

Resolution No.: 16-634
Introduced: June 24, 2008
Adopted: June 24, 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. G-875 FOR AMENDMENT TO THE ZONING ORDINANCE
MAP, Jody Kline, Esquire, Attorney for Applicant, Keystone Real Estate Investments,
LLC, OPINION AND RESOLUTION ON APPLICATION
Tax Account No. 04-00776834.

OPINION

Application No. G-875, filed on October 26, 2007, requests reclassification of a 4.26-acre parcel of mostly unimproved land (the "Thomas Somerville Site" in the 2006 Shady Grove Sector Plan) from the R-90 Zone to the PD-35 Zone. The Applicant proposes to develop the property with 156 residential units, including 3 single-family detached units, 36 single-family attached units and a 117 unit, multi-family, four-story building, which will have 20 Moderately Priced Dwelling Units (MPDUs). The property is known as Parcel P146 Derwood (or Parcel P146 Shady Grove Metro); and it is located at Yellowstone Way, on the south side of Redland Road between the CSX Railroad tracks and Crabbs Branch Way, in Derwood, Maryland.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated March 10, 2008, recommended approval (Exhibit 33). The Montgomery County Planning Board ("Planning Board") considered the

application on March 20, 2008 and, by a vote of 3 to 0, also recommended approval, as stated in a memorandum dated March 25, 2008 (Exhibit 35).¹

A public hearing was held April 4, 2008, as scheduled. There was no opposition in this case, and the Shady Grove Advisory Committee indicated to Technical Staff that it supported the proposed rezoning and development plan (Exhibit 33, p. 28), but it did not formally participate in the hearing.² After the submission of some additional documentation, the record closed on May 15, 2008.

The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the PD-35 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-35 Zone has been shown to be in the public interest.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated June 3, 2008, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The 4.26-acre subject property is a trapezoidal parcel located between Redland Road to the north and Chieftain Avenue to the south, with frontages on both streets. The property is bisected into northeastern and southwestern segments by Yellowstone Way, a 60-foot wide secondary residential street. The segment of the property on the east side of Yellowstone Way (approximately 1.3 acres) is unimproved and contains a few trees, brush and grassy area. The segment west of Yellowstone Way (totaling approximately 3.0 acres) contains a paved vehicle storage area and approximately 1.56 acres of low quality

¹ In that same memorandum, the Planning Board noted that it would review the orientation of the single-family houses on Chieftain Avenue at site plan, and a note was added to the revised development plan to so indicate. The Planning Board also mentioned that, at subdivision, it would carefully review some traffic safety issues raised by the community.

² The Advisory Committee also raised some issues with Staff about traffic control and stormwater management, which will be addressed at subdivision.

forest. The site has a very gentle slope (3 to 8%) from the southwest down to the northeast, draining towards the Crabbs Branch regional stormwater management facility, to the northeast. The subject site is not within a Special Protection Area or Primary Management Area, and there are no streams, wetlands, floodplains or steep slopes associated with erodible soils.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommended designating the surrounding area as bounded on the north by Redland Road, on the east by Crabbs Branch Way, on the south by Indianola Drive and on the west by the CSX Railway Tracks. This designation was based on description of the “Metro East—Old Derwood” area in the 2006 Shady Grove Master Plan (p. 31, Density Distribution Map). The Hearing Examiner accepted this definition, as does the District Council.

The surrounding area was described by Technical Staff in its report (Exhibit 33, pp. 6-7):

The land use within the neighborhood boundaries is predominantly residential with single-family detached residences and townhomes. The area also contains a site that is approved for proposed residential development (Baldwin Landing) for 52 single-family detached and townhomes. The area also includes a vehicle emission inspection station and an office building. Outside of the neighborhood boundaries, to the north, is located a large multi-level parking garage that serves the Shady Grove Metro Station located farther northwest. West of the neighborhood across the CSX tracks, a mixture of industrial and commercial uses exist. The areas to the east and south outside of the neighborhood boundaries consist of single-family detached dwellings, townhomes and garden apartments.

Immediately north of the subject site across . . . Redland Road is the Metro parking facility with a multi-level structure and surface parking lot in the TOMX-TDR Zone. To the east, the property abuts a vacant parcel of land owned by Montgomery County in the R-90 Zone. To the south across Chieftain Avenue, confronting the subject property, are single-family homes and the Derwood Bible Church property. The church property is approved for a residential development [*i.e.*, Baldwin Landing] of 52 single-family-detached dwellings and townhomes under the R-90/TDR Zone. To the west, the

property abuts the State Highway Vehicle Emissions Inspection Program Station in the R-90 Zone.

The zoning history was also reported by Technical Staff: The subject property was placed in the R-R Zone when the zone was enacted and mapped in the 1954 Regional District Zoning. The 1958 Countywide Comprehensive Zoning confirmed the R-R zoning of the site. The R-R Zone was renamed R-200 in 1973. The 1971 Sectional Map Amendment (SMA) for Gaithersburg Vicinity (F-657) reclassified the subject property to I-1, and the 1977 Shady Grove Sector Plan confirmed the I-1 Zone for the property. The 2006 Shady Grove Sector Plan recommended a base zone of R-90 and development under the PD-35 Zone by Local Map Amendment. The 2006 Shady Grove SMA implemented the Sector Plan's recommendation for rezoning the property's base zone to R-90.

The development includes 20 (*i.e.*, 13%) Moderately Priced Units (MPDUs), all of which will be located within the multi-family building. The orientation of the three single-family detached units on Chieftain, all of which are three stories tall, will be decided at Site plan, per the wishes of the Planning Board. The townhouse units will be three stories tall in the front and four stories tall in the rear. The design, with the single family units located along Chieftain, is intended to serve as a transition from the single-family homes in the historic Derwood neighborhood across Chieftain, to the larger multifamily building along Redland Road. Walkways provide for the connection within the development to public sidewalks, roadways and public facilities, and to the Shady Grove Metro Station via Redland Road. There will be a large courtyard running from the multi-family building to Chieftain Avenue, another courtyard (or "tot lot") surrounded by the multifamily building and a pocket park on the north side of the site, adjacent to Chieftain Avenue.

Pursuant to Code § 59-D-1.11, development under the PD-35 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-35 Zone. The Development Plan and the Land Use Plan that constitutes one of its primary parts are

binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative and conceptual elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The Development Plan for the present zoning application is contained in Exhibits 54(a) and (b). Exhibit 54(a), the first page of the Development Plan, shows a site layout and all of the textual development data and notes. The second page of the plan, Exhibit 54(b), shows the site layout in greater detail. The proposed Development Plan indicates that the project will be constructed in one phase, that structures shown on the development plan are conceptual and that final lot layouts and setbacks will be determined at site plan review. Technical Staff reports that the proposed development is not dependent on any capital improvements being provided by the County.

As shown in the Applicant's "Development Data," the base density allowed for the site in the PD-35 Zone is 149 units (4.26 acres @ 35 du per acre = 149 units). Because 13% MPDUs (*i.e.*, 20 MPDUs) will be provided, the permitted density is increased by 5%, to a total of 156 units, as provided for under Zoning Ordinance §59-C-7.14(c) and Montgomery County Code §25A-5(c)(3). The development data provided by Applicant will meet the development standards for the PD-35 Zone and the 2006 Shady Grove Sector Plan, including the 50% green area required by the Zone and the four-story height limitation along Redland Road called for in the Sector Plan (p. 41). The project also includes 227 parking spaces, the number called for in the Zoning Ordinance, but that number may be reduced at site plan by up to a 15% credit pursuant to Zoning Ordinance §59-E-3.33.

Applicant has also committed to dedicating, to the public right-of-way, approximately 0.54 acres of land along the site's frontages on Redland Road (.12 acres) and Chieftain Avenue (.42 acres), as specified in the Development Plan.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the PD-35 Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Master Plan and other County Policies.

The first required finding is consistency with the use and density requirements of the Master Plan and with other County plans and policies.³ The subject site is located within the area analyzed in the 2006 Shady Grove Sector Plan. The Sector Plan, at p. 41, specifically addresses the subject site (known as the Thomas Somerville Site in the Sector Plan) with the following recommendations:

This vacant site, approximately 4.2 acres, is divided into two parcels by Yellowstone Way. The eastern parcel is approximately 1.2 acres and the western parcel is three acres. This Plan recommends:

- *Rezoning the site from I-1 to R-90 and permit PD-35 zoning to allow residential development at 35 dwelling units per acre.*
- *Building heights along Redland Road should be no higher than four stories.*
- *Single-family detached or duplex units should front Chieftain Avenue as a transition to the R-200 Old Derwood community and should be no higher than three stories.*
- *Parking for the larger parcel should be structured or located underground within the development.*

The District Council finds that the proposed development would be consistent with the Sector Plan’s use and density recommendations, as well as with its other specific recommendations for the site. The development would make the best use of the Metro’s proximity, and it would provide protection for old Derwood by rezoning this industrial land along Redland Road to a residential zone, as suggested on page 13 in the Sector Plan. The development would provide transition from Derwood and integrate with it.

³ For the reasons stated in the Hearing Examiner’s report (pp. 43-47), the District Council concludes that an evaluation by the Alternative Review Committee (ARC) was not required in this case.

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy. While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case, as spelled out in Zoning Ordinance §59-H-2.4(f).

That section was amended recently by Zoning Text Amendment 07-17.⁴ The amended provision requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." In this case, the application was submitted on October 26, 2007, so the new Growth Policy adopted in November of 2007 will not apply to the rezoning determination; however, the new Growth Policy will be applied at subdivision.

Under both the 2003-05 Growth Policy Element (p.14) and the 2007-2009 Growth Policy, Resolution 16-376, adopted 11/13/07, pp. 22-23, "[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated." There is no such evidence in this case, and the District Council therefore concludes those public facilities are adequate. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in the Hearing Examiner's report. For the reasons stated therein and summarized below, the District Council finds that the proposed development will not unduly burden the County's public facilities.

⁴ Ordinance No: 16-14, effective March 17, 2008.

1. Transportation

Applicant's expert in traffic engineering did a traffic impact study for the subject development (Exhibit 20), following normal Local Area Transportation Review (LATR) procedures in conjunction with Transportation Planning Technical Staff. In the Shady Grove Metro area, the congestion standard was 1,800 critical lane volume (CLV), and it remains so under the new Growth policy. All studied intersections would continue operating below that congestion standard if the proposed development were built. Based on the study, Applicant's traffic engineer concluded that this project would not have a negative impact on the road system or create congested streets. Technical Staff accepted Applicant's traffic study and concluded that minor changes in the dwelling unit configuration would not adversely impact the studied intersections. Thus, LATR was satisfied. Policy Area Mobility Review (PAMR) was created by the new Growth Policy and therefore does not apply to this zoning application.

Based on the foregoing, the District Council finds that Applicant has demonstrated a reasonable probability that available public transportation facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

2. School Capacity:

The subject property is located within the Magruder Cluster. Enrollment at all levels in this cluster "is currently within capacity and is projected to stay within capacity." Montgomery County Public Schools (MCPS) letter attached to Exhibit 33. According to MCPS, the number of anticipated school children from the new development (14 elementary, 10 middle and 8 high school students) will not over-extend that capacity. Thus, the evidence demonstrates a reasonable probability that available public school facilities will be adequate to serve the proposed development.

3. Water and Sewer Service:

Under both the 2003-05 Growth Policy Element (p.14) and the 2007-2009 Growth Policy, Resolution 16-376, adopted 11/13/07, p. 22, "applications must be considered adequately served by water

and sewerage if the subdivision is located in an area in which water and sewer service is presently available, is under construction, [or] is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (*i.e.*, categories I, II, and III)”

Water and sewer services are available to the site. The Washington Suburban Sanitary Commission (WSSC) indicated in a message to Technical Staff that the proposed rezoning “will not impact the WSSC’s systems or facilities.” Attachment to Exhibit 33. The WSSC further noted that water and sewer service to the property had been conceptually approved.

The District Council finds that Applicant has demonstrated a reasonable probability that available water and sewer facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with “other applicable County plans and policies.”

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

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

a. Compliance with the Purposes, Standards and Regulations of the Zone

Planned Development (PD) zones are a special variety of floating zone, with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings.

Section 59-C-7.11, Purpose Clause

The PD Zones have a lengthy purpose clause, Zoning Ordinance §59-C-7.11, which is linked to the goals of the applicable master plan.

As discussed above, the proposed development will be in substantial compliance with the 2006 Shady Grove Sector Plan. Accordingly, the requested reclassification will comply with the first element of the PD Zone's purpose clause by allowing implementation of applicable Master Plan objectives.

The proposed development also complies with the purpose clause of the PD-35 Zone by providing a mix of apartments, townhouses and single family units all in one block, combining optimal land planning and efficiency. Sidewalks and the grid system of streets are provided in accordance with the Sector Plan. There are various open spaces on the site, and a recreation/athletic facility within the multi-family building. Recreation areas will be provided, including a courtyard that runs from Chieftain back to the multi-family building; a parcel at the northwest corner of Chieftain and Yellowstone that is like a pocket park, complimenting a similar corner on the confronting Baldwin Landing property; and a "tot lot" in front of the multi-family building.

The purpose clause calls for an encouragement of social and community interaction. The development plan has buildings and homes fronting sidewalks, and a sidewalk system integrated with the existing community, so there will be a high level of community and social interaction both within this project and between the project and the existing community of Derwood.

There will be a range of housing – multi-family, townhouse and single-family, all within the limitations of the PD Zone. Grading has been minimized in that the slope of the property is accommodated by having a four-story, multi-family building facing Redland Road, with parking beneath it, and by having the townhouse buildings with four stories to the rear and three in the front along the street.

The development will be of sufficient scale to get a variety of unit types with a maximum of safety, convenience and amenities for residents, assuring compatibility and coordination with existing uses.

Finally, the plan will support the comprehensive and systematic development of the county by conforming to the Sector Plan.

As pointed out by Technical Staff (Exhibit 33, p. 11):

Development of the property under the PD-35 zone will provide a range of dwelling types to satisfy the intended purpose of the zone within the immediate neighborhood, which is adjacent to the Shady Grove Metro Station. The proposed development provides for a unified form of development at an overall density and mixture of unit types that are generally consistent with the recommendations of the Shady Grove Sector Plan. The proposed development also encourages maximum social and community interaction through pedestrian and vehicular linkages and as such, it would provide for the safety, convenience and amenity of residents and assure compatibility with the surrounding residential, commercial, industrial and transit oriented uses.

The District Council finds that the subject development will provide the kind of housing mix and general-benefit open space recommended by the Purpose Clause, as well as pedestrian interconnectivity and compatibility with its surroundings.

With regard to compatibility with neighboring properties, Technical Staff stated its opinion that “[t]he proposed development is compatible with existing and future land uses in the area in terms of use, density and bulk. The Applicant has placed specific maximum height limits for the proposed multi-family building and the townhomes to ensure that compatibility exists between the uses being proposed and other uses, existing or proposed, adjacent to the proposed development.” Exhibit 33, p. 15. Based on this record, the District Council finds that the proposed development would be compatible with the neighborhood.

In sum, the proposed development is consistent with the intent and purposes of the PD-35 Zone. We turn next to the “standards and regulations” of the PD-35 Zone.

The standards and regulations of the PD-35 Zone are spelled out in Code Sections 59-C-7.121 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the 2006 Shady Grove Sector Plan, recommends that the subject property be developed under the PD-35 Zone, which permits 35 dwelling units per acre (or more if MPDUs are included on site). Accordingly, this provision is satisfied in this case.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criterion (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” As noted above, the subject property is recommended for the PD-35 Zone by the Master Plan, and contains 4.26 acres. Thus, the base density permitted equals 35×4.26 , which results in a base density of 149 dwelling units. This figure clearly exceeds the 50 dwelling-unit minimum under this requirement. Moreover, the development will actually have a total of 156 units because it is allowed a 7 unit bonus based on its inclusion of 20 MPDUs.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-35 Zone, but it also specifies that a minimum of 50% of the units should be over four stories tall. However, footnote 1 to this section permits the District Council to “waive the percentage requirements for one-family and multiple-family dwelling units, if it finds that a proposed development . . . (b) achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.” Here, the Sector Plan limits building heights along Redland Road to no more than four stories, and units on Chieftain Avenue to no more than three stories. Sector Plan, p. 41. Therefore, the District Council finds that waiver of the over-

four-story minimum requirement is appropriate in this case. The development plan calls for a four-story building on Redland Road and three-story homes on Chieftain, consistent with the Sector Plan.

Section 59-C-7.132 and 7.133, Commercial and Other Uses Permitted

There are no non-residential uses proposed here.

Section 59-C-7.14, Density of Residential Development

The Sector Plan recommends the PD-35 Zone (at p. 41), which is a high-density category permitting a maximum of 35 dwelling units per acre. As noted above, the base density permitted for the acreage in question is 149 units. However, Code §59-C-7.14(c) permits a bonus density if the number of MPDUs provided exceeds 12.5% MPDUs. The subject Development Plan calls for 13% MPDUs and a bonus density of 7 units (5%), for a total of 156 units. Technical Staff reports that “[t]he density requested for this development will not exceed the density permitted.” Exhibit 33, p. 14. The District Council finds that Applicant’s density calculation is consistent with the bonus density permitted under Montgomery County Code §25A-5(c).

Section 59-C-7.15, Compatibility

The Hearing Examiner found that the proposed development will be compatible with other uses existing or proposed in the vicinity of the planned development, and the District Council agrees for the reasons set forth above in the discussion of the Zone’s Purpose Clause. The section also requires that only a single-family detached home be constructed within 100 feet of any adjoining single-family detached zone. The subject site is across the street from some single-family detached homes, but does not adjoin any single-family detached property, so this provision does not apply.

Section 59-C-7.16, Green Area

This section of the Ordinance requires 50% green space for the PD-35 Zone, and the Development Plan satisfies that requirement.

Section 59-C-7.17, Dedication of Land for Public Use

The Applicant's Development Plan (Exhibit 54(a)) indicates that a total of approximately 0.54 acres of land will be newly dedicated to public use along the property's frontages on Redland Road (about 0.12 acres) and Chieftain Avenue (about .42 acres). Technical Staff states, "The application satisfies all public use dedication requirements." Exhibit 33, p. 15. The District Council so finds.

Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. A total of 227 off-street parking spaces are required by Zoning Ordinance §59-E-3.7, and the Development Plan (Exhibit 54(a)) indicates that number will be provided; however, Technical Staff calculated that a 15 percent reduction may apply due to the location of the property within 1,600 feet of a Metro Station (§59-E-3.33(a)). If the amount of parking is reduced by 15% at site plan, then the required parking would be reduced to 193 spaces. Technical Staff determined that "[t]he proposed off-street parking is consistent with zoning ordinance requirements," and the District Council so finds. Ex. 33, p. 16.

In sum, the District Council concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-35 Zone.

b. Safety, Convenience and Amenity of Residents

The next part of "Finding (b)" required by Section 59-D-1.61 is a determination that the proposed development would provide the "maximum safety, convenience, and amenity of the residents." Since this required finding is practically identical with one of the purpose clause requirements for the PD-35 Zone, it has been discussed in that context above. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

c. Compatibility with Adjacent Development

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose

Clause of the PD-35 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.”

Applicant’s traffic engineer opined that the circulation pattern shown in the site plan would be safe, adequate and efficient for the proposed use. Tr. 45. Technical Staff agreed, stating that “[t]he Development Plan also provides an efficient and coordinated vehicular and pedestrian circulation system [and that] review and analysis of the subject proposal by the Transportation Planning staff reveals that the proposed access to the site, as shown on the Development Plan, is safe and adequate.” Exhibit 33, p. 17.

Accordingly, the District Council finds that the proposed circulation systems and site access would be safe, adequate and efficient for both vehicular and pedestrian traffic.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources.

The subject site is not within a Special Protection Area or Primary Management Area, and there are no streams, wetlands, floodplains or steep slopes associated with erodible soils. Exhibit 33, p. 18. There are 1.56 acres of low quality forest. Tr. 78. Applicant has submitted an approved Natural Resources Inventory and Forest Stand Delineation (Exhibit 9), a Stormwater Water Management Concept Plan (Exhibit 15), and a Preliminary Forest Conservation Plan (Exhibit 10), which has been approved in modified form by the Planning Board. Tr. 85-86. Technical Staff reported no environmental issues warranting denial of this application. Moreover, as mentioned in the discussion of the Purpose Clause, above, the project design has minimized grading.

In sum, the District Council finds that Applicant has demonstrated the environmental controls required by “Finding (d).”

§59-D-1.61(e): common area maintenance.

The fifth required finding is “[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.”

Applicant submitted an affidavit from Richard Koch, Applicant’s Managing Member, identifying Applicant’s parent company, BREOF-KREI P146 LLC, as the contract purchaser of the subject site; affirming that Applicant is BREOF-KREI P146 LLC’s authorized agent; and indicating that BREOF-KREI P146 LLC will be responsible for maintenance of the recreational and other common areas until ownership is transferred, at which time documents will be created with provisions assuring continued perpetual maintenance of such areas by the new owner or homeowners association. Exhibit 52(c).

The District Council finds that Applicant has sufficiently demonstrated both its interest in the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The Applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district. [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

The issue of Master Plan conformance was discussed above. As outlined therein, Applicant's proposal is consistent with the recommendations, goals and objectives of the 2006 Shady Grove Sector Plan. The Planning Board and its Technical Staff supported the proposed rezoning, and there has been no opposition to this project. The impact on public facilities was also discussed above. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

The proposed project will bring an attractive residential development within walking distance of a Metro Station, and will provide affordable housing and streetscape improvements.

For the reasons discussed above, the District Council concludes that the proposed development would be in the public interest.

Conclusion

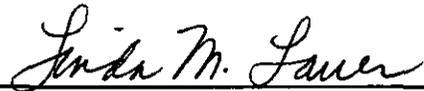
Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the PD-35 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-35 Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved 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:

Zoning Application No. G-875, requesting reclassification from the R-90 Zone to the PD-35 Zone, of a 4.26-acre parcel of land, known as Parcel P146 Shady Grove Metro (Derwood), and located at Yellowstone Way, on the south side of Redland Road between the CSX Railroad tracks and Crabbs Branch Way in Derwood, Maryland, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibits 54(a) and (b), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council