

Resolution No. 15-1354
Introduced: March 7, 2006
Adopted: March 7, 2006

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

By: County Council

SUBJECT: APPLICATION NO. G-820 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Jody Kline, Attorney for Owner Normandy Farms Joint Venture. OPINION AND RESOLUTION ON APPLICATION

Tax Account No. 10-00862983

OPINION

Application No. G-820, filed on February 9, 2004 by Applicant Normandy Farms Joint Venture, requests reclassification from the RE-2/TDR Zone (Residential, one-family, two-acre minimum lot size) to the Country Inn Zone of 6.5 acres of land located at 10701 Falls Road in Potomac, Maryland, in the 10th Election District. The property is identified as Parcel 180 on Tax Map FP43 and has been the home of the Normandie Farm Restaurant for over 70 years. As required under the Country Inn Zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards and staging. Pursuant to Code § 59-D-1.11, development under the Country Inn Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the Country Inn Zone.

The Hearing Examiner recommended approval of the application on the basis 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 Country Inn Zone, would be compatible with existing and planned land uses in the surrounding area and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with the conclusions drawn by the Hearing Examiner, the Planning Board and Technical Staff.

The Hearing Examiner's Report and Recommendation dated February 13, 2005 is incorporated herein by reference.

The subject property consists of approximately 6.5 acres of land located at 10710 Falls Road in Potomac, slightly south of the Falls Road Golf Course and north of Democracy Boulevard. The property is classified under the RE-2/TDR Zone and is roughly rectangular in shape, with approximately 500 feet of frontage along Falls Road and an average depth of 600 feet (the northern boundary line extends back from Falls Road approximately 670 feet, and southern boundary line extends back about 575 feet). The property is developed with a large, one-story, brick and siding restaurant, a two-story administrative building, a storage shed attached to the side of the restaurant, large parking areas and a small slate patio. The property is gently to moderately sloping. Natural features include a forested area in the western part of the property measuring 0.71 acres; a spring in the southwestern corner of the property that flows through a stone and concrete enclosure; a very small area of wetlands in the southwestern corner of the property; large areas of grass; and scattered trees, including some specimen trees, as well as ornamental trees, shrubs and perennials.

To the east, the site abuts Falls Road. To the north, it abuts the Manor Care Nursing Home in the RE-2/TDR Zone, which is located on land that was once part of the subject property. The site abuts single-family homes classified under the RE-2/TDR Zone to the west, and to the south it abuts a single-family lot in the RE-2 Zone.

The surrounding area for this application extends roughly from the Bullis School on the east, to the Potomac Tennis Club on the north, Normandy Farms Drive on the west (including properties on both sides of the street) and Democracy Boulevard on the south. The surrounding area contains a nursing home, a tennis club, a private school with substantial acreage, and single-family detached homes on large lots, roughly one to three acres each.

The Normandie Farm Restaurant has been located on the subject property since 1931, predating zoning in the County. The property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2

Zone by text amendment in 1973, and the subject property's zoning has remained the same since then, having been reconfirmed by Sectional Map Amendments G-247 (1980), G-565 (1987) and G-800 (2002).

The Board of Appeals approved a special exception for a restaurant on the site in 1959 (BA-749), which allowed the restaurant to be expanded (it was operating prior to the special exception as a legal, non-conforming use and, therefore, could not expand). The special exception was modified twice in the next two years. The first modification was to permit the construction of a two-story accessory building with an office and dressing rooms (BA-956, 1960), and the second was to permit the construction of a new kitchen, with expansion and remodeling of the dining area (BA-1175, 1961). In 1970, an additional special exception was granted to permit the operation of an antique shop in an existing building to the rear of the restaurant.

The property was sold in 1982. The original special exception and the two restaurant modifications were transferred to the new owners. The antique shop special exception, which had been abandoned, was revoked. An additional modification, in 1986, removed from the special exception area nine acres at the north end of the site, which were not being used for the special exception. This reduced the acreage to its current size. The nine acres were later sold, and they currently house the Manor Care Nursing Home. The subject site was designated as a TDR receiving area in 1982, as part of a larger, 41-acre parcel. The 15.5 acres then subject to the special exception, were, however, excluded from the density transfer provision.¹

¹ Both the Staff Report and Applicant's counsel suggest that the Normandie Farm Restaurant is a legal, non-conforming use. This appears, however, not to be the case. Restaurants were, indeed, deleted from the Zoning Ordinance as a permitted special exception in residential zones in 1967. See Board of Appeals Resolution in Case No. 749, dated March 27, 1980. The legislation contained a savings clause, however, which is codified in Section 59-G-2.57. That section provides, in pertinent part, that any restaurant in the RE-2 Zone lawfully existing on March 3, 1967 "is a conforming use and may be continued, structurally altered, reconstructed or repaired so long as it remains an otherwise lawful use as previously permitted. Any alterations or reconstruction that results in an expansion of the existing floor area must be approved by special exception by the Board [of Appeals.]" Code § 59-G-2.57. Accordingly, it appears that the restaurant might have sought the desired expansion through modification of its special exception, rather than through rezoning. The District Council is not aware of any legal provision or administrative practice that prohibits a rezoning application from receiving favorable consideration simply because the Applicant might have achieved its goals another way.

The Applicant proposes to expand the restaurant by building a second building, about the same size as the first and in a similar architectural style, immediately to the west of the existing restaurant. The two buildings would share a kitchen, and would be connected by an enclosed breezeway. The Applicant intends to use the new building primarily for special events such as weddings and bar mitzvahs, which currently can be accommodated only by closing the restaurant. The expansion plan would include demolishing the two-story administrative building, removing a small part of the existing restaurant to make room for the breezeway, and making significant changes to the parking and on-site circulation. The total building square footage on the site currently is 14,272 square feet, of which approximately 1,979 square feet are to be demolished. The new construction would bring the total building square footage up to approximately 24,400 square feet, for a net addition of about 10,200 square feet.

The site would retain its two existing access points onto Falls Road, but the southern entrance would be brought up to state standards with a 30-foot width (the northern entrance already satisfies state standards). At the same time, the parking areas would be improved to provide clearer drive aisles, sidewalks and gathering spaces, patron drop-off and pick-up areas, and a separate loading and employee parking area. The parking areas would be reconfigured to remove pavement that currently is within the stream valley buffer, and to create wider setbacks.

The Development Plan in the present case shows access points and the approximate locations of existing and proposed buildings, structures and parking areas. No dedications are proposed. Due to the nature of the use, no land is intended for common use but not public ownership. Additional elements required for a development plan have been submitted in the form of a vicinity map (Ex. 5), a Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD," Ex. 6 and color rendering Ex. 47), and a preliminary forest conservation plan (Ex. 33(a)).

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

§59-D-1.61(a): master plan consistency. The Master Plan makes unusually specific recommendations for the subject property, and the proposed Development Plan substantially complies with them. The Applicants seek the Country Inn Zone, as recommended in the Master Plan. The total building square footage proposed is slightly greater than the 10,000-square-foot limit recommended in the Master Plan, on the order of two percent. A two-percent overage can be considered de minimus, as it would not have a noticeable effect on the size of the structures. The Development Plan also substantially complies with the Master Plan's land use and design guidelines, which recommend that the inn complement the existing restaurant and emphasize an attractive rural setting, with generous setbacks from lot lines, trees and soft surfaces in the parking areas and green, park-like edges along the site perimeter. The proposed new building is intended to be in a style similar to that of the existing restaurant. It would be largely obscured from view from Falls Road because of its location west of the existing restaurant building, and would be set back a significant distance from all of the site boundaries. Moreover, the parking areas would have more trees and green elements, and their relocation away from the stream valley would enhance the rural character of the setting.

Based on the Land Use Plan, Exhibit 51(a), and a color rendering of it, Exhibit 48, the "green, park-like edges" objective would be achieved very well on the north, east and west boundaries, where there would be significant green-area setbacks between pavement and boundary lines. The Land Use Plan shows the nearest parking area more than 100 feet from the northern boundary line, with grassy areas, trees and bushes between the two. On the west side of the site, the Land Use Plan shows a setback ranging from approximately 120 to 200 feet, with substantial forest cover. The eastern boundary line, along Falls Road, would retain its existing lawns, which are at least 90 feet deep along the entire frontage except the southeast corner, near the southern entrance. The only edge that would not fully comply with the Master Plan guidelines is the southern boundary, where parking areas would sit 20 feet from the property line. Twenty feet can hardly be described as "generous", but it is larger than the current southern setback, which ranges from about 12 feet to 15 feet near Falls Road, and gets narrower near the rear of the property, dropping down to less than two feet in some places. A uniform 20-foot

setback would improve current conditions and leave room for at least a modest amount of green space. The District Council concludes, based on the preponderance of the evidence, that the proposed Development Plan would be in substantial compliance with the Master Plan.

The evidence indicates that the proposed development would satisfy the requirements of Local Area Transportation Review, and therefore would be consistent with the County's Growth Policy. There is no evidence of a conflict with any other applicable county plan or policy.

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

1. The Purpose Clause

The purpose clause for the Country Inn Zone states that is intended to be used to permit country inns at appropriate rural locations, in a manner that will be compatible with and will not adversely affect the rural character of the surrounding area. An additional purpose specified is to preserve and maintain significant trees.

The present application proposes a substantial expansion to a country inn/restaurant that has operated at this location for more than 70 years. While the surrounding area may fairly be characterized as semi-rural, there is substantial open space on the grounds of the nearby golf course and the Bullis School, and the nearby homes are on large lots, approximately one to three acres in size. The large lots and significant open space in the vicinity lend an open, rural character to the area. Moreover, the architectural style and setting of the Normandie Farm Restaurant have contributed, in large measure, to the rural character of the surrounding area, and would continue to do so with the proposed expansion.

The proposed development would provide for the preservation and renovation of an existing structure that has been in its present use for more than 70 years, and permit the construction of a new structure of a compatible style and scale, preserving the rustic, French country character of the architecture. It would also involve enhancements to the natural green space on the property, increasing perimeter buffers and improving environmental conditions in the stream valley buffer. The development

would preserve the significant trees in the stream valley buffer, as shown on the preliminary forest conservation plan.

The intensity of the use would increase, but the nature of the activity would be the same. Moreover, the increased setbacks and buffering would mitigate much of the impact from increased levels of activity, particularly to the west of the site, where most of the nearby residences are located.

With regard to traffic conditions, the evidence indicates that the expanded operation would generate a noticeably greater number of vehicle trips, estimated in the traffic study as a 70 percent increase. This would not be enough, however, to cause the site driveways or the closest intersections to reach unacceptable levels of congestion. Moreover, undisputed evidence indicates that the site entrances would be safe and adequate. Thus, the evidence supports a conclusion that the proposed development would not be incompatible with the surrounding area due to traffic impacts.

For all of the above reasons, the District Council concludes that the continued use of the property for a country inn, its reclassification to the Country Inn Zone, and implementation of the proposed Development Plan would be compatible with and would not adversely affect the rural character of the area; in fact, the proposed development would enhance the rural character that the Normandie Farm Restaurant lends to the surrounding area. Accordingly, the District Council concludes that the proposed Development Plan would comply with the purposes of the Country Inn Zone.

2. Standards and Regulations of the Zone

As shown in the table on the next page, the proposed development would satisfy the standards and regulations of the Country Inn Zone. The Applicant requests approval for parking along most of the southern property line with a 20-foot setback, which is significantly less than the 50 feet normally required. Written evidence suggests that the Applicant intends to use pole lighting for the parking areas, with cut-off features to prevent light spillage onto adjacent properties. Moreover, implementation of the Development Plan would result in moving the parking farther away from the southern boundary line than its current location, creating room for at least a modest amount of landscaping and leading to an improvement over current conditions. Under these circumstances, the

District Council considers it appropriate to approve the Development Plan with the proposed parking setbacks, as permitted under Section 59-C-4.397.

Country Inn Zone Development Standards, Sections 59-C-4.391 to 4.397

Element	Permitted/Required	Proposed
Net Lot Area	2 acre minimum	6.5 acres
Proposed Use	As permitted in Code § 59-C-4.39 (country inn; caretaker dwellings; up to 12 guest rooms in main building; cable communication system; public utilities and telecommunication facilities by special exception; antique shops, handicrafts and art sales; saddlery; transitory use; blacksmith)	Country Inn
Building Coverage	10% maximum	Approx. 9%
Building Height Main Building	2.5 stories except for existing buildings and additions	1 story/Not to exceed 35 feet
Accessory Building	2 stories except for existing buildings and additions	1 story ²
Building Setbacks From any street From other lot lines	50 feet minimum* 75 feet minimum**	92 ft. (existing) 112 ft. (north) 203 ft. (south) 274 ft. (rear)
Green Area	50% minimum	57.41%
Parking	259 spaces, based on proposed square footages	261 spaces
Parking Setbacks From any street From other lot lines	25 feet minimum *** 50 feet minimum ***	32 ft. 20 ft.

* The District Council may approve a setback less than 50 feet for any building existing on the site at the time of reclassification to the Country Inn Zone, and for any addition or improvement to an existing building shown on the Development Plan.

** The District Council may approve a setback less than 75 feet for any building existing on the site at the time of reclassification to the Country Inn Zone, and for any addition or improvement to an existing building shown on the Development Plan.

***The District Council may approve a reduced setback for any parking facility existing on the site at the time of reclassification to the Country Inn Zone, and for any modification to an existing parking facility shown on the Development Plan.

² The submitted Land Planning Report lists "1 story" next to accessory building, apparently under the expectation that the new building would be considered an accessory structure. Ex. 50 at 7. Technical Staff states that the new structure would be considered an addition to the existing building, rather than an accessory structure, because of the breezeway planned to connect the two. Supplemental Staff Report, Ex. 52, at 2. Either way, the height limitation would not be exceeded.

3. Maximum Safety, Convenience and Amenity of the Residents

Because the proposed development is non-residential in nature, the maximum safety, convenience and amenity of residents is not a factor for consideration.

4. Compatibility

As described in more detail under (b)1. above, the District Council concludes that the proposed development would be compatible with adjacent development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems. The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient, and would represent an improvement over current conditions. The southern entrance drive would be expanded to 30 feet in width to meet state standards, and would move a few feet farther north to increase the southern setback. Expert testimony indicated that the two access points would have adequate sight distances, and that although the northern entrance sits on a curve in the road, it is safe for drivers to use that entrance due to extra pavement along the curve, the sharpness of the curve and a posted speed limit decrease. Parking would be improved with clearer drive aisles, sidewalks and gathering spaces, patron drop-off/pick-up areas, and a separate area for loading and employee parking. Pedestrian circulation would be improved by lead-in walks from Falls Road and pathways on-site.

§59-D-1.61(d): preservation of natural features. The proposed Development Plan would preserve much of the existing vegetation and natural features of the site. As shown on the preliminary forest conservation plan, the proposed development would preserve 0.69 acres of the total 0.71 acres of forest on site, including all of the existing trees in the stream valley buffer. The preliminary forest conservation plan also shows new tree plantings in the portions of the stream valley buffer that are currently covered with pavement or grass, and in the northwest corner of the site. Forest conservation requirements would be satisfied on site. Storm water management facilities would control

run-off, prevent erosion and improve environmental conditions around the spring in the southwest corner of the site.

§59-D-1.61(e): common area maintenance. This finding is not applicable to the proposed use.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. As discussed earlier, the District Council agrees with the conclusions drawn by the Planning Board and its Technical Staff that the proposed development would be in substantial compliance with the Master Plan, and that the Country Inn Zone is an appropriate zone for the subject property.

The evidence of record indicates that the proposed development would be adequately served by and would not adversely affect public facilities in the area.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassification is in the public interest.

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

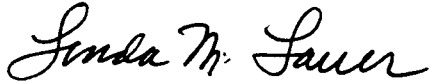
ACTION

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

Zoning Application No. G-820, requesting reclassification from the RE-2/TDR Zone to the Country Inn Zone of 6.5 acres of land located at 10701 Falls Road in Potomac, Maryland, in the 10th Election District, is hereby **approved** in the amount requested and subject to the specifications and requirements of the final Development Plan, Ex. 51(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.

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer".

Linda M. Lauer
Linda M. Lauer, Clerk of the Council