

Resolution No.: 16-451
Introduced: February 5, 2008
Adopted: February 5, 2008

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

By: County Council

SUBJECT: APPLICATION NO. DPA 07-2 FOR AMENDMENT TO THE APPROVED DEVELOPMENT PLAN FOR FLOWER HILL PROFESSIONAL CENTER, PARCELS A-3, A-4 AND A-9, C. Robert Dalrymple and Debra S. Borden, Attorneys for Applicant Pettit Companies, OPINION AND RESOLUTION ON APPLICATION.
Tax Account Nos.

OPINION

The original zoning for the Flower Hill Subdivision was approved in 1969 in LMA No. E-772, covering some 249 acres. See Hearing Examiner's Report and Recommendation dated June 11, 1984 in DPA No. 84-1 and LMA Nos. G-420, G-421 and G-422. In a development plan amendment application and three local map amendments granted in 1986, the District Council granted requests to add more acreage to the Flower Hill Subdivision, and to develop part of the existing undeveloped acreage for townhouses. See *id.* The present application, DPA No. 07-2, was filed on March 29, 2007 by Applicant Pettit Companies, an entity owned by the Pettit family, the developer of the Flower Hill Subdivision. The present application requests approval for an amendment to the development plan that was approved in 1985 in connection with Local Map Amendment G-420. G-420 rezoned approximately 62 acres of land from the R-200 Zone to the Planned Neighborhood Zone, adding that acreage to the Flower Hill Subdivision. The site plan approved subsequent to that rezoning designated the subject site for commercial and retail use up to a total of 90,370 square feet. The site plan approval anticipated that additional commercial development might take place on the site, but required a new adequate public facilities review before additional development could be approved or added. The Applicant now seeks to construct 66,000 additional square feet of commercial building space on the subject site.

The Hearing Examiner recommended approval of the proposed Development Plan on grounds that the additional development would not change the character of the site, would be consistent with the purposes and standards of the Planned Neighborhood Zone, would substantially comply with the recommendations of the applicable master plan and would be compatible with surrounding development. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with the Hearing Examiner's conclusions and incorporates her Report and Recommendation of January 16, 2008 herein.

The subject property contains a total of approximately 15 acres of land known as the Flower Hill Professional Center, which was identified as part of Master Plan Parcel 31 in LMA No. G-420. The subject property is located in the southwest corner of the intersection of Woodfield Road (MD 124) and Muncaster Mill Road/Snouffer School Road in Gaithersburg. The requested development plan amendment would directly affect only three of the eight parcels contained in the Flower Hill Professional Center (Parcels A-3, A-4 and A-9), but for ease of reference, the entire 15-acre professional center will be referred to as the "subject property" or "subject site." When necessary, the individual parcels proposed for additional development will be referred to by parcel number.

The subject property is almost entirely bordered by roads: Woodfield Road (MD Rte. 124) to the north, Flower Hill Way to the west, Washington Grove Lane along most of the southern boundary, and Muncaster Mill Road to the east, where the property tapers to a point. The property's Washington Grove Lane frontage is occupied by four two-story office buildings, one on Parcel A-3 and three on Parcel A-4. In the north half of the site, along Woodfield Road, are a McDonald's Restaurant at the corner of Woodfield Road and Flower Hill Way (Parcel A-5), a gas station (Parcel A-6), a small bank (Parcel A-7) and a convenience store with a Jerry's Sub Shop (Parcel A-8). Parcel A-9 occupies a triangular piece of land at the northern end of the site and is currently undeveloped, although it was designated on the last approved development plan for a commuter parking lot. The eighth parcel is Parcel A-10, which consists of the interior roadway within the subject property, providing access and circulation throughout the site. The site has a comprehensive network of sidewalks both within the site,

providing pedestrian access among the various buildings, and along the abutting roadways, providing pedestrian access between the site and adjoining developments.

The subject property has no forest stands, specimen trees, streams, wetlands, steep slopes or erodible soils. Vegetation is limited to landscape plantings along sidewalks and in parking areas, as well as grass on the vacant Parcel A-9.

The surrounding area for this application consists of the area roughly bounded by Montgomery County Airpark to the north, Airpark Road to the east, Mid-County Highway to the west and Goshen Road to the northwest. The surrounding area contains a mix of uses and zones. The subject site is bordered on two and two-thirds sides and at the tip of the triangle by public roads. Washington Grove Lane ends in a cul de sac about two-thirds of the way along the property's southern boundary. Past the cul de sac, Parcel A-9 of the subject property abuts vacant land that was part of the MD 124 right-of-way before the road was relocated. The property is still in public ownership, but has been planted in grass and is unused. The right-of-way line is demarcated by a row of telephone poles. On the other side of the old right-of-way from Parcel A-9 is a townhouse community in the R-60 Zone, which is part of the Emory Grove Subdivision. The Emory Grove townhouses sit at a higher elevation than Parcel A-9, estimated to be 20 to 25 feet above the grade of the proposed new office building. See Tr. Dec. 17 at 16-18. They are oriented with the sides or back corners of the townhouses facing the subject property, and the closest townhouse is about 110 feet from the location proposed for the new building on Parcel A-9.

Parcels A-3 and A-4 of the subject property confront single-family detached homes in the Emory Grove subdivision across Washington Grove Lane. These homes are roughly the same distance from the subject property as the townhouses confronting Parcel A-9. Farther south are additional homes in the R-60 Zone.

To the west, across Flower Hill Way, the subject property confronts the Flower Hill Shopping Center in the Planned Neighborhood Zone, which is anchored by a Giant grocery store and owned by a Pettit family company. Beyond the shopping center are residential neighborhoods in the R-

60 Zone. To the north, across Woodfield Road, the subject property confronts townhouses in the Planned Neighborhood Zone that are part of the Flower Hill Subdivision. Farther north is the bulk of the Flower Hill Subdivision, consisting of a variety of housing types in the Planned Neighborhood Zone, with two parks and a school. To the east, the triangle-tip of the subject property points towards the intersection of Woodfield Road with Muncaster Mill Road (to the south) and Snouffer School Road (to the north). North of this intersection is the Montgomery County Airpark, and to the northeast are properties in the C-1 (Convenience Commercial) and C-T (Commercial, Transitional) Zones.

The Applicant has experienced a low vacancy rate at the subject site for the past several years, accompanied by requests from several tenants for additional space and for a sit-down restaurant on site. In response, the Applicant proposes to add three buildings to the subject commercial center, for a total of 66,000 additional square feet. The buildings are intended primarily for commercial office use, but the Applicant hopes to attract a sit-down restaurant and to provide a larger space for a health and fitness club that currently occupies eight units in another building on site. One building is proposed for Parcel A-3, adjacent to an existing office building. The second building is proposed for Parcel A-4, across a surface parking area from three existing office buildings. On both of these parcels, the new buildings would replace surface parking spaces that the Applicant and Technical Staff consider to be in excess of the site's needs. The new building on Parcel A-4 would also include underground parking spaces, taking advantage of a change in grade that allows a third story visible only from the north. On the currently vacant Parcel A-9, the Applicant proposes to build a new office building, associated surface parking, drive aisles and walkways, and an above-ground stormwater management quality control facility.

Pursuant to Code § 59-D-1.11, development under the Planned Neighborhood Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the zone. This development plan must contain several elements, including a land use plan showing site access, the locations and uses of all buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to

public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. Additional required submissions include a natural resources inventory/forest stand delineation and an “economic analysis supporting the inclusion of any proposed local commercial facilities as permitted in” the zone. Code §59-D-1.3(h).

As a general matter, the development plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The site plan approved by the Planning Board later in the process must conform to all non-illustrative elements of the development plan approved by the District Council. See Code § 59-D-1.2.

The principal component of the development plan amendment proposed in this case is a document entitled “Land Use Plan Amendment,” Exhibit 46, hereinafter referred to as the Development Plan Amendment. This document presents the development plan that was approved in conjunction with LMA No. G-420, revised to show the existing development on the site, the improvements now proposed to be added and a list of textual binding elements. Additional required elements have been submitted in the form of a Development/Land Use Plan for Parcels A-3, A-4, A-8 and A-9 (Ex. 36) which provides a more detailed view of the proposed improvements¹; a zoning map (Ex. 7); a natural resources inventory/forest stand delineation (“NRI/FSD”) (Ex. 8); and two economic analyses of the market for the proposed commercial spaces in the area of the site (Exs. 10 and 42).

The textual binding elements shown on the Development Plan Amendment are reproduced on the next page.

¹ Parcel A-8 is referenced as part of the Amendment Area for purposes of parking calculations.

Textual Binding Elements from Development Plan Amendment, Ex. 46

BINDING ELEMENTS

1. The development is limited to an additional 66,000 square feet of commercial uses for an estimated total of 168,000 square feet (total on Parcels A-3 thru A-9) to be confirmed or adjusted at APF review. Parcel A-8 is shown on this Plan for the purposes of parking calculations only.
2. ^{total new} The development is limited to those commercial uses, which would generate no greater than 134 additional new morning peak hour vehicular trips and 139 additional new evening peak hour vehicular trips, resulting in a maximum of 3 additional buildings.
3. The Applicant shall submit a Landscape Plan to be approved in conjunction with site plan approval.
4. The area of the Project intended for common or quasi-public use is noted and shown as Parcel A-10. Parcel A-10 is owned by the Flower Hill Business Association (the "Association"), which has sole responsibility for maintenance and repair of Parcel A-10. Covenants applicable to all parcels of the Property were recorded on September 11, 1990 at Liber 9473, folio 324 in the Land Records of Montgomery County, Maryland. The Applicant is a participating member of the Association.
5. Access to the Project shall be by seven (five existing and two proposed) vehicular entrances and exits. Three entrances/exits are on Woodfield Road, two existing and one proposed (right-in right-out or right-out to be confirmed at Site Plan), on the north side of the Property, leading to a private access road which runs the length of Parcel A-10. On the South side of the Property, there are two existing entrances/exits from Washington Grove Road and one proposed entrance/exit directly connected to Parcel A-9. On the west side of the Property there is one existing entrance/exit on Flower Hill Way. Cross easements for parking and access applicable to all parcels on the Property were recorded in the Land Records of Montgomery County, Maryland at on September 11, 1990 at Liber 9473, folio 324.
6. The maximum building coverage on Parcels A-3, A-4, A-8, & A-9 will be 20% of the total site area of Parcels A-3, A-4, A-8, & A-9.
7. The minimum setbacks will be 70 feet from Woodfield Road, 15 feet from Washington Grove Road, and 15 feet from Flower Hill Way.

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with use and density indicated in the sector plan. The Hearing Examiner, the Planning Board and Technical Staff found that the proposed development would be in substantial compliance with the use and density indicated in the Master Plan. The District Council agrees. The 1985 *Approved and Adopted Gaithersburg Vicinity Master Plan* (the "Master Plan") specifically recommended the subject site for retail/commercial use under the Planned Neighborhood zoning classification to serve existing and future residential development. The evidence amply demonstrates that the proposed development, as an expansion of the existing commercial center, would be consistent with these specific land use recommendations. The District Council agrees with the Hearing Examiner that the concerns raised by Technical Staff, which address compatibility through the Master Plan's zoning recommendation, are misplaced. The evidence supports a finding of compatibility based on the submitted Development Plan Amendment, and any additional landscaping, sidewalks or other minor changes may be required during subdivision review, at the discretion of the Planning Board. After a careful review of all of the evidence pertaining to the Master Plan, the District Council is persuaded that the proposed Development Plan Amendment would be consistent with the applicable Master Plan recommendations, including the specific recommendations as to use. The Master Plan does not suggest a recommended level of density, allowing density to be determined based on compatibility with adjacent development and the needs of the community.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program.

§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

1. The Purpose Clause

The purpose clause for the Planned Neighborhood Zone is set forth in full below, quoting from Section 59-C-7.31.

It is the purpose of this section to provide a method which will facilitate the construction of residential neighborhoods in the county in accordance with good planning principles. The principles, which it is the purpose and intention of this section to encourage and require in planning of such neighborhoods,

are based on the assumption that a neighborhood is an urban area within which the residents may all conveniently share common services and facilities. In order to make this possible, the following conditions should exist:

- (a) The size of the neighborhood should be such as will provide a child population sufficient to utilize at least one public elementary school of optimum size and location for convenient and economic operation.
- (b) There should be retail shopping facilities adequate to provide for the day-to-day needs of the residents of the neighborhood.
- (c) To the extent possible, all major transportation arteries should be located at the perimeter of the site. Where this is not possible, a grade-separated pedestrian walkway system must be constructed to provide for safe pedestrian crossing of such heavily traveled roadways. In addition, each planned neighborhood must include bikeways, sidewalks and other appropriate walkways to provide for safe, direct and convenient movement of pedestrians to local schools, shopping and recreation areas.
- (d) Moderately priced housing within the means of families of low and moderate incomes should be available within the neighborhood.

The District Council finds that by providing a site for commercial uses within close proximity to the residential neighborhoods of Flower Hill, the commercial center on the subject site helps to fulfill the basic purpose of the zone to create urban neighborhoods within which residents may conveniently share common services and facilities. The additional development proposed in the present application would enhance the fulfillment of this purpose by creating space for new or expanded commercial offerings. The present application does not change the size of the residential neighborhoods, the location of major transportation arteries or the availability of moderately priced housing. Accordingly, the only elements of paragraphs (a) through (d) that pertain to this application are the requirement in paragraph (b) for retail shopping facilities adequate to provide for residents' day-to-day needs, and the requirement in paragraph (c) for bikeways, sidewalks and other appropriate walkways to provide for safe, direct and convenient movement of pedestrians to local shopping areas.

The District Council finds that the proposed development would satisfy these elements of the purpose clause by increasing the amount of space available for retail use and expanding the

extensive network of sidewalks that provide for safe, direct and convenient pedestrian access to and within the subject site.

2. Standards and Regulations of the Zone

The applicable standards and regulations of the Planned Neighborhood Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy each of these requirements.²

59-C-7.32. Limitation.

No property shall be placed in a planned neighborhood zone except upon application of a person with a financial, contractual or proprietary interest in the property, notwithstanding any provisions of this chapter to the contrary.

No rezoning is requested in this application.

59-C-7.33. Land uses.

Commercial uses are permitted as follows:

(c) All of the commercial uses permitted in the C-1 zone except commercial, recreational or entertainment establishments may be permitted for an area of not more than 15 acres at any one location if the following conditions are met:

(1) A market analysis of the local trade area, filed as a part of the development plan, indicates a need for the amount of commercial use proposed, and

(2) The adopted master plan recommends commercial use within the area covered by the application, or there are not adequate local shopping areas, existing or proposed on a master plan, within a reasonable distance and with reasonable access from the site.

(3) Rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room may be installed under the guidelines contained in Sec. 59-A-6.14.

The additional development proposed here is similar in character to existing commercial space on the subject site and is consistent with the applicable master plan recommendations. The two submitted market analyses, summarized on pages 31-32 and 38-39 of the Hearing Examiner's report,

² Standards relevant only to residential development are not included in this analysis.

provide an adequate basis for a finding that a need exists for the amount of additional commercial space proposed.

59-C-7.35. Height of buildings.

The heights of all buildings in the planned neighborhood zone shall be consistent with the limitations set in other zoning classifications for areas of similar density or similar use.

Technical Staff considers the C-1 Zone to be indicative of areas that are similar in density or use, and applies the C-1 Zone's 30-foot height limitation within the Planned Neighborhood Zone. See Ex. 33. The testimony and the textual binding elements of the Development Plan Amendment limit the height of the proposed buildings to a maximum of 30 feet, consistent with this requirement.

59-C-7.36. Utility lines.

All utility lines in the planned neighborhood zone shall be placed underground. The developer or subdivider shall ensure final and proper completion and installation of utility lines as provided in the subdivision regulations, being section 50-40(c) of this Code. Street light standards shall be provided by the developer in accordance with the approved site plan.

The Applicant's engineer testified that all utility lines on the subject property are underground, and would remain so with the proposed Development Plan Amendment.

59-C-7.37. Reservation of land.

The Planned Neighborhood Zone requires the reservation of land for public purposes such as schools, roads and parks. All necessary dedications were made in earlier stages of this development, and no new dedications have been requested by the Planning Board or proposed by the Applicant.

3. Compatibility

The "maximum safety, convenience and amenity of residents" portion of 59-D-1.61(b) is not addressed here because the proposed development is not residential in nature. Compatibility, however, is a requirement for every development plan.

The evidence provided by Technical Staff regarding compatibility was somewhat confusing. Staff and the Planning Board recommended approval, suggesting a finding that the proposed

development would be compatible with surrounding land uses. Certain language in the Staff Report, however, suggests that Staff believes changes may be necessary to ensure compatibility. The District Council agrees with the Hearing Examiner that the testimony of the Applicant's land planner, Phil Perrine, demonstrates persuasively that the proposed development would be compatible with surrounding land uses because it would not change the nature of the use, and the closest residential properties would be adequately buffered by distance, topography and existing vegetation.

The single-family homes across Washington Grove Lane would experience no change in the nature of the commercial development across the road or the closeness of the buildings, although there would be an intensification of the density and intensity of use. They would be buffered from any impacts associated with this increase in density by the road right-of-way and existing landscape buffering. The townhouses across the former Rte. 124 right-of-way from Parcel A-9 would clearly experience a change with the construction of an office building and associated parking on land that is currently an open, grassy space. However the townhouses are oriented with their sides or rear corners toward the subject property, making them less sensitive to the use of Parcel A-9 than if their front or rear yards faced the subject site. The proposed building would be no taller than 30 feet in height and would sit approximately 20 to 25 feet lower in grade than the townhouses, making its presence less noticeable than if it were on the same grade. Moreover, the townhouses would be buffered from the impact of the new building and activity by a distance of approximately 110 feet between the new building and the closest townhouse, and by existing trees.

Uses confronting other parts of the site would likely experience little impact from the proposed development, being buffered by significant road rights-of-way, open spaces and intervening buildings. Based on the preponderance of the evidence, the District Council finds that the proposed development would be compatible with surrounding land uses.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The opinions of the Applicant's traffic expert and civil engineer and the depictions on the submitted plans are sufficient to support a conclusion that the proposed circulation

systems and points of external access are safe, adequate and efficient. The vehicular circulation pattern would be largely unchanged from the current condition, although two new access points and an extension of the internal roadway system would be added to serve Parcel A-9. The extensive sidewalk system would be extended to serve each of the new buildings.

§59-D-1.61(d): preservation of natural features. The site's limited natural resources offer little opportunity to preserve natural features. The evidence indicates that grading would be minimized by constructing the proposed building on Parcel A-4 to take advantage of the natural topography, and a sediment control plan would tend to prevent soil erosion during construction. The application has received an exemption from forest conservation requirements. The evidence concerning stormwater management is sufficient to permit a conclusion, in the context of this developed site, which already incorporates stormwater management, that applicable water resource protection requirements would be satisfied.

§59-D-1.61(e): common area maintenance. The Applicant has submitted a copy of an existing Declaration of Covenants for the Flower Hill Business Association, which provides for ownership and perpetual maintenance of common areas on the subject site with financial contributions from each property owner and tenant. This document and the explanatory testimony provided by Mr. Pettit are adequate and sufficient evidence that common areas and quasi-public use spaces will be adequately maintained in perpetuity.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment.

For the reasons stated above and in the Hearing Examiner's report, the District Council agrees with the Planning Board and Technical Staff that the subject application would be in substantial compliance with the recommendations and objectives of the Gaithersburg Master Plan. The positive

recommendations of the Planning Board and Technical Staff also support a conclusion that the proposed development would be in the public interest. For the reasons discussed in Part III.E of the Hearing Examiner's report, the District Council concludes that the preponderance of the evidence fully supports a conclusion that public facilities would be adequate to accommodate the proposed development and would suffer no adverse impact due to implementation of the Development Plan Amendment.

The Applicant's submitted traffic study demonstrates that the proposed development would not cause critical lane volume ("CLV") at any of the studied intersections to exceed the congestion standard established for the relevant policy area, whether the study is reviewed under the 2003-2005 AGP Policy Element in effect when the application was submitted, or the 2007-2009 Growth Policy adopted on November 13, 2007. The subject site is in a policy area that does not required any trip mitigation under the new Policy Area Mobility Test ("PAMP") adopted in the 2007-2009 Growth Policy. Thus, the Applicant's evidence demonstrates compliance with both growth policy tests. Technical Staff found the Applicant's traffic study acceptable and concluded that the proposed development should have no adverse impact on the safety and adequate of the transportation system with the infrastructure improvements typically required by the County and SHA, such as proper turning radii, driveway widths and curb cut requirements.

The traffic study was based on a total of 66,000 square feet of new commercial space, broken down to 59,300 square feet of office, 3,500 square feet of additional health and fitness club space and 3,200 square feet of restaurant use. Those uses were estimated to generate 134 new trips during the morning peak hour and 139 new trips during the evening peak hour. Because the traffic study was based on this specific number of trips, the Applicant has included on the Development Plan Amendment a textual binding element that would limit the additional development on the subject site to uses that generate no more than 134 new trips during the morning peak hour and 139 new trips during the evening peak hour. The Applicant preferred to limit the number of trips rather than committing itself to the specific use and square footage figures that were used in the traffic study. In the District

Council's opinion, limiting the number of new trips will be equally effective as a parameter for subdivision review.

The Applicant's traffic expert opined that the two new access points proposed for the subject property – a right-in, right-out driveway at the north end of the property and a new entrance at the end of the cul de sac on Washington Grove Lane – would provide safe movements, as do the existing access points. He further noted that the site has sidewalks throughout, including along the frontage of all the surrounding roads, as well as lead-in sidewalks at all access points.

The evidence indicates that public water, sewer and other utilities are available on site, and that utilities are all underground as required in the Planned Neighborhood Zone. The commercial development proposed in this application would have no impact on the public schools.

For these reasons and because to grant the instant development plan amendment application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

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:

Development Plan Amendment Application No. DPA 07-2, which seeks to amend the development plan approved in connection with Local Map Amendment No. G-420 to permit the construction of 66,000 additional square feet of commercial building space on Parcel A-3, A-4 and A-9 of the Flower Hill Commercial Center, Tax Account No. 09-02877063, is hereby **approved**, subject to the specifications and requirements of the final submitted Development Plan Amendment, Exhibit 46; provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan Amendment approved by the District Council, Exhibit 46, with the changes to the binding elements that were handwritten at the December 17, 2007 hearing added in the

same type as the existing text, within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer". The signature is written in black ink and is positioned above a horizontal line.

Linda M. Lauer, Clerk of the Council