

Resolution No.: 16-392
Introduced: November 27, 2007
Adopted: November 27, 2007

**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-851 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Jody Kline, Esquire, Attorney for Applicant, OPINION AND RESOLUTION ON
APPLICATION

Tax Account No. 07-03281496

OPINION

Application No. G-851, filed on July 5, 2006 by Applicant Wildwood Medical Center, L.L.C., requests reclassification from the R-90 Zone to the O-M Zone of 3.5 acres of land located at 10401 Old Georgetown Road in Bethesda, Maryland, on property known as Lot N541, Parcel B, Wildwood Manor Shopping Center, in the 7th Election District. The application was submitted under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, development standards and staging.

The Hearing Examiner recommended approval of the application on the basis that the O-M Zone at the proposed location would satisfy the requirements of the purpose clause; that the proposed reclassification and development would be compatible with existing and planned land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The Montgomery County Planning Board ("Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with the Hearing Examiner's conclusions and incorporates herein the Hearing Examiner's Report and Recommendation dated November 9, 2007.

The subject property consists of 3.5 acres of land located on the east side of Old Georgetown Road (MD 187) in Bethesda, between Rock Spring Drive to the north and Democracy

Boulevard to the south, about 1,200 feet south of the MD 187/I-270 interchange. The property is currently developed with a three-story, 35,000-square-foot medical office building surrounded by surface parking, which operates pursuant to a special exception that was approved in the early 1960s. The property has approximately 340 feet of frontage on Old Georgetown Road, to which it has access via Medical Center Drive, a stub road that was built across an easement that the subject property enjoys on the adjoining property to the north. The site's parking area interconnects with a filling station abutting the southwest corner of the site and, at three locations along its southern boundary, with the Wildwood Shopping Center (the "shopping center"). Both the gas station and the shopping center have direct access to Old Georgetown Road. The subject site abuts Berkshire Drive to the west, but has no vehicular connection to it.

The property slopes moderately down from the northwest corner to the southeast corner. It has no forested areas, wetlands, floodplains, rare or endangered species, critical habitats or historic features. It is landscaped with trees and shrubs near the building, within the parking area and along Old Georgetown Road.

The surrounding area for this application has been designated as the area including the homes between the subject site and I-270 to the north, the first long block of homes to the east and southeast between I-270 and Cheshire Drive, and the properties fronting on the west side of Old Georgetown Road from Democracy Boulevard to I-270. The surrounding area contains a mix of residential, institutional, retail and office uses. Immediately to the north and east, extending to I-270 to the north and Cheshire Drive to the south, are single-family detached homes in the R-90 and R-90/TDR Zone. Abutting to the south are the gas station and the shopping center, which contains a Balducci's grocery store and a number of restaurants and specialty stores. The gas station and the shopping center itself are classified in the C-1 Zone, but the shopping center's parking lot operates pursuant to a special exception under the R-90 Zone. Confronting the subject site across Old Georgetown Road is Georgetown Square, a shopping center in the C-1 Zone with a Giant grocery store and a number of other restaurants and retailers. Behind Georgetown Square, just outside the defined surrounding area on

property zoned R-90, is Walter Johnson High School. Farther north on Old Georgetown Road is property known as the Davis tract, which was reclassified several years ago to the MXP Zone and has been only partially developed. The northern part of the Davis tract, abutting I-270, contains multi-family residential dwellings with structured parking. The southern part is under development, and is approved for mixed housing, office, institutional and entertainment uses.

The subject property was classified under the R-90 Zone in the 1954 comprehensive zoning of the area. In 1964, the Board of Appeals approved special exception number B-A 1631, allowing the construction of a medical office building on the property. The special exception was grandfathered with the adoption of a zoning text amendment in 1984, which limited medical office buildings in residential zones to no more than four medical practitioners. R-90 zoning was reaffirmed by *Sectional Map Amendment in 1992 (G-706)*.

The Applicant proposes to add a second office building south of the existing building and a smaller building, for use as a drive-through bank, along the site's Old Georgetown frontage. The new office building would be similar in size to the existing building, and its use would be restricted to non-medical offices to limit traffic impacts.¹ Parking for the new building would be provided in an underground garage. Vehicular access would continue to be provided via the existing entrance at the north end of the site, plus two connection points to the shopping center. The northern access road currently extends across the full depth of the property, and has three driveways into the subject site: one just a few feet from Old Georgetown Road, one leading to the main drive aisle, and one near the back of the site. In connection with the present proposal, the Applicant proposes to shorten the access road, retaining only the first two driveway entrances. The remainder of the easement area would be used to increase the landscaped area between the site and the homes to the north.

The first driveway entrance along the northern access road would lead to the drive-in bank. The second entrance would lead to a continuous drive traversing the property to its southern boundary. Both the existing building and the proposed office building are intended to front on this main

¹ The Zoning Ordinance calls for more parking for medical office buildings than for general office buildings.

drive, with parking at the rear. Walkways are proposed to connect the two office buildings with each other and existing sidewalks to the north and east. The Applicant's conceptual plan proposes to eliminate one row of parking along Old Georgetown Road and replace it with grass and street trees. The plan also includes removing a row of parking along Berkshire Drive, at the east end of the site, and replacing it with grass, fencing, and plantings on an earthen berm, all designed to provide an expanded buffer area and better visual screening between the subject site and the neighboring residential community.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan ("SDP") that specifies which elements of the plan are illustrative and which are binding, i.e. elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the county land records if the rezoning is approved. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The Applicant in the present case has submitted three versions of its SDP. The graphics, which are illustrative in nature, are the same on all three. All three versions describe 12 elements of the proposed plan, but they vary as to which element are binding elements and which are illustrative "design criteria for site plan." The Hearing Examiner has recommended approval of the SDP identified as Exhibit 65(a), which has eight binding elements and four design criteria. The Planning Board and its Staff recommended that the SDP have seven binding elements and five design criteria, as shown on Exhibit 61(a). The one difference between Exhibit 65(a) and Exhibit 61(a) is that a 30-foot buffer area along the side of the property closest to single-family residences is ensured as a binding element on Exhibit 65(a), whereas on Exhibit 61(a) it is designated as a design criterion for site plan, making it illustrative. The third SDP, Exhibit 61(b), includes the buffer area as a binding element and also addresses stormwater management, exterior lighting and improvements to the public right-of-way

adjacent to the site as binding elements, rather than design criteria. The Wildwood Manor Citizen's Association (the "WMCA"), representing the adjacent single-family neighborhood, initially argued in favor of Exhibit 61(b), but later stated that Exhibit 65(a) satisfied its concerns.

The question of which SDP may most appropriately be approved turns on the meaning of Section 59-H-2.53, which outlines the elements of an SDP. The District Council agrees with the Hearing Examiner's interpretation, which is discussed in detail on pages 12 to 16 of the Hearing Examiner's Report and Recommendation, and concludes that Section 59-H-2.53 permits an applicant using the optional method to restrict (1) any element that is addressed in the "development standards" section of the zone, whether in a table or in text; (2) anything related to what uses are permitted on the site; and/or (3) the staging, or timing, that will be followed in constructing the project if it is approved. (The District Council agrees with the Hearing Examiner that there is no ambiguity in the use of the term "staging" in Section 59-H-2.53.) This interpretation is reached with due consideration to the basic underlying purpose of the optional method, which is to permit an applicant to impose limitations sufficient to support a finding of compatibility by the Council. Based on this interpretation, the District Council finds that Exhibit 65(a), the final SDP that was submitted, appropriately categorizes the binding elements and design criteria.

The binding elements on Exhibit 65(a) limit the use and development standards as follows:

1. Uses limited to general, professional and business offices in the existing building and the same uses in both of the new buildings, except that medical practitioners are excluded in the new buildings. Square footage of larger new building limited to 30,000 square feet of gross floor area. Square footage of smaller new building limited to 3,460 square feet of gross floor area.
2. Vehicular access between the subject property and Berkshire Drive will be prohibited.
3. Roof-top mechanical equipment on the proposed three-story office building will be located so as to reduce visibility and the appearance of height for residences to the east.

4. Land uses in a 30-foot strip between the eastern property line of the subject property and the paved area for vehicular circulation shall be limited to a six-foot, board-on-board fence, shade trees and evergreen plantings on both sides of the fence.

5. The height of the proposed three-story building shall be limited to three stories or 42 feet, and shall be no more than four feet higher than the existing office building. No point along the east side of the proposed three-story building shall exceed 56 feet, measured from grade to roof surface.

6. The smaller proposed building shall be no closer than 50 feet to Old Georgetown Road. The two office buildings shall be no closer than 16 feet to the southern property line, and no closer than 130 feet to the eastern property line.

7. Floor area ratio shall not exceed 0.46.

8. The proposed three-story office building may not be occupied and used until an intersection improvement is completed creating a second westbound lane on the access road from the subject site to Old Georgetown Road, or an alternative transportation network improvement approved by the Montgomery County Planning Board is completed and in service.

The design elements identified on Exhibit 65(a) address stormwater management, exterior lighting, improvements that the Applicant proposes to make in the public right-of-way of adjacent Berkshire Drive, subject to necessary approval from the County, and landscaping.

As shown on page 29 of the Hearing Examiner's Report and Recommendation, the proposed development would be consistent with applicable development standards for the O-M Zone and applicable parking requirements.

The District Council turns next to the purpose clause of the O-M Zone, and concludes that the proposed rezoning would satisfy its provisions. The purpose of the O-M Zone as stated in Code §59-C-4.31 is set forth below.

59-C-4.310. Purpose.

It is the purpose of the O-M zone to provide locations for moderate-intensity office buildings in areas outside of central business districts. It is intended that the O-M zone be located in areas where high-intensity uses are not appropriate, but where moderate intensity office buildings will not have an

adverse impact on the adjoining neighborhood. This zone is not intended for use in areas which are predominantly one-family residential in character.

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 any application.

The subject site is outside a central business district, in an area where the proximity of residential neighborhoods would make high-intensity uses inappropriate. The Applicant proposes an office building and a bank that would be relatively modest in size and would fit in well, in terms of the nature of the uses, with the existing office building, gas station and nearby shopping center. With the binding elements on Exhibit 65(a) (the SDP recommended for approval by the Hearing Examiner), the project would be unlikely to have an adverse impact on the adjoining neighborhood. The combination of building height, square footage, setbacks and FAR effectively limit the proposed office building to roughly the location and size shown on the SDP. The neighbors are assured that no vehicular access would be created between the subject property and Berkshire Drive, protecting the neighborhood from a potential influx of traffic from Old Georgetown Road. A 30-foot buffer along the Berkshire Drive side of the site, where the only permitted land uses would be fencing, shade trees and evergreen plantings, would provide visual screening. The buffer might not hide the office buildings from view entirely, but would certainly mitigate their impact, including the potential impact of vehicle headlights at night. The visual impact of the buildings would be further mitigated by a distance of over 200 feet to the nearest homes, and a ten-foot drop in grade from the site to Berkshire Drive.

The traffic study established that the proposed project would not adversely affect local traffic conditions. Although treating the proposed bank as a stand-alone use rather than an expansion of the shopping center might have required the Applicant to put in its traffic improvement earlier, there is no evidence of record to undercut either the Applicant's traffic expert on this point or Technical Staff's concurring opinion. Moreover, testimony from the Applicant's traffic expert demonstrated persuasively that although there is a clear problem on Cheshire Drive approaching Old Georgetown Road, at the south end of the shopping center, any impact the present proposal might have on that traffic problem

would be unlikely to be significant enough to justify making this Applicant responsible for fixing the problem. Accordingly, the District Council concludes that based on the preponderance of the evidence, the Applicant has demonstrated that its proposal would not have an adverse impact on the adjoining neighborhood.

For all of these reasons, the District Council concludes that the proposed rezoning and development would be consistent with the purpose clause for the O-M Zone.

An application for a floating zone reclassification must be evaluated for compatibility with existing and planned uses in the surrounding area. For the reasons stated with regard to satisfying the purpose clause, the District Council concludes that the proposed rezoning and development would be compatible with existing and planned uses in the surrounding area. An additional office building of moderate size and a small bank building would blend in well with the mixed character of the surrounding area and, with the parameters established in the binding elements of Exhibit 65(a), would not have an adverse impact on the adjoining neighborhood. Traffic impacts would be mitigated, resulting in no net adverse impact, and the community would obtain additional opportunities for services and employment.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The District Council agrees with the findings made by the Hearing Examiner, the Planning Board and Technical Staff that the proposed development would comply with the Master Plan. The proposed development would further many of the relevant goals in the Master Plan, including focusing development on areas with existing infrastructure, increasing variety and vitality among land uses, and encouraging a land use pattern that provides opportunities for housing and employment.

The evidence indicates that the proposed rezoning and development would be adequately supported by and would have no adverse effect on local roadways or public utilities.

Accordingly, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification bears sufficient relationship to the public interest to warrant its approval.

For these reasons and because to grant 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 granted 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-851, seeking reclassification from the R-90 Zone to the O-M Zone of 3.5 acres of land located at 10401 Old Georgetown Road in Bethesda, Maryland, on property known as Lot N541, Parcel B, Wildwood Manor Shopping Center, in the 7th Election District, is hereby approved in the amount requested, subject to the specifications and requirements of the approved schematic development plan, Exhibit 65(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved schematic development plan, in accordance with §59-D-1.64, and provided that the Declaration of Covenants is filed in the county land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council