Gary Dean Simpson
 Property Line Surveyor, MD Reg. No. 514



(27)



NOTICE OF HEARING

Notice is hereby given that the Mayor and Council of Rockville, Maryland will conduct a public hearing on Monday, July 11, 2011, at 7:00 p.m., or as soon thereafter as it may be heard, in the Council Chamber, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850 in connection with Annexation Petition ANX2011-00140, BP Associates Limited Partnership, applicant. Said application requests that the Mayor and Council enlarge the boundaries of the City of Rockville by adding an area of land totaling 3.12 acres of land, more or less, which land is located east of the intersection of Southlawn Lane and East Gude Drive, 1300-1314 East Gude Drive and 14803, 14805, and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park, known as Burgundy Park Center. The proposed zoning under the City of Rockville Zoning Ordinance is MXE (Mixed-Use Employment).

More detailed information can be found on file in the office of the City Clerk or the Planning Division. Persons wishing to have their names placed on the speakers' list for the Mayor and Council hearing are asked to call 240-314-8280 by 4:00 p.m. on the day of the hearing.

MAYOR AND COUNCIL OF ROCKVILLE
By: Glenda P. Evans, City Clerk

Resolution No.: _____
Introduced: _____
Adopted: _____

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

By: District Council

SUBJECT: Approval of the City of Rockville's request to reclassify the Burgundy Park (BP) Associates Limited Partnership property from I-2 to MXE zoning (Annexation Petition ANX2011-00140)

Background

1. Article 23A, Section 9(c) of the Annotated Code of Maryland provides that no municipality annexing land may, for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan without express approval of the County Council.
2. The City of Rockville is proposing to annex approximately 3.12 acres of land located east of the intersection of Southlawn Drive, 1300-1314 East Gude Drive and 14803, 14805 and 14809 Southlawn Lane, part of Lot 12, Block B – Burgundy Park (BP); known as Burgundy Park Center. The site is currently classified in the I-2 zone in Montgomery County. The BP Property is partially in Rockville. The portion in Rockville is zoned Light Industrial (I-L). Neither zone is consistent with the current retail, office, and restaurant use of the property.¹ The Council is asked to approve the City's Mixed Use Employment (MXE) zone, which is consistent with its current use but is substantially different from its current zoning. No additional development is proposed.
3. The Upper Rock Creek Master Plan acknowledged and supported the annexation of BP property by the City of Rockville.
4. The BP Property is within the Maximum Expansion Limits of the City of Rockville.
5. Under the annexation proposal, the BP property would be reclassified to the City's MXE Zone, which allows a mix of residential and commercial uses. No new development of

¹ The Center was developed when a range of retail uses was permitted.

the site is proposed. The change to the MXE zone would constitute a land use for the property substantially different than specified for the property in the Upper Rock Creek Master Plan and therefore the express approval of the County Council is required immediately to dispense with the current zoning limitations on the property.

6. On June 2, 2011, the Montgomery County Planning Board voted to recommend that the Council approve the City's request to change the property's current zoning. The Board recommendation was consistent with the recommendations of the June 9, 2011 Planning Staff report and the recommendation of the County Executive.
7. On July 11, 2011, the Planning, Housing, and Economic Development Committee reviewed the annexation petition and indicated support for the requested reclassification.
8. On July 19, 2011, the County Council reviewed Annexation Petition ANX2011-00140 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee. The Council concluded that the proposed reclassification of the BP Property from the I-2 to the MXE zone should be approved.

Action

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

In accordance with the provisions of Article 23A Section 9(c) of the Annotated Code of Maryland, the District Council approves the reclassification by the City of Rockville of the BP Property from the County's Heavy Industrial (I-2) zone to the City's Mixed Use Employment (MXE) zone.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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