

Resolution No.: 15-1639
Introduced: October 17, 2006
Adopted: October 17, 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: WITHDRAWAL WITHOUT PREJUDICE OF APPLICATION NO. G-809 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Jody Kline, Esquire, Attorney for Applicant Centex Homes Corporation, and Isaac Marks, Sr. Esquire, Attorney for Applicant Maria Ruth Burley and, OPINION AND RESOLUTION ON MOTION TO WITHDRAW APPLICATION WITHOUT PREJUDICE Tax Account Nos. 10-00849463 and 10-00849452.

OPINION

Application No. G-809, filed on May 9, 2003, by Applicant Maria Ruth Burley,¹ requested reclassification from the existing R-90 Zone (Residential-single family homes) to the R-T 8 Zone (Residential Townhouse, with maximum of 8 units per acre) of 5.23621 acres of land. The subject property is known as Parcels 361 and 417, with addresses of 10401 and 10525 Seven Locks Road, and located on the east side of Seven Locks Road, approximately 1,600 feet north of its intersection with Democracy Boulevard, in the 10th Election District, in Potomac. A public hearing was convened on April 8, 2005, and a Report and Recommendation of the Hearing Examiner was issued on July 12, 2005.

The Hearing Examiner recommended remand of the application for further proceedings because, as then planned (*i.e.*, a 31 unit development), environmental and traffic concerns rendered the proposed development inappropriate for the R-T 8 Zone at the proposed location, incompatible with its surroundings and contrary to the public interest. By Resolution 15-1117, dated July 26, 2005, this body remanded the matter to the Hearing Examiner "to give Applicant the opportunity to submit a revised SDP, reducing the number of planned dwelling units sufficiently so that the Department of Permitting Services can approve a

¹ The developer, Centex Homes Corporation, subsequently joined in the application.

Stormwater Management Concept Plan without waiving channel protection requirements, and permitting Applicant to commit, in Binding Elements, to any traffic mitigation and/or safety measures found necessary by the Planning Board.”

After making some efforts to reconfigure their proposed development, Applicants have now elected to withdraw their application. Applicants have requested that such withdrawal be without prejudice to the property owners’ rights to seek rezoning in the future, and that the County Council specify that the time limitation against reapplication not apply. The hearing in this matter, which had been scheduled for July 17, 2006, was removed from the Hearing Examiner’s calendar at Applicants’ request, and the matter is now before the District Council to determine whether such withdrawal shall be without prejudice to the property owners’ rights to seek rezoning in the future.

This question is governed by Zoning Ordinance §59-H-6.6, which provides:

Sec. 59-H-6.6. Withdrawal of application.

The district council may allow an applicant to withdraw his application for a local map amendment at any time; provided, that if the request for withdrawal is made after publication of the notice of hearing, no application for the reclassification of all or any part of the land which is the subject of the application shall be allowed within the time limitations set forth in subsection 59-H-2.23 following the date of the resolution of the district council approving such withdrawal, unless, by the resolution allowing withdrawal or subsequent resolution, the council specifies that the time limitation shall not apply.

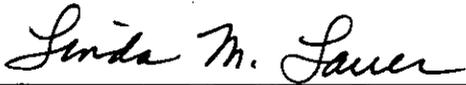
Based on the Hearing Examiner’s Report and Recommendation of July 12, 2005, the District Council finds that, given the appropriately designed development, rezoning of the subject site may still be in the public interest. That was the reason the original application was remanded, rather than denied outright. Therefore, allowing a reapplication to occur without extraordinary delay would also be in the public interest. For this reason, the District Council will grant Applicants’ request that withdrawal of the application be without prejudice to the property owners’ rights to seek rezoning in the future and that the time limitations for reapplication specified in Code Section 59-H-2.23 not apply.

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-809, requesting reclassification from the R-90 Zone to the R-T 8 Zone of 5.23621 acres of land, known as Parcels 361 and 417, with addresses of 10401 and 10525 Seven Locks Road, and located on the east side of Seven Locks Road, approximately 1,600 feet north of its intersection with Democracy Boulevard, in the 10th Election District, in Potomac, is hereby **withdrawn without prejudice** to the property owners' rights to seek rezoning in the future, and the time limitations for reapplication specified in Code Section 59-H-2.23 shall not apply.

This is a correct copy of Council action.



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