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I. EXECUTIVE SUMMARY

Applicant:	Branch Banking and Trust Company (a/k/a BB&T)
DPA No. & Date of Filing:	DPA 05-2, filed June 1, 2005, by Commerce Bancorp. The Site is now leased by Branch Banking and Trust Company (a/k/a BB&T) which filed a revised SDPA (<i>i.e.</i> , a Schematic Development Plan Amendment) ¹
Zone:	C-T Zone (Commercial-Transitional Zone)
Amendment Sought:	<ul style="list-style-type: none"> To amend a Schematic Development Plan (SDP) approved in 1987 in conjunction with G-540 and modify its binding elements which limit development on Lots 7 and 23; To remove the development limitations on the SDP and to consolidate the Lots 7 and 23 with Lot 22 (adjacent lot zoned C-T in G-229) to allow a construction of a bank on Lots 7, 22, and 23. Re-subdivision of the three lots into two lots.
Existing Schematic Dev. Plan:	The existing SDP has a binding element that restricts the use of Lots 7 and 23 to the re-use, remodeling, or reconstruction of the buildings existing on those lots
Location:	11107 Valley View Avenue, 2907 and 2909 University Boulevard, Kensington, Maryland, in the northeastern quadrant of the intersection of West University Boulevard (MD 193) and Valley View Avenue.
Applicable Master Plan:	1990 Sector Plan for Wheaton Central Business District and Vicinity
Gross Tract Area:	39,102 square feet of land consisting of Lot 7, Lot 22, and Lot 23.
Density Permitted / Planned:	C-T: 0.5 FAR / Planned 0.2 FAR on Lot 1A & 0.13 on Lot 1B
Maximum Building Coverage:	35% maximum in CT Zone / Planned 20% on Lot 1A & 13% on Lot 1B
Green Space Required / Planned:	10% required / 35% planned on Lot 1A & 40% on Lot 1B
Parking Planned:	23 spaces
Building Height Limits / Planned:	C-T: 35 ft / 25 ft. planned on Lot 1A & 20 ft. on Lot 1B
Neighborhood Response:	Initially the Kensington View Civic Association opposed the SDPA, but that has changed to support (Exhibits 76 and 97)
Significant Issue:	Consistency with the Sector Plan
Technical Staff Recommends:	Disapproval
Planning Board Recommends:	Approval, with modifications accepted by Applicant
Hearing Examiner Recommends:	Approval, as modified per Planning Board recommendations

¹ Although labeled "DPA 05-2," this case actually involves a Schematic Development Plan Amendment (SDPA), not a Development Plan Amendment (DPA). The distinction is important because Zoning Ordinance §59-D-1.61 specifies findings the Council must make for a DPA case, which do not apply to an SDPA case. DPA cases involve only zones specified in Zoning Ordinance §59-D-1.1, and none of those zones is involved in this case.

II. STATEMENT OF THE CASE

The case was filed by the original Applicant, Commerce Bancorp, Inc., on June 1, 2005. A hearing was scheduled for January 6, 2006, but was postponed at the former Applicant's request, followed by a long period of inactivity. New documents and plans were submitted on January 8, 2010, amending the application (Exhibit 44) to change the Applicant from Commerce Bancorp, Inc. to the present Applicant, Branch Banking & Trust Company (BB&T), and to revise the proposed Schematic Development Plan Amendment (SDPA). BB&T is the lessee of the site (Exhibit 47(a)).

The Subject Property is located at 11107 Valley View Avenue and 2907 - 2909 University Boulevard, which is in the northeastern quadrant of the intersection of West University Boulevard (MD 193) and Valley View Avenue, in Kensington, Maryland. The site contains 39,102 square feet of land in the C-T (commercial-transitional) Zone and consists of three subdivided lots - Lot 7, Lot 22 and Lot 23, on which three vacant and deteriorating buildings are located. Applicant proposes to construct a 4,080-square foot, 25-foot high bank building, plus four drive-through lanes, which would be under a 1,663-square foot, 16.5-foot high, detached canopy.

Lots 7 and 23 were re-zoned from R-60 to C-T Zone by Local Map Amendment G-540, approved by the District Council on August 3, 1987, under the optional method of rezoning. The Schematic Development Plan (SDP) and covenants (Exhibit 8) which Applicant seeks to amend have a binding element that restricts the use of Lots 7 and 23 to "utilizing the existing structures with improvements for C-T use." Absent approval of the requested SDPA, the existing SDP would prevent construction of the proposed bank building.

Lot 22 had been previously zoned C-T by LMA G-229 in 1980, but that was not done under the optional method of development and, therefore, is not subject to any binding elements at present.² However, it is proposed by BB&T in DPA-05-2 that Lot 22, along with Lots 7 and 23, be made

² The Hearing Examiner takes official notice of the record in the rezoning cases, LMA Nos. G-229 and G-540. Tr. 9.

subject to revised binding elements under the optional method of development, and redeveloped in accordance with the revised SDPA (Exhibit 94(a)).

The Schematic Development Plan Amendment (Exhibit 94(a)) would also require corresponding amendments to the binding elements set forth in the existing covenants (Exhibit 8). To accomplish this change, revised covenants have been executed and filed in the record (Exhibit 100(a)). If the Council approves this SDPA, the revised covenants will be filed in the land records of Montgomery County, pursuant to the requirements of Zoning Ordinance §59-H-2.54(d).

The application for the SDPA was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPCC), and in a report dated September 3, 2010, Staff recommended disapproval (Exhibit 68). Staff felt that the proposed development would conflict with the goals of the 1990 Sector Plan for Wheaton Central Business District and Vicinity and would not fulfill the purpose of the C-T Zone. The Montgomery County Planning Board (“Planning Board”) disagreed with its Technical Staff. The Planning Board considered the application on September 16, 2010, and voted unanimously to recommend approval, but with revisions to Applicant’s proposed binding elements, as stated in the Board’s memorandum dated September 22, 2010 (Exhibit 74). The Planning Board recommended adding binding elements for setbacks and a maximum floor area ratio (FAR) for the smaller proposed lot (Lot 1B). The Board also recommended a condition relating to the rear property line. The Applicant agreed to those changes, and they are embodied in the revised SDPA.

Prior to the hearing, the SDPA was opposed by the Kensington View Civic Association (Exhibits 65 and 69). However, by the date of the hearing, Kensington View changed its mind and supported the application. Tr. 5 and Exhibits 76 and 97. Pre-hearing letters in support were also filed by the adjoining owner of a single-family residence (Exhibit 71(a)); by the Wheaton Urban

District Advisory Committee (Exhibit 71(b)); and by the Wheaton Redevelopment Advisory Committee (Exhibit 71(c)).

The property was posted as required (Exhibit 77), and notice of the hearing was mailed by the Applicant (Exhibit 78). A public hearing began, as scheduled, on September 24, 2010, and it resumed on December 6, 2010, after the final SDPA (Exhibit 94(a)) was filed.³ In addition to Applicant's four witnesses, two witnesses from the Kensington View Civic Association testified in support of the proposal. There were no opposition witnesses. The record remained open until December 17, 2010, to allow Applicant to file revised covenants and to give the parties an opportunity for comment. When Applicant was unable to timely file the revised covenants, the record was reopened and closed again on January 4, 2011, following receipt of the covenants (Exhibit 100(a)) and comments by the parties.

After reviewing the record, the Hearing Examiner concludes that Applicant has demonstrated that the proposed SDPA would be consistent with the purpose of the C-T Zone, compatible with surrounding development and in the public interest. He therefore recommends approval of SDPA 05-2.

III. FACTUAL BACKGROUND AND DISCUSSION OF ISSUES

A. Zoning History

Technical Staff provided the following zoning history of the subject site (Exhibit 68, pp. 4-5):

The site was placed in the R-60 Zone when the zone was enacted and mapped in the 1954 Regional District Zoning. The 1958 County-Wide Comprehensive Zoning confirmed the R-60 zoning of the site. The portion of the property that is currently identified as Lot 22 was reclassified from the R-60 Zone to the C-T Zone (Commercial Transitional) in 1980 by Application No. G-229. On August 3, 1987, the District Council approved Application G-540 with some development restrictions to allow the reclassification of the property currently identified as Lot 7 and Lot 23 from the R-60 Zone to the C-T Zone. The 1990 approved Sector Plan for Wheaton Central Business District and Vicinity retained the subject property in the C-T Zone . . . with [the aforementioned] restriction. . . .

³ Although the hearing resumed on December 6, 2010, there was no testimony taken on that date. The discussion involved solely the question of how to best word the proposed covenants so as to preserve the intention of the parties, and procedural questions relating thereto. Therefore, only the September 24, 2010, transcript is referred to in this report.

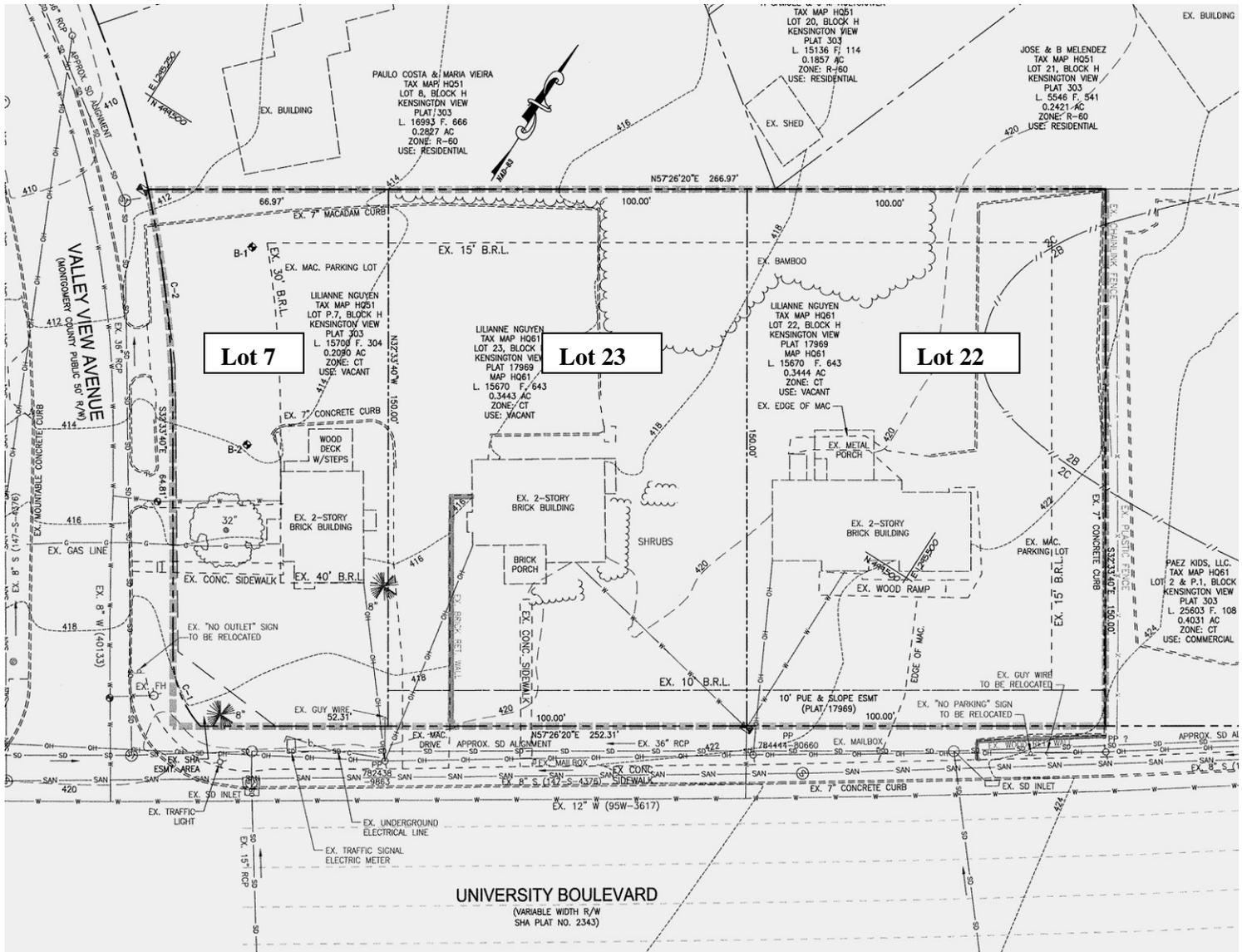
B. Subject Property

The subject property is located in the northeastern quadrant of the intersection of West University Boulevard (MD 193) and Valley View Avenue, in Kensington, Maryland. The site contains 39,102 square feet of land in the C-T (commercial-transitional) Zone and is shown below in a portion of the aerial photo from Exhibit 54:



The property consists of three subdivided lots - Lot 7, Lot 22 and Lot 23, and is improved with three single-family dwellings (one dwelling unit on each of the three lots) that are currently vacant and in a deteriorated condition. Tr. 40. The property has approximately 260 feet of frontage

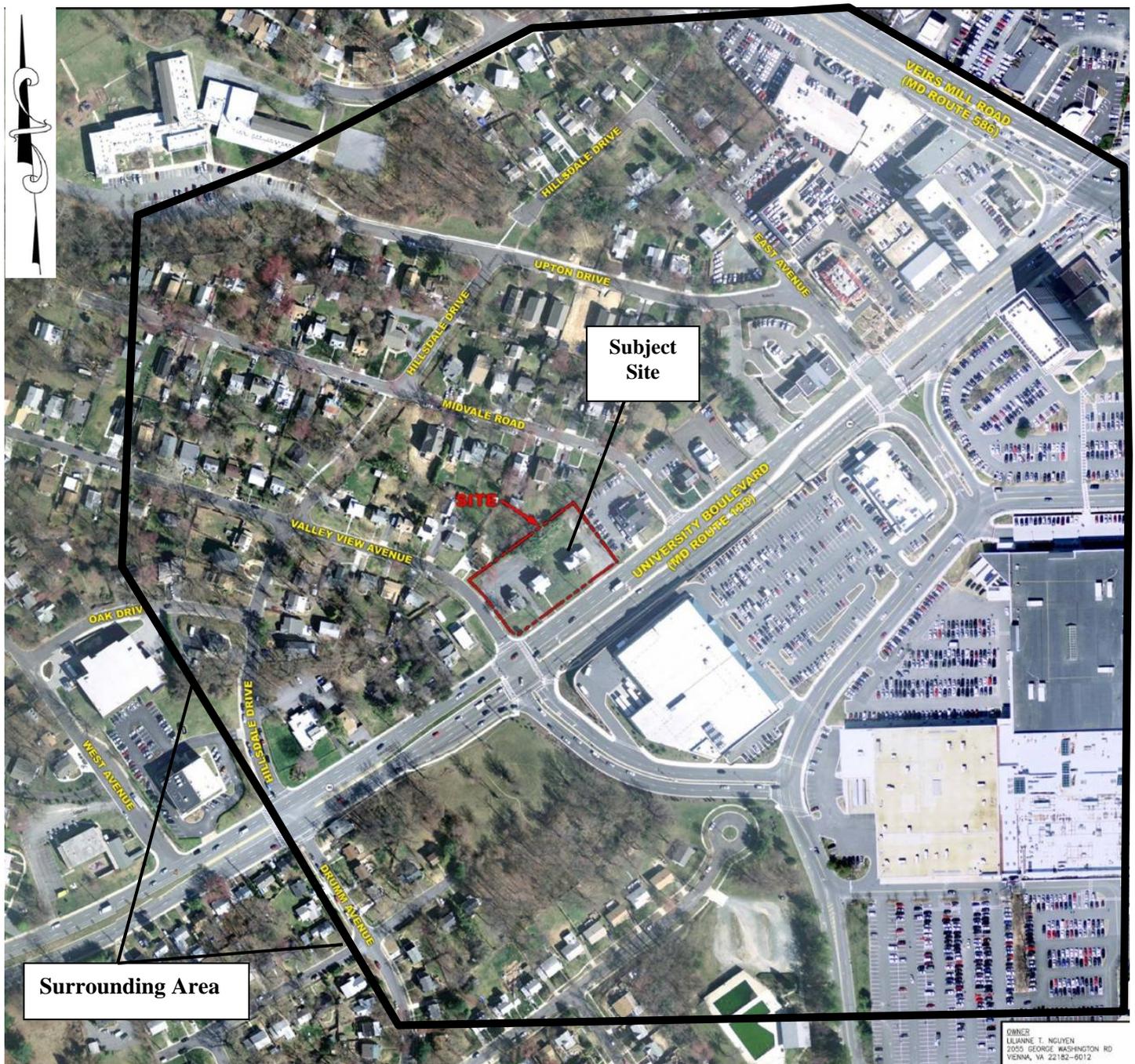
(combined) on University Boulevard and approximately 150 feet of frontage on Valley View Avenue, and it may be accessed from both streets, according to Technical Staff. Exhibit 68, p. 4. The existing lots are depicted in an “Existing Conditions” plan (Exhibit 53(b)):



C. Surrounding Area and Adjacent Development

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 recommends designating the surrounding area as generally defined by the Kensington View Subdivision to the north, Veirs Mill Road to the east, the Westfield Shopping Town Wheaton (Wheaton Plaza) to the south, and Hillsdale Drive and Drumm Avenue to the west. The Applicant agreed with this definition, depicted below (Exhibit 54). Tr. 25.



Since the defined area suggested by Technical Staff appears to cover those who will be most affected by the view of the bank building and by traffic it generates, the Hearing Examiner accepts this definition of the surrounding area.

Technical Staff described existing development within the surrounding area as follows (Exhibit 68, p. 4):

. . . The subject neighborhood is characterized by a mixture of commercial and residential uses. The northern portion of the neighborhood is residentially developed with single-family dwellings in the R-60 Zone. The western portion is also residentially developed in the R-60 Zone with a concentration of special exception uses that are housed in some of the single-family structures north of University Boulevard. The eastern and southern portions of the neighborhood are commercially developed in the C-2 and C-O Zones. Westfield Shopping Town Wheaton, a regional shopping center, is located south of the site and directly across University Boulevard in the C-2 Zone. Properties west of the Shopping Center are residentially developed in the R-60 Zone.

Judy Higgins, who testified on behalf of the Kensington View Civic Association (KVCA), stated that Kensington View is a small community of approximately 160 homes of varying size and age and architecture styles. According to Ms. Higgins, the subdivision has eight roads total, and all of those roads dead end at County property. Tr. 102. Both she and Applicant's land planner, Joe Davis, described the subject site as a gateway to the community. Tr. 85 and 103.

D. Proposed Development

1. Development Concept

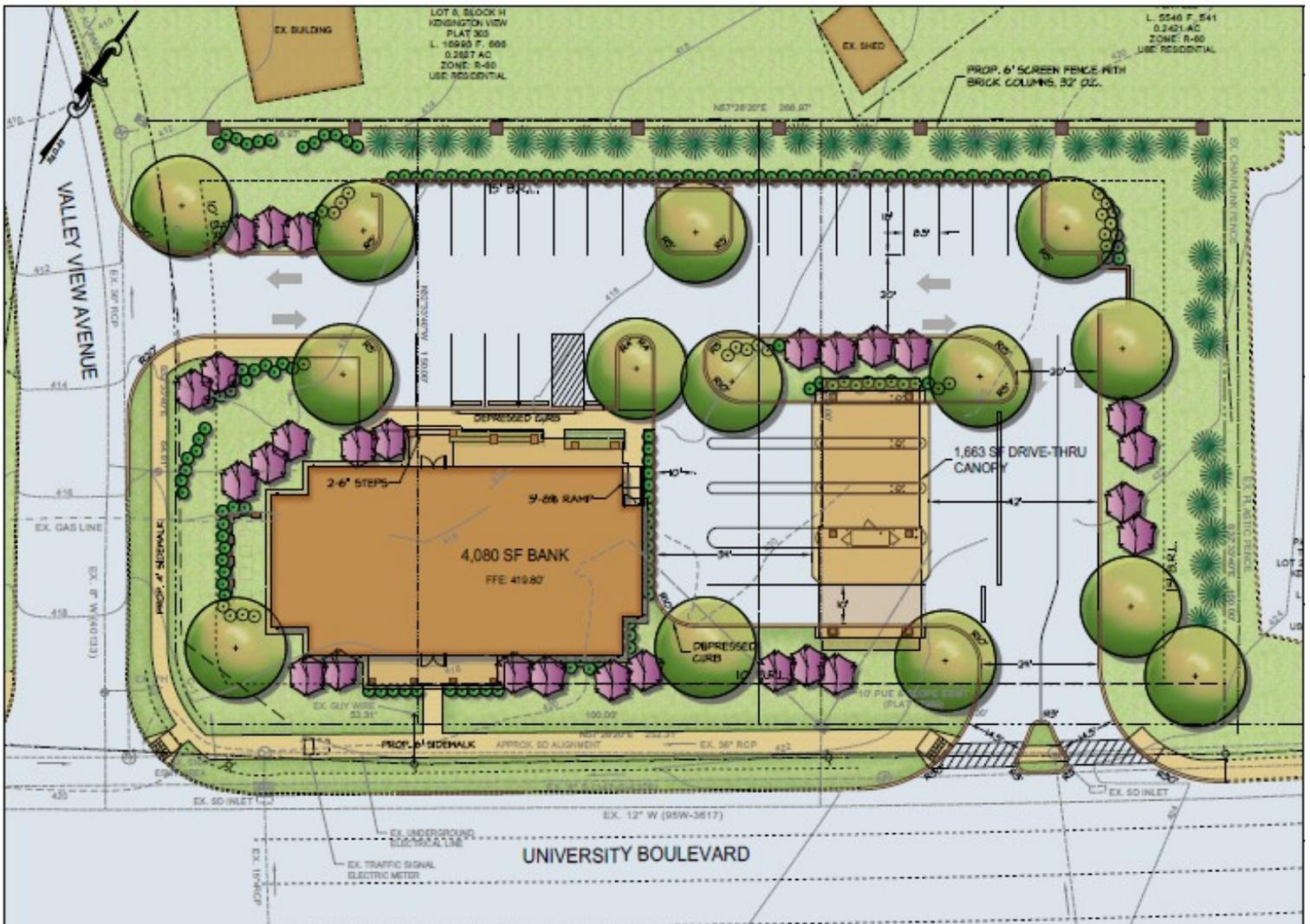
Applicant's development concept for the site was set forth in its Pre-hearing Submission (Exhibit 66(A), pp. 1-3):

The Applicant is requesting an amendment to an approved Schematic Development Plan in accordance with Section 59-H-2.5 of the Montgomery County Zoning Ordinance, to allow for a new commercial bank facility with four (4) drive-thru lanes and one (1) bypass lane on 39,102 square feet of C-T (commercial-transition) zoned property located in the northeastern quadrant of the intersection of West University Boulevard (MD 193) and Valley View Avenue. The total land area of 39,102 square feet consists of three subdivided lots - Lot 7 (9,102 square feet), Lot 22 (15,000

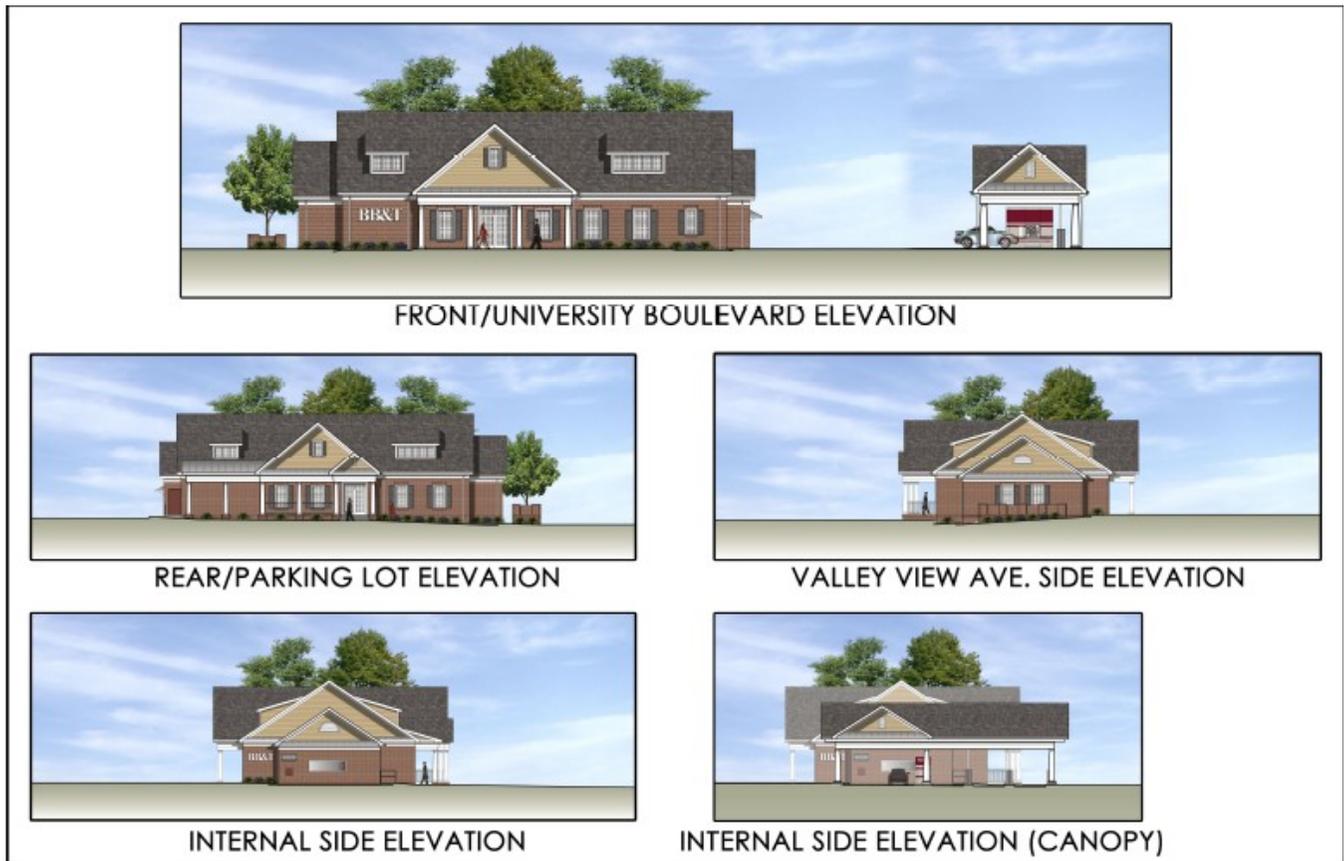
square feet) and Lot 23 (15,000 square feet). Presently the lots are each improved with vacant two-story former single-family detached dwelling units. Two of the lots, 7 and 23, are subject to a binding Schematic Development Plan approved in conjunction with Zoning Application No. G-540 that simply requires reuse/retention of the existing structures on those lots. Under the subject amendment, the Applicant seeks to obtain approval of a new Schematic Development Plan that would apply to all three lots (7, 22, and 23) and to replace the existing binding elements with new, more specific limitations.

The subject Schematic Development Plan amendment seeks approval to raze the existing improvements and redevelop the entire site with a newly constructed branch bank building, detached drive-thru facility and associated surface parking. To do so, the three (3) existing lots are proposed to be re-subdivided into two (2) lots, consisting of a 21,799 square foot corner lot (Proposed Lot 1A) and a 17,303 square foot interior lot (Proposed Lot 1B), as shown on the submitted SDP.

The development concept is depicted in the following rendered SDP (Exhibit 85):



Applicant's vision for the proposed building and canopy is depicted below in the rendered elevations from Exhibit 83:



Richard L. Prosser, a vice-president of BB&T, testified that the proposed bank building does not resemble BB&T's prototypical building; it has been modified greatly to give it a residential look so it can serve as a transition. Applicant tried to create a residential feel with the pitched roof, the dormers on the roof, the use of brick and a residential style window and entrance door. Applicant also tried to pull the same residential elements into the drive-through canopy. Tr. 30.

Applicant's site designer, Timothy Madden further described the proposed building and canopy. The proposal is for 4,080 square foot bank office building on the corner, and a 1,663 square foot canopy that covers the drive through facilities on the property. There will be two separate structures as viewed on the renderings, and Mr. Madden characterized the architectural concept that

has evolved from this project as “very residential in scale.” Tr. 43. It is designed specifically to meet the compatibility standards of the CT Zone. The materials, the cornicing, the height, everything is residential in scale and character. The building is located to provide some buffering in the transition area north of University Boulevard – *i.e.*, between Wheaton Plaza (located on the south side of University Boulevard) and the Kensington View residential community to the north of the site.

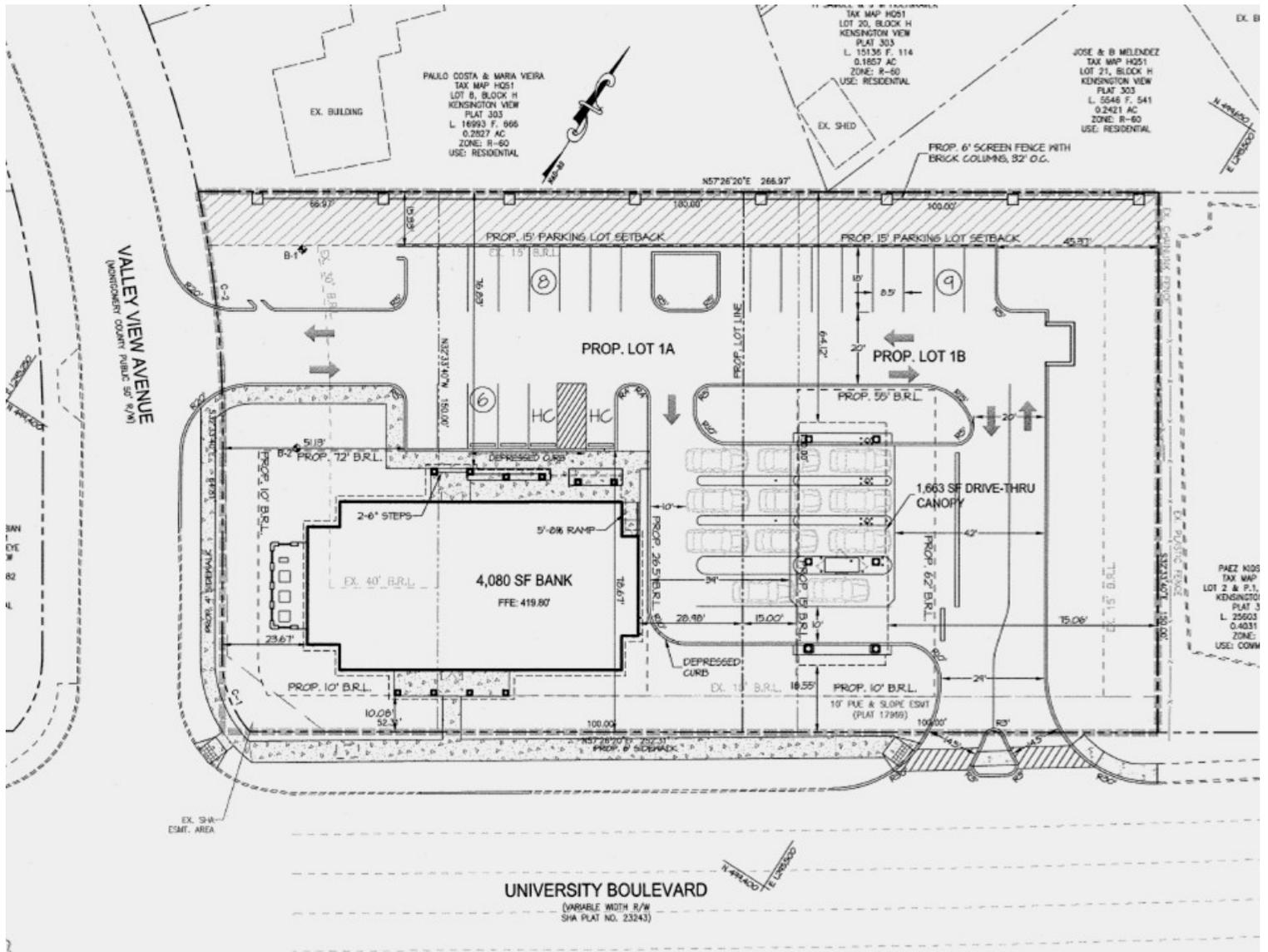
Applicant designed this project with less than the maximum floor area ratio (FAR) allowed, and less than the maximum building coverage allowed. There will be a 15 foot wide green area to the rear (north) of the site and a large green area on the east side of the property. Tr. 43-46. Foundation plantings around the building will be of residential character. Applicant intends to have seasonally flowering vegetation, so it feels more residential in its effect and it softens the building. Applicant also plans to surround that asphalt area with minor flowering trees and evergreen and flowering shrubs to soften the whole effect. In the rear of the site, Applicant proposes multiple layers of screening plant material and low hedge material directly adjacent to the parking area. Larger evergreen trees would be behind that and the six foot height privacy fence in the rear. Tr. 51. These features are depicted in the rendered SDP reproduced on page 11 of this report.

The location of the building and the canopy is designed to provide the functions of vehicular access and egress. There will be a right in, right out entrance on University Boulevard, as far away from the Valley View signalized intersection as possible, to avoid conflicts with stacking at the traffic light. Tr. 43-44.

These design concepts for the proposed structures may be significantly modified at site plan review, but the binding elements, discussed below, will remain. Whether the schematic development plan amendment is compatible with surrounding development and consistent with the applicable Master Plan will be discussed in Part III. E. of this report.

2. Schematic Development Plan Amendment & Binding Elements

Applicant seeks to modify the use of the site, as previously described. To do so, it must obtain approval of an amended SDP (*i.e.*, an SDPA), and revised binding elements, which will also be filed in the County land records following approval of the SDPA. The standards under which the SDPA and its binding elements will be reviewed are the same as those applied to the review of the original SDP, and they will be discussed in Part V of this report. The site layout from the revised SDPA (Exhibit 94(a)) is reproduced below, and text is shown on the following pages:



GENERAL NOTES:

SCALE: 1" = 2,000'

- 1. OWNER (ALL 3 LOTS):
LILIANNE T. NGUYEN
2055 GEORGE WASHINGTON ROAD
VIENNA, VA 22182
- 2. APPLICANT:
BB&T BANK
6400 ARLINGTON BLVD., SUITE 1140
FALLS CHURCH, VA 22042
ATTN: RICHARD PROSSER

- 3. TAX MAP/SUBDIVISION/BLOCK/LOT
HQ51/16/H/P.7
HQ61/16/H/22
HQ61/16/H/23

- 4. LIBER/FOLIO:
LOT P.7: 15700/304
LOTS 22 & 23: 15670-643

- 5. TAX ACCOUNT NUMBERS:
LOT P.7: 13-01026853
LOT 22: 13-02893223
LOT 23: 13-02893234

- 6. TOTAL LOT AREA:
LOT P.7: 0.8977 AC (39,102 SF)
LOT 22: 0.2090 AC (9,102 SF)
LOT 23: 0.3443 AC (15,000 SF)
LOT 23: 0.3444 AC (15,000 SF)

- 7. ZONING (ALL LOTS): C-T

- 8. EXISTING USES: VACANT OFFICE BUILDINGS

- 9. PROPOSED USES: BANK/FINANCIAL INSTITUTION

- 10. PROPOSED LOT AREAS: PROP. - LOT 1A: 21,799 SF PROP. - LOT 1B: 17,303 SF

11. BULK REQUIREMENTS (SEC. 59-C-4.30)	ALLOWED	PROP. - LOT 1A	PROP. - LOT 1B
A. MAX. BUILDING COVERAGE	35%	20%	13%
B. MAX. BUILDING HEIGHT	35'	25'	20'
C. MAX. GROSS FLOOR AREA:	0.5	0.20	0.13
D. MIN. BUILDING SETBACK	ALLOWED	PROP. - LOT 1A	PROP. - LOT 1B
FRONT SETBACK (UNIVERSITY BLVD.)	10'	10'	10'
FRONT SETBACK (VALLEY VIEW AVE.)	10'	10'	N/A
SIDE SETBACK (RESIDENTIAL ZONE - NORTH)	15'	72'	55'
SIDE SETBACK (COMMERCIAL ZONE - EAST)	15'	N/A	62'
FROM PROPOSED LOT LINE	15'	26.5	15'
E. MIN. GREEN AREA:	10%	35%	40%
F. PARKING REQUIREMENTS (2.7 SPACES/1,000 SF):	12 SPACES	23 SPACES (ACROSS BOTH PROP. LOTS)	
G. PARKING SETBACKS:	ALLOWED	PROPOSED - BOTH LOTS	
FROM UNIVERSITY BLVD.	10'	78.67'	
FROM VALLEY VIEW AVE.	10'	51.13'	
FROM RESIDENTIAL ZONE	10'	15.33'	
FROM ADJ. COMM. T.M. HQ61, LOTS 2 & P.1 BLOCK H	4'	45.37'	
FROM PROPOSED LOT LINE	0'	0'	
H. MINIMUM DRIVE AISLES:	20'	20'	

- 12. SEVEN (7) DRIVE-THRU STACKING SPACES HAVE BEEN PROVIDED.
- 13. ALL HANDICAPPED SPACES SHALL MEET MINIMUM ADA ACCESSIBILITY REQUIREMENTS.
- 14. THE PROPOSED BANK WILL BE SERVICED BY PRIVATE WATER & SEWER.
- 15. ALL PROPOSED CONDITIONS ESTABLISHED TO MEET THE BULK REQUIREMENTS AS SPECIFIED UNDER SECTION 59-C-4.30 OF THE MONTGOMERY COUNTY ZONING CODE SHALL BE BINDING ELEMENTS OF THIS APPROVED DEVELOPMENT PLAN AMENDMENT.
- 16. THIS PROPERTY IS EXEMPT FROM THE MONTGOMERY COUNTY FOREST CONSERVATION REQUIREMENTS PER THE APPROVAL LETTER FOR PLAN NO. 42009122E, DATED 02/10/09.

DESIGN CRITERIA FOR SITE PLAN

1. Signage proposed for the site or for any building/structure on the site will not include the term/name "Wheaton".
2. Final locations, sizes and species of landscape materials will be determined at the time of Site Plan review. However, to the extent feasible, best efforts shall be used to place landscaping near/along the interior lot line to help create the perception of two distinct lots.

The new SDP (Exhibit 94(a)) shows one building, a maximum of 25 feet in height, consisting of 4,080 square feet of gross floor area; four (4) drive-thru lanes and a bypass lane with a 1,663 square foot, detached canopy located to the east of the building; 23 parking spaces; and a new six foot high screening fence along the northern lot line of the development. There will be a 15 foot wide landscaped area to the rear of the site, in addition to the aforementioned screening fence, and it is marked on the SDP by the diagonal hatch marks to designate that it is required by one of the binding elements. The Binding Elements are specified on the SDP in the following chart:

CATEGORY	PERMITTED /REQUIRED	BINDING ELEMENT	
		PROPOSED - LOT 1A	PROPOSED - LOT 1B
LAND USE	SEE SEC. 59-C-4.2(e) FOR C-T ZONE	1. Uses Permitted - Bank/Financial Institution 2. Any building or structure must have pitched roofs and be residential in character/style. 3. Running the entire length of the northern boundary of the Subject Property, there will be no other land use than a green space, at least 15' wide, as a buffer to screen the parking/paved area on the Subject Property. Within this green space, which is marked thusly on the SDP  there will be no improvements installed except landscaping, a 6 foot high screen fence, light poles/fixtures, surface drainage facilities and any other features approved/required at the time of Site Plan review.	1. Uses Permitted - Bank/Financial Institution (Drive-Thru Canopy) 2. Any building or structure must have pitched roofs and be residential in character/style. 3. Running the entire length of the northern boundary of the Subject Property, there will be no other land use than a green space, at least 15' wide, as a buffer to screen the parking/paved area on the Subject Property. Within this green space, which is marked thusly on the SDP  there will be no improvements installed except landscaping, a 6 foot high screen fence, light poles/fixtures, surface drainage facilities and any other features approved/required at the time of Site Plan review.
MAX. FLOOR AREA RATIO	0.5	0.2	0.13
MAX. BUILDING COVERAGE	35%	20%	13%
MAX. BUILDING HEIGHT	35'	25'	20'
MIN. GREEN AREA	10%	35%	40%
MIN. BUILDING SETBACKS			
FRONT SETBACK (UNIVERSITY BLVD.)	10'	10'	10'
FRONT SETBACK (VALLEY VIEW AVE.)	10'	10'	N/A
SIDE SETBACK (RESIDENTIAL ZONE-NORTH)	15'	72'	55'
SIDE SETBACK (COMMERCIAL ZONE-EAST)	15'	N/A	62'
FROM PROPOSED LOT LINE	15'	26.5'	15'

The same binding elements chart is contained in the revised covenants (Exhibit 100(a)) which Applicant will file in the County's land records if DPA 05-2 is approved by the Council. These binding elements remove and replace the exiting binding element which restricts development on the site. The existing binding elements included the following restrictive language (Exhibit 8, p.2):

So long as the aforesaid property is zoned C-T, pursuant to the Zoning Ordinance for Montgomery County, Maryland, the use of the land on the aforesaid property will be limited to utilizing the existing structures with improvements for C-T use. The development of the subject property in the C-T Zone is limited to the re-use, remodeling or reconstruction of the two buildings existing on the site at the time the C-T Zoning is granted as provided, Section 59-C-4-3.02 (B), (C) (D) of the Zoning Ordinance of Montgomery County . . .

In addition to removing the quoted restriction, the new binding elements would impose new development limits which would extend to the entire site, inclusive of the land area that comprises current Lot 22, which is presently not subject to a schematic development plan or a declaration of covenants.

The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified in the covenants. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP or the SDPA may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment.

The usual language in such covenants requires that they remain in effect until the property is rezoned or they are amended by the Council or invalidated by a court. At the request of the KVCA, Applicant added the following language to the covenants (Exhibit 100(a), p. 4):

In the event that the Property is zoned to a zoning classification other than the C-T zone, the restrictions on development provided herein shall remain in force and effect to the extent permitted by law; otherwise they shall terminate and have no further force and effect.

These binding elements were designed to keep the location, scale and size of the proposed structures compatible with other properties in the immediate area and to ensure appropriate screening of the site. They were amended, at the suggestion of the Planning Board (Exhibit 74), to address the concerns that had led the Technical Staff to recommend disapproval of the SDPA (Exhibit 68).

Those concerns involve consistency with the Sector Plan and the purposes of the C-T Zone. The Sector Plan and related issues will be discussed in Part III.E. of this report.

Some minor modifications to the proposed binding elements were made at the hearing, and were submitted to Technical Staff for its review. Technical Staff approved the proposed changes, with the following comments (Exhibit 92(a)):

Staff provided estimates for the development standards; however, after meeting with the applicant and reviewing the plan in greater detail, minor modifications are appropriate to the binding elements chart originally proposed by staff. This will allow a greater degree of flexibility during the site plan review while maintaining the intent of the SDP.

* * *

The modifications to the development standards offer the applicant and staff the opportunity for minor changes to the building design and site elements, which is reviewed in greater detail at site plan. The changes are still in conformance with the basic requirements and in most cases are well under the maximums permitted and exceed the minimums required. The maximum building coverage corresponds to the maximum floor area ration in the table.

Please accept the changes to the development standards in order to allow the greatest flexibility during the detailed site plan review.

The Hearing Examiner finds that the proposed Binding Elements and General Notes will achieve the desired end of keeping the location, scale and size of the proposed structures compatible with other properties in the immediate area and will ensure appropriate screening of the site. A final executed copy of the Declaration of Covenants containing the Binding Elements has been filed in the record as Exhibit 100(a).

3. Public Facilities (Water & Sewer Service, School Capacity, Traffic and Parking)

Zoning Ordinance §59-H-2.4(f) 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 . . .”

a. Water and Sewer Service

Technical Staff reports that the property is served by public water and sewer. “The Washington Suburban Sanitary Commission (WSSC) staff has indicated that the changes proposed by this application will not significantly impact the water or sewer systems.” Exhibit 68, pp. 8-9.

b. School Capacity

School capacity is not an issue in this case since no residential buildings are proposed.

c. Traffic, Parking, Access and Site Circulation

Traffic

Glenn E. Cook, Applicant’s transportation expert, testified that he prepared a traffic impact study (Exhibit 66(B)) in conjunction with the application submitted by BB&T. Tr. 87-98.

Transportation planning staff established the scope of the study, as well as a list of developments that had been approved in the area that they wanted included as part of the background traffic conditions.

The traffic study is developed by looking at existing traffic, background traffic, which is existing traffic plus traffic from other approved developments, as well as traffic generated by the subject site. He went through the analysis, conducted traffic counts and did the traffic projections.

This project is located in Kensington/Wheaton area which has a congestion standard of 1600 critical lane volume (CLV). The PAMR (policy area mobility review) requirements have changed slightly, but the local area transportation review (LATR) requirements have not. In the past, PAMR had required 15% mitigation in this area, but now it requires 10 percent.

Mr. Cook testified that all the three study-area intersections are operating well below the congestion standard of 1600. In fact, none of them even exceeds 1000 CLVs per hour. So, from a local area transportation review (LATR) standpoint, the roadway is adequate to handle the additional traffic generated by the bank. A drive-in bank generates two types of traffic – new trips, which include people who come from their homes and just make a trip to the bank, and pass-by trips, which

include people that are already on the road network and happen to stop by the bank on their way to work, shopping, school or the like. The number of new trips that the bank would generate would be 52 in the morning and 57 during the evening peak hour. His findings are reflected in the following table from the Technical Staff report (Exhibit 68, p. 9):

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
SDPA 05-2; PROPOSED BB&T BANK, WHEATON**

Proposed Density	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
4,180 SF Drive-In bank						
“New” or “Primary” Trips – (100% AM/53% PM)	29	23	52	28	29	57
“Pass-by”/“Diverted” Trips – (0% AM/47% PM)	--	--	--	26	25	51
Total Site Trips	29	23	52	54	54	108

Source: The Traffic Group, Inc., BB&T Wheaton Branch Bank – Traffic Impact Analysis, March 17, 2010.

Note: Site trip generation based on ITE Land Use Code 912; Drive In Bank. ITE Trip Generation 8th Edition.

Factoring in all of these new trips, the intersections all came in well below the congestion standard that was established for this area, as shown in the following table from the Staff report. Ex. 68, p. 10.

**TABLE 2
SUMMARY OF INTERSECTION CAPACITY CALCULATIONS
SDPA 05-2; PROPOSED BB&T BANK, WHEATON**

Intersection	Traffic Conditions					
	Existing		Background		Total	
	AM	PM	AM	PM	AM	PM
MD 193 and Newport Mill Rd/Lexington St	690	715	693	722	696	731
MD 193 and Valleyview Ave/Mall Access	389	656	392	665	428	699
MD 193 and East Ave/Mall Access	561	697	564	706	569	711
MD 193 and Site Driveway	--	--	--	--	375	299
Valleyview Ave and Site Driveway	--	--	--	--	46	74

Source: The Traffic Group, Inc., BB&T Wheaton Branch Bank – Traffic Impact Analysis, March 17, 2010.

Note: Congestion Standard for Wheaton CBD Policy Area: 1,800 CLV.

Mr. Cook concluded that the site met the test for the local area transportation review, and he submitted that information to the transportation planning staff, who in turn submitted it to the State Highway Administration. He received comments back from both of them, and he testified that they both agreed with the conclusions of his report.

Mr. Cook also looked at the PAMR requirements for the policy area. Based on the new traffic that will be generated (the PAMR requirement is based only on new trips in the study area, not pass-by trips), Applicant's mitigation obligation is six trips. The County PAMR regulations allow Applicant to pay \$11,300 for each trip, and therefore, BB&T would make a payment to the County to offset the PAMR requirements for the site.

At the request of Technical Staff, Mr. Cook also did a queuing analysis along Valley View Avenue. There was some concern that if the volume of traffic generated by the site all utilized Valley View Avenue, there could be potential queuing of vehicles back from the light to block the driveway that is proposed on the east side of Valley View. The queuing study revealed that, at no time did he ever observe more than two cars waiting at the traffic light. In fact, in 55 percent of the cycles of the light, he found no traffic queuing at that location. Based on the amount of traffic anticipated along Valley View Avenue, the bank would add, at the most, one or two cars during any particular cycle of the light. Therefore, he would anticipate that the maximum queue would be three or four cars, and there is ample room to store that number of cars before it interferes with ingress or egress from the Valley View Avenue access.

Technical Staff noted its approval of Mr. Cook's traffic studies and concluded that both LATR and PAMR would be satisfied (Exhibit 68, p. 9):

For the purposes of APF review, the consultant for the Applicant submitted a traffic study (dated March 17, 2010) and a supplemental Traffic Queuing Study (dated April 6, 2010) that examined traffic-related impacts of the proposed development on nearby intersections and at the site. Our review of

the traffic study and the supplemental analysis indicated that the studies complied with the requirements of the *Local Area Transportation Review/Policy Area Mobility Review Guidelines* and adequately addressed traffic impacts resulting from the subject SDPA.

In Mr. Cook's opinion, the transportation network in the surrounding area is adequate to accommodate the traffic to be generated by this proposed use. Tr. 97.

Based on this record, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available transportation facilities and services will be adequate to serve the proposed development.

Parking

The SDP calls for 23 parking spaces on site. That amount should be more than adequate since Zoning Ordinance §59-E-3.2 would require only 12 spaces (2.7 spaces per 1,000 square feet of office space). Applicant's building will provide 4,080 square feet of office space. Multiplying 4.08 X 2.7 yields a requirement of 11.016 spaces. Rounding up results in a 12 parking space requirement. There will thus be adequate parking for employees and customers.

Mr. Madden testified that six of the spaces would be in the front, and handicapped spaces would be located near the closest accessible route to the building. Seventeen spaces would be to the rear (northern) side. There will be a trash dumpster and provisions for storm water management surrounding the parking areas. Tr. 48-50.

Site Access and Circulation

The existing full access to the site off of Valley View Avenue would be upgraded and maintained, with an additional access point sited off of University Boulevard, for right-turn ingress and egress only. Mr. Madden indicated that the site would have sidewalks and would be ADA accessible.

Mr. Cook opined that the circulation pattern proposed for the site is safe, adequate and efficient for both vehicular and pedestrian traffic. The driveways are located in order to maximize the ability to maneuver on and off the site. There is also adequate stacking space on the site so the cars queuing to go through the drive thru lanes will not back out onto the public road. Tr. 96-97. There is no contrary evidence in the record, and the Hearing Examiner therefore so finds.

4. Environment

Technical Staff reports the site is flat and mostly impervious, and that “[t]here are no forest, streams, environmental buffers or other environmentally-sensitive areas on the site.” Exhibit 68, Attachment 4. Applicant’s site designer, Timothy Madden, testified that Applicant has an approved NRI/FSD (Exhibit 57) and an exemption from forest conservation requirements (FCP exemption #42009122E) because the site is less than an acre in size, and there are no forest resources on the site. Tr. 59. Technical Staff notes that a condition of the FCP exemption is that a tree save plan is required with the preliminary plan stage. The plan may require tree preservation or mitigation of individual trees. Exhibit 68, p. 12.

Applicant does not yet have approval from the Department of Permitting Services (DPS) of a stormwater management concept. By letter of June 17, 2010, DPS informed Applicant of items that needed to be addressed in that regard. Exhibit 87. Mr. Madden testified that Applicant has discussed stormwater management with DPS and is confident that it will meet the requirements of the new environmental site design. Tr. 60-63. Technical Staff notes that Applicant will be required to demonstrate compliance with stormwater management regulations at subdivision. Exhibit 68, Attachment 5.

The Hearing Examiner finds that no environmental issues have been raised that warrant denial of this application.

E. Master Plan, Compatibility and Community Concerns

The main issue in this case is whether the proposed development is consistent with the goals of the 1990 Sector Plan for Wheaton Central Business District and Vicinity and would fulfill the purpose of the C-T Zone. The purpose and regulations of the C-T Zone will be discussed in Part V of this report. This section will address consistency with the Sector Plan and compatibility.

1. The 1990 Wheaton Sector Plan

The Sector Plan recommends retaining the C-T Zoning that already exists on the site (SP, Zoning Map on p. 47) and recommends an office land use for the site (SP, Land Use Map on p. 28). The text of the Sector Plan addresses the subject site on pages 33 and 46.

On page 33, the Sector Plan provides:

The Plan indicates office use for the University Boulevard frontage between East Avenue and Valleyview Avenue. The remaining residential structures front on a major artery with associated traffic noise and air pollution. The residential sensitivity of these problems is indicated by the deterioration of a number of the homes. The conversion of these houses to offices would tend to stabilize this frontage area and provide a buffer to the existing single-family community to the north. Future development should be similar in scale to the existing conversions that have taken place in the block between East Avenue and Valleyview Avenue. . . . [Emphasis added.]

On page 46, the Sector Plan:

Recommends C-T zoning (low-intensity office development) for the northern frontages of University Boulevard between East Avenue and Valleyview Avenue, and the south frontage of University Boulevard adjacent to Wheaton Plaza on those parcels where this zoning does not currently exist. A number of single-family structures along University Boulevard have already been converted to nonresidential uses. While some of the existing houses are large enough to lend themselves to office conversion, a number of properties would be better developed as new low-intensity office development. New development should be limited to existing lots and should be discouraged on assemblages of more than one lot. Conversion, where appropriate, and low-intensity new development are encouraged to buffer existing single-family residences from adverse effects associated with major traffic arteries. [Emphasis added.]

2. Technical Staff's Analysis and Applicant's Response

Technical Staff felt that the SDPA was not consistent with the Sector Plan's recommendations (Exhibit 68, p. 1). Technical Staff interpreted the Zoning Ordinance as requiring "substantial compliance" with the Sector Plan (Exhibit 68, p. 15), and Staff felt that the proposed development, without the binding elements later added at the behest of the Planning Board, would not provide a sufficient buffer and transition for the existing single-family residences. While recognizing that "the architectural design of the [proposed] bank building represents a notable improvement over the earlier designs," Staff felt that the proposal was inconsistent with the Sector Plan because it would not be similar in scale to the existing conversions and would not be limited to the existing lots, as recommended by the Sector Plan. Exhibit 68, pp. 8, 12 and 14-15.

The Applicant contends that the Sector Plan merely "discourages" (*i.e.*, does not prohibit) the assemblage of lots because doing so might result in a development that is larger than what may be considered "low intensity office development." Applicant argues that the underlying purpose of the above lot assemblage provision was to reduce the scale of new development in this commercial transitional area, and that its SDPA plan achieves this objective, regardless of whether the individual lots are maintained or consolidated.

Applicant's land planner, Joe Davis, testified at the hearing (Tr. 69-86) that when the 1990 Sector Plan was being developed, there was a strong desire to protect the existing business enclave and to protect the surrounding communities. Language was added that talked about discouraging assemblages of lots because there was a fear that if lots were assembled to create a larger lot, it would create an opportunity for larger buildings which would be out of scale with the community.

But the language specified that combining lots should be discouraged, not that it should be prohibited. In Mr. Davis's opinion, the proposed re-subdivision into two lots does not violate the Sector Plan because it is being done with an optional method application, and the Applicant is able

to address the Master Plan's intent for low intensity development by utilizing binding elements to maintain an appropriate scale. Therefore, this proposal is not a violation of the Sector Plan in terms of either its land use recommendations or its zoning recommendations.

Mr. Davis opined that this development would be low intensity when compared to the standards of the C-T zone, and it fits in well with the Sector Plan's emphasis on low intensity office development. It also fits in well as a transition between the high intensity commercial development at Westfield and the one-family residential community adjacent to the subject site.⁴

3. The Planning Board's Recommendation and the Community's View

The Planning Board disagreed with its Technical Staff. The Planning Board voted unanimously to recommend approval, but with a revisions to Applicant's proposed binding elements. Noting the age of the Sector Plan, the Chair of the Planning Board stated (Exhibit 74):

The Planning Board . . . disagreed with staff's conclusion that the proposed redevelopment is a substantial departure from the Sector Plan's recommendation for the subject area, finding that the proposed development is in substantial compliance with the Sector Plan. The Board also took into consideration that the current Sector Plan was approved 20 years ago and that the effectiveness and applicability of the specific recommendations may not be germane to current situations in the area. . . .

The Planning Board recommends approval of the application provided that the Applicant adds binding elements for setbacks and an FAR for the smaller lot (LOT 1B), plus a rear property line condition discussed during the hearing. The Applicant agreed at the hearing to add setbacks that would limit development to buildings on the footprints shown on the SDP.

In sum, the Board recommended adding binding elements for setbacks and a maximum floor area ratio (FAR) for the smaller proposed lot (Lot 1B). The Board also recommended a condition ensuring adequate screening for the rear property line. The Applicant agreed to those changes, and they are embodied in the revised SDPA.

⁴ Mr. Davis noted that the proposed use would be an allowable use under the new CR Zone which is being considered for the area in discussion of proposed amendments to the Sector Plan, and it certainly would not exceed any standard of the CR Zone.

Upon reviewing the Planning Board's recommendation, the community, through the Kensington View Civic Association (KVCA), withdrew its opposition and now supports the application. Exhibits 76 and 97. Judy Higgins testified on behalf of the Kensington View Civic Association (KVCA) in support of the proposed DPA. Tr. 5, 98-104. She noted that Applicant has worked with KVCA diligently for two years to figure out how they can make this work for the community. Ms. Higgins believes that, for the first time, there is a plan that was properly examined and vetted with the community in mind, as witnessed by the Planning Board's decision. So it is KVCA's decision too, that approval of this development would bring even further protection to the edge of a fragile community.

After years of adversarial discussion over these three properties, and with the promises and commitments that BB&T and the property owner have offered the community, KVCA fully supports this DPA to create two lots that will house a residential style bank on one lot and a residential style drive through on the other. KVCA feels this project is the right way to protect the neighborhood.

These sentiments were echoed by the other community witness, Virginia Sheard, who is a resident of Kensington View. Tr. 6, 104-108. Supporting letters were received from the adjoining owner of a single-family residence (Exhibit 71(a)); the Wheaton Urban District Advisory Committee (Exhibit 71(b)); and the Wheaton Redevelopment Advisory Committee (Exhibit 71(c)).

4. The Hearing Examiner's Evaluation

First of all, it should be noted that, contrary to Technical Staff's statement, the Zoning Ordinance does require not "substantial compliance with the Master Plan to support approval" of this SDPA. The Applicant is actually seeking to amend a schematic development plan, under the optional method of development, not a development plan pursuant to Zoning Ordinance §59-D.1.61. In order to approve a development plan, the Council must find, *inter alia*, that "[t]he proposed development

plan substantially complies with the use and density indicated by the master plan or sector plan . . . “
Zoning Ordinance §59-D-1.61(a).⁵

There is no corresponding requirement in the Zoning Ordinance for approving a schematic development plan, and it does not make sense to apply a higher standard to review of an application for an amendment to a schematic development plan than to review of the original schematic development plan under Zoning Ordinance §59-H-2.5. In such a review, the case law requires the Council to find that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967). Maryland law also requires that zoning powers be exercised in the public interest.

Part of the public interest consideration is an evaluation of the proposal’s consistency with the applicable Master Plan; however, Master Plans are generally considered recommendations, not absolute requirements. *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 530, 814 A.2d 469, 478 (2002) (citing *Richmarr*, 117 Md. App. at 635-51, 701 A.2d at 893-901 (1997)). Furthermore, as pointed out by the Planning Board, the 1990 Sector Plan for Wheaton Central Business District and Vicinity is now 20 years old, and it contains the following “Notice to Readers”:

“ . . . Master Plans generally look ahead to time horizon of about 20 years from the date of adoption, although it is intended that they be updated and revised about every ten years. It is recognized that the original circumstances at the time of plan adoption will change over time, and that the specifics of master plan may become less relevant as time goes on. . . . ” [Sector Plan, final unnumbered page.]

Clearly then, specific language in the Sector Plan should not be applied in a way that would defeat the underlying purpose of the Plan to allow C-T zoned office use on this site which will provide a transition between commercial development to the south (*i.e.*, Wheaton Plaza) and the

⁵ Development Plans (as distinguished from schematic development plans) are only called for in the zones specified in Zoning Ordinance §59-D-1.1. The C-T Zone, which is the zone presently on the site, is not one of the zones in which a development plan is called for. Nothing in DPA 05-2 seeks to change the C-T Zone classification for the site.

Kensington View neighborhood to the north. Incorporating the binding elements recommended by the Planning Board accomplishes that result, and that is why this application is now supported by the community.

The Hearing Examiner agrees with the Planning Board's findings and the analysis provided by Applicant's land planner, Joe Davis. The proposed bank building is well within the parameters of the C-T Zone which already exists on the site, and was designed architecturally to appear as residential as possible, with a pitched roof, dormers, the use of brick and a residential style window and entrance door. Tr. 30 and 43. *See* rendered elevations reproduced on page 12 of this report.

The Hearing Examiner finds that the proposed bank building, canopy and parking areas, as limited by the binding elements, will provide a compatible transition between the nearby commercial use of Wheaton Plaza and the residences of Kensington View.

Given these circumstances, the Hearing Examiner concludes that the SDPA, as currently proposed, is appropriate at this stage of review, and capable, under its binding elements, of producing a project consistent with the Sector Plan and compatible with its surrounding development.

IV. SUMMARY OF THE HEARING

Applicant called four witnesses at the hearing – Richard L. Prosser, a vice-president of BB&T; Timothy F. Madden, an expert in site design; Joseph R. Davis, an expert in land planning; and Glenn E. Cook, an expert in traffic engineering and transportation planning. Two witnesses from the Kensington View Civic Association, Judy Higgins and Virginia Sheard, testified in support of the proposal. There were no opposition witnesses.

At the beginning of the hearing, the Hearing Examiner announced that he planned to take official notice of the record in LMA Nos. G-229 and G-540, the cases under which the subject site was rezoned to its present zone. Tr. 9.

Applicant's counsel, Jody Kline, Esquire, also pointed out that Applicant had negotiated an agreement with the community for the proposed DPA, but that the community had a concern that the binding elements are only good as long as the property is zoned CT, as provided in the declaration of covenants. At the current time, the Planning Board is considering an amendment to the Wheaton Central Business District Sector Plan that conceivably could result in the property being rezoned to the new commercial residential (CR) classification. The community's concern is that adoption of the CR Zone for this site would wipe out this whole process and the negotiated settlement. Applicant therefore gave the community a letter, outside the record, that says during the Master Plan amendment process, Applicant will state to Staff of the Planning Board and the County Council that it is not interested in CR zoning for the site. Applicant is happy with the C-T Zone, so the covenants can run with the property prospectively in the future. Tr. 16-17.

The Hearing Examiner pointed out that the letter would not have any binding effect (and subsequently language was added to the proposed covenants to indicate Applicant's preference to adhere to the proposed binding elements as long as they are legally applicable). Tr. 17.

The Hearing was resumed on December 6, 2010, so that Applicant could file revised binding elements and executed covenants after review by Technical Staff, and the record was kept open thereafter for further revisions and public comment.

A. Applicant's Case in Chief

1. Richard L. Prosser (Tr. 24-33):

Richard L. Prosser, a vice-president of BB&T, testified that BB&T will shortly lose the two locations it presently has in the Wheaton market, and seeks to replace them with a full service retail branch bank at the subject site. Tr. 24-31 [Mr. Kline indicated that the Applicant accepts the Technical Staff's defined surrounding area for purposes of its analysis. Tr. 25.]

Mr. Prosser introduced rendered elevations proposed for the subject site (Exhibit 83). This does not resemble their prototypical building; it has been modified greatly to give it a residential look so it can serve as a transition. Applicant tried to create a residential feel with the pitched roof, the dormers on the roof, using brick and a residential style window and entrance door. Applicant also tried to pull the same residential elements into the drive through canopy. Tr. 30.

Mr. Prosser described his efforts at community outreach. He also stated that he and his engineer tried to work out a plan that would comply with the recommendation on page 46 of the 1990 adopted Wheaton Central Business District Sector Plan, that new development in this area should be limited to existing lots and should be discouraged on assemblages of more than one lot. However, they could not make it work that way. “[T]his layout that we arrived with is really, in our opinion, the only way that it lays out effectively and efficiently, and gives that urban street look as a residential property without having a sea of parking visible from the street.” Tr. 33.

2. Timothy F. Madden (Tr. 34-68):

Timothy Madden testified as an expert in site design. Mr. Madden described the site using a revised version of the SDP (Tr. 40):

Right now the subject property is composed of three existing lots, and on those lots there are existing dwellings. They are in deteriorated condition. They are vacant, and the site is in what I would describe as an overgrown unkempt condition. There are driveway curb cuts along University Boulevard as well as one driveway curb off of Valley View. And the condition of those properties leads me to believe that those structures on the property now are in such poor shape that I don't believe that they could be adaptively reused or renovated in their condition.

Mr. Madden also described the sizes of the lots and indicated that there are several trees on the site, in poor condition. There are no forests, wetlands, flood planes or any other similar natural features on the property.

Applicant's original proposal was to resubdivide into one lot, but the community was concerned about the ability to have multiple lots so that should redevelopment occur after Applicant's development, they were more comfortable that there be multiple lots on the property. And so Applicant made adjustments to its site plan, and to its subdivision proposal to include two lots "to give them the comfort of knowing that it's not one combined lot." Tr. 42.

Applicant made adjustments to the location of the building and the location of the drive thru canopy to accommodate the two lots that are proposed. These adjustments were moving the proposed building closer to the corner and shifting the canopy to the east to be able to meet the setback requirements of Lot 1B. The canopy will be on a lot by itself and the bank building will be on a lot by itself, and they each will follow appropriate lot setbacks. Tr. 43.

According to Mr. Madden, the proposal is for 4,080 square foot bank office building on the corner, and a 1,663 square foot canopy that covers the drive thru facilities on the property. There will be two separate structures as viewed on the renderings, and the architectural concept that has evolved from this project is one that is very residential in scale. It is designed specifically to meet the compatibility standards that this CT zone has. The materials, the cornicing, the height, everything is residential in scale and character. The building is located to provide some buffering in the transition zone between University Boulevard and the commercial complex on the south side of University Boulevard – between that and the Kensington View residential community to the north of the site. Applicant designed this project with less than the maximum floor area ratio allowed, nor the maximum coverage areas. Applicant would provide sufficient green area to the rear of the site, a 15 foot strip of green area in the back with landscaping and privacy fencing (the area marked by the diagonal hatch marks on the SDP to designate that it is required by a binding element). There is also a large green area on the east side of the property. Tr. 43-46.

The location of the building and the canopy is designed to provide the functions of vehicular access and egress. There will be a right in, right out entrance on University Boulevard, as far away from the Valley View signalized intersection as possible, to avoid conflicts with stacking at the traffic light. Tr. 43-44.

Mr. Madden testified that there is a double left turn lane from University Boulevard west into the Westfield commercial complex. That is a high demand turn as identified by the turning movements. To ensure that people turning out of the subject site westbound onto University Boulevard can do so with the intention of continuing westbound, or to make that left turn, having an exit far back from the intersection makes it as safe as possible. But more importantly, Applicant proposed an entrance/exit onto Valley View Avenue which permits the users, especially the users in the drive thru lanes, to circulate through the site and come out onto Valley View, make a left turn and utilize the signalized intersection for their movements. So if they want to leave the bank and go to the commercial center after getting their money, they can do so at a signalized intersection, which is the safest means of crossing University Boulevard. Tr. 45.

Mr. Madden indicated that the site would have sidewalks and be ADA accessible. There will be adequate parking for employees and for customers, including the handicapped parking. If one is visiting the site to use one of the automatic teller machines, a right in, right out access will be provided on University Boulevard and full entry and exit, either left or right, onto Valley View Avenue is permitted. There will be 23 parking spaces on the property, with six in the front and handicapped spaces located to be the closest accessible route to the building. Seventeen spaces would be to the rear (northern) side. There will be a trash dumpster and provisions for storm water management surrounding the parking areas. Tr. 48-50.

Mr. Madden introduced a rendered version of the Schematic Development Plan (Exhibit 85) to describe Applicant's plans for the site. Foundation plantings around the building will be of

residential character. Applicant intends to have seasonally flowering vegetation, so it feels more residential in its effect and it softens the building. Some of this parking area will be porous pavement in accordance with the new storm water management regulations. Most of it will be asphalt. Applicant plans to surround that asphalt area with minor flowering trees and evergreen and flowering shrubs to soften the whole effect. In the rear of the site, Applicant proposes multiple layers of screening plant material and low hedge material directly adjacent to the parking area. Larger evergreen trees would be behind that and a six foot height privacy fence in the rear.

Exhibit 86 is building setback exhibit, specifying the binding elements of the site Applicant will adhere to. [After discussion at the hearing, it was agreed that the descriptions in Exhibit 86, as well as the numerical setbacks, would be listed on a revised SDP. Tr. 53-58]. Mr. Madden pointed out that the Applicant consistently agreed that the 15 foot strip of land in the rear (the north) will not be used for any development. It'll be landscaping and green area, natural drainage, as one of the binding elements. Tr. 58.

Mr. Madden further testified that the application will comply with the forest conservation law requirements. Applicant has an approved NRIFSD and an exemption from forest conservation requirement because the site is less than an acre in size, and there are no forest resources on the site. Tr. 59.

Exhibit 87 is a June 17, 2010 letter from DPS finding Applicant's proposal for stormwater management unacceptable. However, Applicant has discussed stormwater management with DPS and is confident that it will meet the requirements of the new environmental site design. Tr. 60-63.

According to Mr. Madden, the site is currently served by public water and sewer. The proposed facilities will also be served by public water and sewer. There are water lines and sewer lines in Valley View Avenue, and Applicant will propose to connect to them with a commercial water tap and meter, and a sewer connection. There are no reports of transmission or treatment

capacity problems. In his opinion, the property would be adequately served by public service utilities. Tr. 63-64.

Mr. Madden further testified that the binding elements are more restrictive than maximum development of a CT zone would allow. They more than meet the standard. Tr. 64.

Moreover, site circulation would be safe, adequate and efficient. Applicant will be eliminating multiple curb cuts along University Boulevard and providing the in and out curb cut onto Valley View to provide safe and adequate access for people to the signalized intersection, which is key in making it safe. Tr. 65

There will be minimal grading on the site, and in Mr. Madden's opinion, the proposal as limited through the binding elements, will result in a design compatible with surrounding land uses.

3. Joseph R. Davis (Tr. 69-86):

Joseph R. Davis testified as an expert in land planning. He was involved in planning the Wheaton Central Business District for the County when the 1990 the Wheaton Central Business District Vicinity Sector Plan was being considered.

At that time, there was a certain amount of concern within the Wheaton community as to what the nature of the master plan would be in terms of promoting new development in the Wheaton area. There was a strong desire to protect that business enclave and to protect the surrounding communities. The area on the north side of University Boulevard was identified as a commercial transitional area. In terms of land use, the Sector Plan indicated that office development would probably be the most appropriate land use for this area, and in terms of zoning, the commercial transitional (C-T) zone was specifically identified here.

The three lots included within this property were actually already zoned CT. One of the lots, the eastern most lot, was actually rezoned in 1982, and it was done through the normal application.

The two western most lots were rezoned in 1987 through the optional method process, and they were limited to reuse of the existing homes on those properties.

When the Sector Plan was developed in 1990, there were other homes along that frontage that had been reused. Also, there has been some redevelopment. So, in terms of land use recommendations, there was a recognition that some of the homes had sort of transferred to office use, and also that there would be the need for some redevelopment to occur. And in terms of the land use plan, there was an emphasis on retaining the small scale, low intensity, office development with a scale of development that would be compatible with the adjacent residential neighborhood. It was recommended for CT zoning, but in that recommendation there is also a language that talked about discouraging assemblages of lots. There was a fear that if you assembled lots into creating a larger lot for example, two or three lots making one larger lot, that would create an opportunity for larger buildings that would be out of scale with the community.

But the language said combining lots should be discouraged, not that it should be prohibited. It's now proposed for re-subdivision into two lots. In Mr. Davis's opinion, that does not violate the Sector Plan because it is being done with the optional method application, and the Applicant is able to address the Master Plan's intent for low intensity development. Therefore, he concludes that this proposal is not a violation of the Sector Plan in terms of either its land use recommendations or its zoning recommendations. Nor does he feel that it would violate any concern in the plan dealing with the potential re-subdivision because the binding elements that are being proposed will maintain an appropriate scale.

The purpose of the commercial transitional (C-T) Zone indicates that it should be recommended on a master plan or a sector plan, which in this case it is. Secondly, that it would be appropriate where you have one-family residential development and the site would be between that and higher intensity commercial development. In this case, the Westfield Mall Shopping Center,

which is across University Boulevard and which is classified in the C2 zone, does qualify as high intensity commercial.

The CT zone has a maximum FAR, floor area ratio of .5. In this case it's about a .187, so it's roughly one-third of the allowable density. In terms of green area, approximately 40 percent of the subject site would be green area, as compared to a minimum of 10 percent on the opposite side for the commercial C2 zone. Moreover, the C2 zone has a much higher floor area ratio and permits much taller building heights, so the proposal compares favorably with the development across University Boulevard.

As to building height, the proposed bank will be on the order of about 22 feet, and the ATM canopy would be about 16 feet. That works well with the adjacent residential community where the building heights in the R-60 zone development are on the order of either two and a half stories or 32 feet, under the changes that have been made to the ordinance.

Mr. Davis feels that this development would be low intensity when compared to the standards of the C-T zone, and it fits in well with the Master Plan's emphasis on low intensity office development. It also fits in well as a transition between the high intensity commercial development at Westfield and the one-family residential community adjacent to the subject site.

The not-yet-adopted Sector Plan amendment recommends the new CR zone, and it's recommending, he believes, at this location, a maximum FAR of 1.5, which is three times higher than the existing C-T density allowed, and that would be almost 12 times higher than what this application proposes. The new CR zone a mixed use zone. Offices are permitted. It establishes densities for commercial development, maximum density for residential development, and a building height. It could be a mixture of commercial and residential uses, and there is a grandfather provision in the CR zone. It recognizes approvals that will have occurred prior to being reclassified into the zone. Even if not grandfathered, the proposed use would be an allowable use, and it certainly is not

going to exceed any standard of the CR Zone. If anything, it could represent potentially an under-utilization based on what a Master Plan could recommend. The proposal would probably meet the standard method of development standards of the CR zone, and Mr. Davis does not think it would even require site plan review because it's below 10,000 square feet.

Mr. Davis noted that historically there has been concern in the community with this property, and there is a need to be careful in terms of the development that occurs. He stated that Applicant's proposal is really a very low intensity project, which the community now supports. The newly proposed sector plan proposes a much different type of land use arrangement, potentially mixed use, with higher densities, but it would not preclude this proposal.

In Mr. Davis's opinion, the proposal by BB&T is in the public interest. This corner is actually a gateway into Wheaton as one comes in from the west on University Boulevard. This bank proposal would be in the public interest by establishing a much more attractive gateway. From that standpoint, the possibility of a 1.5 FAR under the CR zone surprises him, and he would question whether the intensity of CR zoning at the edge is appropriate.

4. Glenn E. Cook (Tr. 87-98):

Glenn E. Cook testified as an expert in traffic engineering and transportation planning. He prepared a traffic impact study in conjunction with the application submitted by BB&T (Exhibit 66(b)). He contacted the transportation planning staff to establish a scoping agreement with the staff. The staff came back with a recommended study area as well as a list of developments that had been approved in the area that they wanted included as part of the background traffic conditions.

The traffic study is developed by looking at existing traffic, background traffic, which is existing traffic plus traffic from other approved developments, as well as traffic generated by the subject site. He went through the analysis, conducted traffic counts and did the traffic projections.

This project is located in Kensington/Wheaton area which has a congestion standard of 1600 critical lane volume (CLV). It has been 1600 for a while in Kensington. The PAMR requirements have changed slightly, but the local area review requirements have not. The PAMR requirements were 15%, and now they are 10 percent.

Mr. Cook testified that all the three study-area intersections are all operating well below the congestion standard of 1600. In fact, none of them even exceed 1000 CLVs per hour. So from a local area transportation review (LATR) standpoint, the roadway is adequate to handle the additional traffic generated by the bank. A drive in bank generates two types of traffic, new trips which are people who come from their home and just make a sole trip to the bank, and pass by trips, which is people that are already on the road network that happen to stop by the bank on their way to work, shopping, school or whatever the purpose may be. The number of new trips that the bank would generate would be 52 in the morning and 57 during the evening peak hour. Factoring all of them in, the intersections all came in well below the congestion standard that was established for this area.

Mr. Cook concluded that the site met the test for the local area transportation review, and he submitted that information to the transportation planning staff, who in turn submitted it to the State Highway Administration. He received comments back from both of them, and they both agreed with the conclusions of his report.

Mr. Cook also looked at the PAMR requirements for the policy area. Based on the new traffic that will be generated (the PAMR requirement is only based on new trips in the study area, not pass by trips), Applicant's mitigation obligation is six trips. The County PAMR regulations allow Applicant to pay \$11,300 for each trip, and therefore, BB&T will make a payment to the County to offset the PAMR requirements for the site.

At the request of Technical Staff, Mr. Cook also did a queuing analysis along Valley View Avenue. There was some concern that if the volume of traffic generated by the site all utilized

Valley View Avenue, there could be potential queuing of vehicles back from the light to block the driveway that is proposed on the east side of Valley View. The queuing study revealed that, at no time, did he ever observe more than two cars waiting at the traffic light. Valley View Avenue essentially being a dead end street, the traffic is just from the local residents. In fact, in 55 percent of the cycles of the light, he found no traffic queuing at that location. Based on the trip generation for the proposed bank, that traffic would be divided between the driveways. Based on the amount of traffic anticipated along Valley View Avenue, the bank would add, at the most, one or two cars during any particular cycle of the light. Therefore, he would anticipate that the maximum queue would be three or four cars, and there is ample room to store that number of cars before it interferes with ingress or egress from the Valley View Avenue access.

Mr. Cook further testified that the circulation pattern proposed for the site is safe, adequate and efficient for both vehicular and pedestrian traffic. The driveways are located in order to maximize the ability to maneuver on and off the site. There is also adequate stacking space on the site so the cars queuing to go through the drive thru lanes will not back out onto the public road. In Mr. Cook's opinion, the transportation network in the surrounding area is adequate to accommodate the traffic to be generated by this proposed use.

B. Community Witnesses

1. Judy Higgins, on behalf of KVCA (Tr. 5, 98-104):

Judy Higgins testified on behalf of the Kensington View Civic Association (KVCA) in support of the proposed DPA. After the Planning Board's decision, KVCA thought it had to look at things differently. KVCA feels that BB&T's proposal is far more compatible than what the future might bring under the proposed new Sector Plan.

Although KVCA had previously opposed this DPA, it now supports its approval.

Ms. Higgins testified that Kensington View is a small community of approximately 160 homes of varying size and age and architecture styles. The subdivision has eight roads total, and all of those roads dead end at County property. Approximately 25 percent of the originally platted subdivision has been lost to ill advised zoning decisions of the past, and the willingness, dedication, and compromise on the part of the Applicant brings the neighborhood a sense of security.

Applicant has worked with KVCA diligently for two years to figure out how they can make this work for the community. Ms. Higgins believes that, for the first time, there is a plan that was properly examined and vetted with the community in mind, as witnessed by the Planning Board's decision. So it is KVCA's decision too, that approval of this development would bring even further protection to the edge of a fragile community.

After years of adversarial discussion over these three properties, and with the promises and commitments that BB&T and the property owner have offered the community, KVCA fully supports this DPA to create two lots that will house a residential style bank on one lot and a residential style drive through on the other. KVCA feels this project is the right way to protect the neighborhood.

2. Virginia Sheard (Tr. 6, 104-108):

Virginia Alden Sheard testified that she lives in Kensington View, about five blocks from the subject site. She participated in discussions of development proposals for the three subject lots for about 10 years, and she is familiar with the issues confronting Kensington View Community about them.

Because the subject site is a major gateway into this residential community, the specific requirements of the C-T zone and the binding elements recorded when the properties were rezoned from R-60 that limited change to remodel, reuse and renovation, and the recommendations of the 1990 sector plan against consolidating lots, were seen as an insurance to maintain the residential integrity of Kensington View.

Ms. Sheard had joined the others on the Kensington View Land Use and Zoning Committee in opposing any application to consolidate the existing lots into one lot, or even two larger lots because of the potential of a much larger scale development at Kensington View's gateway which would more likely be commercial in nature, less of a transition to the residential environment and would affect the residential desirability of the community. That was generally the Kensington View community position until the Planning Board offered a more lenient interpretation of the language and intent of the zone and the sector plan, and proposed a set of binding elements to address the major community concern about lot consolidation. The proposed binding elements would limit any future development to approximately the footprint and building volume of this SDPA, thereby prohibiting the large scale project Kensington View feared.

Therefore, Ms. Sheard now considers the BB&T proposal to be in the best interest of Kensington View, providing that the proposed binding elements that are now part of the application are legally binding and become recorded with the land if this DPA is approved by the Council. These binding elements relieved most of the apprehension about the future adverse impact of lot consolidation. The further away from the site a respondent lives the more important the current look of the boarded up houses at Kensington View's gateway becomes, rather than the strict adherence to the language and intent of either the plan or the zone.

There has never been a question about BB&T or a bank being a permitted use, nor is there any concern that BB&T will not be a good neighbor. According to Ms. Sheard, most of the neighbors voiced a sense of relief that there will at least be a long term resolution and that the boarded up buildings will go away and be replaced by an attractive and well known bank and a well landscaped site. BB&T's 35 to 40 year lease will control the site for the foreseeable future, knowing that another DPA can come in and interfere with that time frame. But this is as good as Kensington View can expect at this time.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks and building heights.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967). Any zone must also be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28)*, Md. Code Ann., § 7-110.

These are the standards that were applied in 1980 when part of the subject site was rezoned to the C-T floating zone by LMA No. G-229, and in 1987, when the remainder of the site was rezoned to C-T by LMA G-540. The Schematic Development Plan Amendment proposed now must be evaluated under these same standards, with the binding elements discussed in Part III of this report.

The C-T Zone contains a post-zoning review process that generally delegates to the Planning Board the details of site specific issues such as building location, stormwater control, vehicular and pedestrian routes, landscaping and screening. We turn now to the three areas of Council review

discussed above – the purposes and requirements of the applicable zone, compatibility with land uses in the surrounding area and relationship to the public interest.

A. The Purpose Clause and the Zone’s Requirements

Purpose Clause of the C-T Zone

The purpose clause for the C-T Zone, Zoning Ordinance §59-C-4.301, provides:

The purpose of the C-T zone is to provide sites for low-intensity commercial buildings which, singly or in groups, will provide an appropriate transition between one-family residential areas and high-intensity commercial development. The C-T zone is intended to constitute a margin of limited width at the border between a commercial area and a one-family residential area. For that reason, the C-T zone can only be applied:

(a) *In areas designated for the C-T zone on adopted and approved master or sector plans; or*

(b) *On property so located that it is between and adjoining or separated only by a street, highway, or utility right-of-way from both of the following uses:*

(1) *Existing or proposed one-family residential uses; and*

(2) *Existing high-intensity commercial uses. As used herein, the term "high-intensity commercial use" refers to any commercial or central business district development with an existing height that is greater than 40 feet. The term "high-intensity commercial use" does not include development in the C-1 zone.*

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses, and, in itself, shall not be sufficient to require the granting of an application.

The Technical Staff report quoted the purpose clause of the C-T Zone and found that the application would not provide the kind of “*transition between one-family residential areas and high-intensity commercial development*” that is the general purpose of the zone. Staff reached this conclusion because the SDP calls for tearing down the three existing residential structures and replacing them with a single bank and parking lot. It would also consolidate and resubdivide the

three existing lots into two lots. In Staff's opinion, that would change the cohesiveness of existing as well as future development of the C-T zoned properties in the block. Exhibit 68, p. 13.

Once again, the Planning Board disagreed with its Staff (Exhibit 74, p. 1):

The Planning Board found that the application is consistent with the purposes of the Commercial, Transitional (C-T) Zone and it satisfies all relevant standards of the C-T Zone.

The Hearing Examiner agrees with the Planning Board's finding. With the addition of the previously discussed binding elements, the proposed development should serve precisely the goal articulated in the C-T Zone's purpose clause. The proposed bank will indisputably be a "*low-intensity commercial building*," and the Hearing Examiner finds that it will "*provide an appropriate transition between one-family residential areas [i.e., Kensington View] and high-intensity commercial development [i.e., Wheaton Plaza].*"

Moreover, the SDPA satisfies both of the alternative criteria specified in subsections (a) and (b) of the purpose clause. The site is in an area "*designated for the C-T zone on adopted and approved master or sector plans*," since the 1990 Wheaton Sector Plan specifically recommends the site for the existing C-T Zone. It thus meets criterion (a). It meets criterion (b) because the property is located between existing one-family residential uses [*i.e., Kensington View*] and existing high-intensity commercial uses [*i.e., Wheaton Plaza*].

Based on this record, the Hearing Examiner finds that the proposal, as limited by its binding elements, conforms with the C-T Zone's purpose clause.

Regulations (i.e., Development Standards) of the C-T Zone

The regulations of the C-T Zone are provided in Zoning Ordinance §§59-C-4.302 to 4.309. Most of the development standards for the C-T Zone were set forth in a Binding Elements Table on the revised SDPA (Exhibit 94(a)), which is reproduced on page 16 of this report. As shown in that

chart, the development standards Applicant has committed to in binding elements are well within the requirements of the C-T Zone.

For example, the Binding Elements restrict the bank height to 25 feet and the canopy height to 20 feet, although a 35 foot height is permitted in the C-T Zone. The Binding Elements also restrict floor area ratio (FAR) to 0.2 for the bank building and 0.13 for the canopy, although an FAR of 0.5 is permitted in the C-T Zone. Similarly, the building coverage on Lot 1A is limited to 20% and on Lot 1B to 13%, although a building coverage of 35% is permitted in the C-T Zone. There will also be a minimum Green Area of 35% on Lot 1A and 40% on Lot 1B, although the C-T Zone specifies a minimum Green Area of only 10%. The Binding Elements also restrict setbacks and many other aspects of the proposed development. The revised Binding Elements were approved by Technical Staff in a post-hearing review. Exhibit 92(a).

As discussed in Part III of this report, Applicant's proposal also more than meets the minimum of 12 parking space required for the site (by providing 23 spaces), and the lot frontage exceeds the minimum of 100 feet called for in Zoning Ordinance §59-C-4.302(a). The property has approximately 260 feet of frontage on University Boulevard and approximately 150 feet of frontage on Valley View Avenue. Exhibit 68, p. 4.

Based on the entire record, the Hearing Examiner finds that the proposed development meets the purposes and requirements of the C-T Zone, and that the proposed development's binding elements will permit the Planning Board flexibility to approve a design at site plan review which will meet all applicable standards.

B. Compatibility

Compatibility was discussed in Part III.E. of this report. Based on the record discussed there and on the above analysis of the applicable purpose clause, the Hearing Examiner finds that the proposed use would be compatible with the surrounding area, and that the SDPA, as currently

proposed, is appropriate at this stage of review, and capable, under its binding elements, of producing a project compatible with its surrounding development. The Planning Board will also evaluate compatibility at site plan review.

C. Public Interest

Maryland law requires that zoning powers be exercised in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, 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*].

Factors which are usually considered in determining the public interest include Master Plan conformity, the recommendations of the Planning Board and its staff, any adverse impact on public facilities or the environment, and factors such as provision of affordable housing.

1. Master Plan Conformity, Technical Staff and the Planning Board:

As discussed at length in this report, Technical Staff recommended disapproval, but the Planning Board disagreed and found that the proposed development, as limited by the binding elements, is appropriate and consistent with the Sector Plan. Exhibit 74. For the reasons discussed in Part III. E. of this report, the Hearing Examiner also finds that the proposed SDPA is consistent with the Sector Plan for Wheaton Central Business District and Vicinity, approved and adopted in 1990.

2. Public Facilities and the Environment:

The Transportation Planning staff reviewed the SDPA and found that it meets all requirements of Local Area Transportation Review and Policy Area Mobility Review, as discussed in Part III. D. 3. c. of this report. As mentioned earlier, the record also supports the conclusion that other public facilities will not be adversely affected by the proposed use.

Environmental issues were discussed in Part III. D. 4 of this report. As mentioned there, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject property, and Environmental Planning Staff found no environmental issues. A stormwater management concept plan has not yet been approved for the site, but that step will be required at subdivision.

One other factor bears mentioning in connection with the public interest. The evidence in this case is that the subject site is now “improved” with three vacant homes, which are in a deteriorated condition. Tr. 40. The record indicates that Applicant’s proposed building will create a much improved gateway to the community. Tr. 85 and 103. The Hearing Examiner concludes, as did the community, that that would be in the public interest.

In sum, the Hearing Examiner finds that the proposed use will not adversely affect surrounding development, will be consistent with the goals of the Sector Plan, will provide a useful service to the community and will not adversely affect public facilities or the environment. The Hearing Examiner therefore concludes that its approval would be in the public interest and appropriate for the comprehensive and systematic development of the County.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, the Hearing Examiner reaches the following conclusions with respect to DPA 05-2:

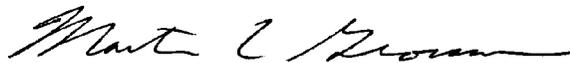
1. That the requested SDPA complies with the purpose clause and the development standards of the C-T Zone;
2. That the requested SDPA will be compatible with existing and planned land uses in the surrounding area; and
3. That the requested SDPA bears sufficient relationship to the public interest to justify its approval.

VII. RECOMMENDATION

I, therefore, recommend that DPA 05-2, seeking to amend the Schematic Development Plan and Covenants approved by the Council on August 3, 1987, in Local Map Amendment G-540, and to amend LMA G-229, approved by the District Council in 1980, for a combined total of 39,102 square feet of land consisting of Lots 7, 22, and 23, located at 11107 Valley View Avenue, and 2907 - 2909 University Boulevard, Kensington, Maryland, **be approved** subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 94(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Schematic Development Plan Amendment within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance; and that the Declaration of Covenants (Exhibit 100(a)) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

Dated: February 3, 2011

Respectfully submitted,



Martin L. Grossman
Hearing Examiner