

ALTERNATIVE "A"

Agenda Item # 14

Resolution No: _____

Introduced: March 16, 2010

Adopted: _____

3006.01

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

By: County Council

Subject: APPLICATION NO. G-882 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Stephen Z. Kaufman, Esquire, and Heather Dlhopsky, Esquire, Attorneys for Applicant, Foundation for Advanced Education in the Sciences (FAES), OPINION AND RESOLUTION ON APPLICATION Tax Account Nos. 07-00554887, 07-00555676, 07-00557072, 07-00555370, 07-00554455, 07-00554865, and 07-00554876. Request for Withdrawal Without Prejudice

OPINION

Zoning Application No. G-882, filed May 11, 2009, requested reclassification from the R-60 Zone to the RT-8 Zone of 4.0795 acres of land located at 9204, 9206, 9208, 9214 Cypress Avenue and at 5201 and 5205 Cedar Lane, Bethesda, Maryland, just north of the National Institutes of Health ("NIH") campus.

Technical Staff and the Planning Board reviewed the case and recommended that the application be denied. Numerous letters were filed supporting and opposing the application. Hearings were held on October 26 and October 30, 2009 before the Hearing Examiner. Nine neighbors (including the president of the Maplewood Citizens Association and an expert in real estate appraisals) attended the hearings and testified in opposition.

Various post-hearing submissions were made by the parties, and the record ultimately closed on February 5, 2010. The Hearing Examiner's report was filed on February 12, 2010, recommending disapproval of the application.

On February 17, 2010, the applicant's counsel submitted a letter requesting that the application be withdrawn "without prejudice," meaning without the time limitation that would normally apply under Section 59-H-2.23 to prohibit any other application to re-zone this property for three years from the date of filing or 18 months from the date of District Council action. On March 10, 2010, Tyler Mace, Esquire, who co-chaired the opposition for the Maplewood Citizens Association, filed his opposition to Applicant's request to treat its withdrawal of the application as "without prejudice."

The Hearing Examiner, in a memorandum dated March 10, 2010, recommended that the withdrawal be granted, but not without prejudice. This case has resulted in the expenditure of a great deal of community and governmental resources. Thirty-one letters were received in support of the application and forty-one in opposition. Both Technical Staff and the Planning Board reviewed this case extensively and issued reports recommending denial of the application. Two days of hearings were held by the Hearing Examiner, and nine members of the community (including the president of the Maplewood Citizens Association) took time from their busy schedules to attend and testify in opposition. The Hearing Examiner researched and wrote a detailed, 104 page, review and analysis of the case, which required extensive legal research and review of the legislative history of provisions of the Zoning Ordinance.

Given the extensive expenditure of public resources and community time and effort, withdrawal without prejudice, which would allow the immediate filing of another rezoning application regarding this site, would be against the public interest.

ACTION

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

The Council grants the request to withdraw the cited rezoning application, but such withdrawal shall be with prejudice. Zoning Application No. G-882, requesting reclassification from the R-60 Zone

to the RT-8 Zone of 4.0795 acres (177,703 square feet) of land known as (Part of Lot 7, Lot 8-A, Lot 8-B, Lot 8-C, Lot 8-D, Lot 8-E and Lot 8-F Alta Vista subdivision), located at 9204, 9206, 9208, 9214 Cypress Avenue and 5201, 5205 Cedar Lane, Bethesda, Maryland, is hereby **withdrawn, with prejudice**. The time limitations specified in Section 59-H-2.23 of the Montgomery County Zoning Ordinance shall apply.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

ALTERNATIVE "B"

Agenda Item # 14

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Introduced: March 16, 2010

Adopted: _____

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

By: County Council

Subject: APPLICATION NO. G-882 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Stephen Z. Kaufman, Esquire, and Heather Dlhopsky, Esquire, Attorneys for Applicant, Foundation for Advanced Education in the Sciences (FAES), OPINION AND RESOLUTION ON APPLICATION Tax Account Nos. 07-00554887, 07-00555676, 07-00557072, 07-00555370, 07-00554455, 07-00554865, and 07-00554876. Request for Withdrawal Without Prejudice

OPINION

Zoning Application No. G-882, filed May 11, 2009, requested reclassification from the R-60 Zone to the RT-8 Zone of 4.0795 acres of land located at 9204, 9206, 9208, 9214 Cypress Avenue and at 5201 and 5205 Cedar Lane, Bethesda, Maryland, just north of the National Institutes of Health ("NIH") campus.

Technical Staff and the Planning Board reviewed the case and recommended that the application be denied. Numerous letters were filed supporting and opposing the application. Hearings were held on October 26 and October 30, 2009 before the Hearing Examiner. Nine neighbors (including the president of the Maplewood Citizens Association and an expert in real estate appraisals) attended the hearings and testified in opposition.

Various post-hearing submissions were made by the parties, and the record ultimately closed on February 5, 2010. The Hearing Examiner's report was filed on February 12, 2010, recommending disapproval of the application.

On February 17, 2010, the applicant's counsel submitted a letter requesting that the application be withdrawn "without prejudice," meaning without the time limitation that would normally apply under Section 59-H-2.23 to prohibit any other application to re-zone this property for three years from the date of filing or 18 months from the date of District Council action. On March 10, 2010, Tyler Mace, Esquire, who co-chaired the opposition for the Maplewood Citizens Association, filed his opposition to Applicant's request to treat its withdrawal of the application as "without prejudice."

The Hearing Examiner, in a memorandum dated March 10, 2010, recommended that the withdrawal be granted, but not without prejudice. Both Mr. Mace and the Hearing Examiner opposed the "without prejudice" designation because this case has resulted in the expenditure of a great deal of community and governmental resources. Thirty-one letters were received in support of the application and forty-one in opposition. Both Technical Staff and the Planning Board reviewed this case extensively and issued reports recommending denial of the application. Two days of hearings were held by the Hearing Examiner, and nine members of the community (including the president of the Maplewood Citizens Association) took time from their busy schedules to attend and testify in opposition. The Hearing Examiner researched and wrote a detailed, 104 page, review and analysis of the case, which required extensive legal research and review of the legislative history of provisions of the Zoning Ordinance.

Although there has been an extensive expenditure of public resources and community time and effort, the Council has determined that withdrawal without prejudice should be granted.

ACTION

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

The Council grants the request to withdraw the cited rezoning application, without prejudice. Zoning Application No. G-882, requesting reclassification from the R-60 Zone to the RT-8 Zone of

4.0795 acres (177,703 square feet) of land known as (Part of Lot 7, Lot 8-A, Lot 8-B, Lot 8-C, Lot 8-D, Lot 8-E and Lot 8-F Alta Vista subdivision), located at 9204, 9206, 9208, 9214 Cypress Avenue and 5201, 5205 Cedar Lane, Bethesda, Maryland, is hereby **withdrawn, without prejudice**. The time limitations specified in Section 59-H-2.23 of the Montgomery County Zoning Ordinance shall not apply.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council