

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
HAMPDEN LANE, LLC
Applicant

Timothy Dugan, Esquire

Attorney for the Application

Before: Françoise M. Carrier, Hearing Examiner

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Zoning Application No. G-819

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

Application No. G-819, filed on February 3, 2004 by Applicant Hampden Lane, LLC, requests reclassification from the R-10 and R-60 Zones to the TS-R Zone of 30,891 square feet of land in the Edgemoor subdivision (7th Election District) comprised of part of Lots 5 and 6, Block 24B; part of Lots 8 and 9, Block 24D; 313 square feet of right-of-way owned by Montgomery County that was formerly part of Lot 6, Block 24B; and 815 square feet of right-of-way owned by Montgomery County that was formerly part of Lots 8 and 9, Block 24D. The site is located at 4802 and 4804 Montgomery Lane and 4901 and 4905 Hampden Lane, Bethesda and is depicted on an identification plat submitted as Exhibit 23(a).

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") who, in a report dated May 7, 2004, recommended *deferral or denial*. The Montgomery County Planning Board ("Planning Board") considered the application on May 13, 2004 and, by a vote of 4 to 1, recommended *approval*, stating that the Planning Board strongly supports this project. A public hearing was convened on June 15, 2004 and continued on June 16, June 22 and September 21, 2004. Evidence and testimony were

presented both in support of and in opposition to the application. The record was held open for one week to receive the final transcript, and closed on September 28, 2004. It was later reopened to receive two corrected exhibits, and closed immediately on January 5, 2004.

The Hearing Examiner issued a Report and Recommendation dated January 7, 2005 (“January 7 HE Report”) recommending *approval* of the application on grounds that (i) the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance; and (ii) the proposed rezoning and development would satisfy the purposes, standards and regulations of the TS-R Zone, would be compatible with existing and planned land uses in the surrounding area and would serve the public interest.

On February 8, 2005, the District Council granted a request for oral argument submitted by opposition parties. Oral argument, followed by extensive questioning of counsel by members of the District Council, took place on March 1, 2005. Following this discussion, the District Council voted to remand the case to the Hearing Examiner for the limited purpose of giving the Applicant the opportunity to amend its development plan to specify, as a binding element, that all moderately priced dwelling units (“MPDUs”) provided in connection with the proposed development will be provided on-site.

By notice dated March 7, 2005, the Hearing Examiner reopened the record to receive into it the District Council’s Order of Remand (Ex. 100), and correspondence from the Applicant’s counsel dated March 3, 2005, which enclosed a revised Development Plan that specifies, as a binding element, that all MPDUs will be on site (Ex. 101). The record was held open for ten days to allow comment on the additional submission by all parties, but no comments were received. The record before the Hearing Examiner closed on March 17, 2005.

II. FINDINGS OF FACT

The January 7 HE Report is incorporated herein by reference, as nearly all of its Findings of Fact remain relevant to the application as currently presented.

The January 7 HE Report noted that the proposed project would include at least the minimum number of MPDUs required under county law (12.7 percent), and is expected to include up

to 15 percent MPDUs. At the time of that report, the Applicant had committed to putting some MPDUs on site, but not necessarily all. With the revised Development Plan submitted on remand, the Applicant is now committed to providing all MPDUs on site. This commitment strengthens the application's ability to comply with the purpose clause for the TS-R Zone, which, among other things, states that development in the TS-R Zone should "provide housing for persons of all economic levels." Code § 59-C-8.22(d). It also makes the application more consistent with the project that was reviewed by Technical Staff and the Applicant's land planner, both of whom were under the impression that all MPDUs would be provided on site. It does not change the density proposed, in terms of number of dwelling units or FAR, but it establishes that within the proposed density, all MPDUs that are provided will be on site.

The Council is now presented with an application for a residential building with the following binding elements:

- 40 to 65 dwelling units, including up to 15 percent MPDUs, with all MPDUs provided on site;
- density of no more than 3.05 FAR;
- a height of up to 100 feet;
- a maximum of 60 percent building coverage;
- at least 10 percent public use space;
- at least 20 percent active/passive recreation space, with the amount on the ground determined by the Planning Board;
- underground parking for residents with a small number of surface parking spaces for drop-off and visitor parking;
- streetscape in substantial compliance with the Sector Plan guidelines; and
- right-of-way dedications as called for in the Sector Plan.

III. FINDINGS OF LAW

The additional evidence received on remand has no impact on the Hearing Examiner's conclusion that the subject application satisfies the requirements for development plans specified in the Zoning Ordinance, would be compatible with land uses in the surrounding area, would satisfy the purposes, standards and regulations of the zone, and would serve the public interest. As stated above, the revised Development Plan bolsters the Hearing Examiner's conclusion, based on the preponderance of the evidence, that the proposed reclassification and development satisfy the purpose of the zone and bear sufficient relationship to the public interest to warrant their approval.

IV. CONCLUSIONS

Based on the foregoing, the analysis contained in the January 7 HE Report, and a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The requested reclassification to the TS-R Zone is in substantial compliance with the use and density recommended by the *Bethesda CBD Sector Plan*. It does not conflict with the county capital improvements program or any other county plan or policy.
2. The Development Plan would comply with the purposes, standards, and regulations of the TS-R Zone, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.
3. The Development Plan proposes conceptual internal vehicular and pedestrian circulation systems and points of external access that would be safe, adequate and efficient.
4. By its design, by minimizing grading and by other means including environmental restoration and reclamation, the proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site. The application is exempt from forest conservation requirements under Chapter 22A. Requirements for water resource protection under Chapter 19 would be satisfied.

5. The submitted documentation of the intended ownership and method of perpetual maintenance of areas to be used for recreational or other common or quasi-public purposes is adequate and sufficient.

B. Zoning Request

Application of the TS-R Zone at the proposed location would be proper for the comprehensive and systematic development of the County because the proposed development would be compatible with land uses in the surrounding area, would satisfy the purposes, standards and regulations of the zone, and would serve the public interest.

V. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-819, requesting reclassification from the R-10 and R-60 Zones to the TS-R Zone of 22,546 square feet of land comprised of part of Lot 5, Block 24B, Edgemoor subdivision, located at 4802 Montgomery Lane, Bethesda; part of Lot 6, Block 24B, Edgemoor subdivision, located at 4804 Montgomery Lane, Bethesda; part of Lot 8, Block 24B, Edgemoor subdivision, located at 4905 Hampden Lane, Bethesda; and part of Lot 9, Block 24D, Edgemoor subdivision, located at 4901 Hampden Lane, Bethesda, all in the 7th Election District, be **approved** in the amount requested and subject to the specifications and requirements of the final Development Plan, Ex. 96(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: March 24, 2005

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner