

Resolution No.: 16-875
Introduced: March 10, 2009
Adopted: March 10, 2009

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

By: County Council

SUBJECT: APPLICATION DPA 08-2 FOR SCHEMATIC DEVELOPMENT PLAN AMENDMENT OF G-627, Previously Approved by the Council on April 25, 1989; Patricia A. Harris, Esquire, Attorney for the Applicant, Stabler 1848, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 08-01869728, 08-015267370 and 08-02860303

OPINION

Applicant Stabler 1848, LLC (a/k/a “Goddard School” and “Thomas Building”) filed Development Plan Amendment (DPA) 08-2, on June 20, 2008, seeking to amend the schematic development plan approved by the Council on April 25, 1989 in LMA G-627. That Council Resolution (No. 11-1397) reclassified 4.84 acres (210,993 square feet) of land located at 900 Olney Sandy Spring Road (MD 108), Sandy Spring, Maryland into the O-M Zone and accepted Applicant’s 1989 plan to develop the property by adding a computer center (now called the Moore building) to the two existing buildings. The three buildings currently on the site contain 51,077 square feet of floor area.

Although the land was reclassified into the O-M Zone, the Council’s resolution (Exhibit 45) provided that the more restrictive development standards specified in the C-T Zone would apply, as agreed to by Applicant. Those C-T Zone development standards will continue to apply under the proposed amendment, as will the standards contained in the Sandy Spring/Ashton Rural Village Overlay Zone (SSRVO Zone). A significant portion of the entire site is within the Sandy Spring Historic District, but neither of the newly proposed structures is within the designated historic area.

DPA 08-2 would add a combined office/school building and a parking facility to the existing three buildings. The new building would contain no more than 35,000 square feet of gross floor area, and would be no more than 30 feet (2 ½ stories) tall. The Schematic Development Plan Amendment (SDPA – Exhibit 94) would also require corresponding amendments to the binding elements set forth in the covenants which were formerly filed in this case. To accomplish this change, revised covenants have been executed and filed in the record (Exhibit 93). Those 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-NCPPC), and in a report dated November 3, 2008, Staff recommended approval (Exhibit 38). Technical Staff also opined in their report that a review of this matter by the Historic Preservation Commission (HPC) was not required.¹ However, the Hearing Examiner's review of the Historic Preservation provisions of the Montgomery County Code, Chapter 24A, led him to conclude that the Historic Preservation Commission (HPC) must be given the opportunity to review this matter, in conjunction with Site Plan review and Subdivision. The District Council agrees with his analysis in Part III. E. of the Hearing Examiner's report.

The Montgomery County Planning Board ("Planning Board") considered the application on November 13, 2008 and, by a vote of four to one, also recommended approval, but with revisions to Applicant's proposed binding elements, as stated in the Board's memorandum dated November 14, 2008 (Exhibit 42). The Planning Board recommended limiting the gross floor area of the new building to 35,000 square feet, with a total gross floor area of all buildings not to exceed 86,077 square feet. The Planning Board also recommended limiting the height of the proposed building to no more than 30 feet (2 ½ stories).

¹ It should be noted that a correction was made to page 25 of their report (Exhibit 38) because Staff had inadvertently left out the crucial word "not" from the sentence regarding whether HPC review was needed (Exhibit 64). They meant to say that review by the HPC is not required.

The Applicant has accepted these recommendations, and they are now incorporated into the binding elements governing this development.

Pre-hearing letters in opposition were filed by the community (Exhibits 37, 40, 41, 43 and 44), including opposition by the Sandy Spring-Ashton Rural Preservation Consortium (Exhibit 40), based mostly on questions of compatibility of the proposed building and garage with the neighborhood and with the historic area, but also expressing concern about potential traffic problems.

A public hearing was held on November 21, 2008, November 24, 2008 and January 13, 2009. In addition to Applicant's witnesses, Martin Klauber, the People's Counsel, participated, and six witnesses testified in opposition, including the Sandy Spring-Ashton Rural Preservation Consortium. As required by Zoning Ord. §59-D-1.74(d)(2), the record was closed at the completion of the hearing on January 13, 2009.

On January 30, 2009, the Hearing Examiner filed his Report and Recommendation, recommending approval of the schematic development plan amendment, with a condition requiring the Planning Board to submit this matter to the Historic Preservation Commission in conjunction with site plan review and subdivision to allow the HPC to determine its jurisdiction and review the substance of the proposed development, if appropriate.²

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation is incorporated herein by reference and his findings and conclusions are hereby adopted. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested schematic development plan amendment, for the reasons set forth by the Hearing Examiner, and that approval should be conditioned upon submission to the HPC, as recommended by the Hearing Examiner.

Technical Staff provided the following zoning history of the subject site (Exhibit 38, p. 8):

² Applicant did not object to this condition when it was proposed by the Hearing Examiner at the hearing. 1/13/09 Tr. 51-52.

1958 Comprehensive Zoning Amendment	R-R, R-30 and C-2
1970 rezoning F-541	R-30 to C-1 (2.25 ac)
1972 rezoning F-850	R-R to C-T (2.26 ac)
1981 Comprehensive Zoning (G-293)	C-T, C-1 and C-2
1989 Rezoning LMA G-627	C-T, C-1 and C-2 to O-M (4.84 ac) ³
1998 Sandy Spring/Ashton Master Plan confirmed the O-M Zone	

The subject site is located in the southwest quadrant of the intersection of Meeting House Road and Olney-Sandy Spring Road (MD Route 108) in Sandy Spring, Maryland. It is comprised of Parcel A, Sandy Spring Subdivision; Lot 1, Block. A, Earnshaw Subdivision; and Tax Parcel P426. The site is shaped like an inverted "L," with a notch missing from the northern (top) portion. The notch is occupied by Tax Parcels 386 and 371, where the Sandy Spring National Bank is located. The bank is not on the subject site.

Technical Staff reports that the site has 410 feet of frontage along MD 108 (north) and 370 feet of frontage along Meeting House Road (on the east). A significant portion of the entire site (*i.e.*, all of Parcel "A") is within the Sandy Spring Historic District, but neither of the newly proposed structures is within the designated historic area since the historic area does not extend onto the western portion of the site (Lot 1 and Tax Parcel P426). Parcel "A" (the eastern side of the site) is already developed with three buildings (the Stabler, Moore and Bentley Buildings), while Lot 1 and Tax Parcel P 426 (the western side of the site) are generally unimproved, containing a small forested area and a parking lot.

The subject site is classified in the O-M Zone (moderate-intensity office use) and in the Sandy Spring-Ashton Rural Village Overlay Zone. The property is gently sloping, dropping approximately 16 feet in elevation from MD 108 to the south property line on the east side of the property, and dropping approximately 10 feet in elevation along the western side of the property. There is an existing forest stand along the western property line of approximately 0.75 acres. A drainage outfall into an intermittent stream is located on the southeast portion of the property.

³ As noted above, the subject site was rezoned to O-M, but the development standards of the C-T Zone were applied and incorporated into covenanted binding elements.

A surface parking lot surrounds the west (rear) and north side of the three existing buildings, providing 86 spaces, with an additional 66 parking spaces provided on the western portion of the property. Access is provided directly from MD 108 and Meeting House Road, and the parking is interconnected to the adjacent Sandy Spring Bank property fronting on MD 108. A stormwater management facility is located at the southern end of Parcel A. A driveway providing access directly to MD 108 is shared with the adjacent Sandy Spring Bank and interconnects to the parking on Parcel A.

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, the District Council will designate the surrounding area in the same manner as was accepted by the Council in the 1989 rezoning of the subject property to the O-M zone (G-627). In that case, the surrounding area was defined in Resolution 11-1397 (Exhibit 45) as those uses within a 1,000 foot radius of the subject site.

The land use within the surrounding area is characterized by limited commercial uses (retail and service) and moderate to low-density residential uses surrounding the commercial enclave, which is located mostly between Norwood Road and Meeting House Road, along MD 108. The Sandy Spring Historic District is located within the surrounding area and includes Parcel A on the subject site, as well as the Sandy Spring Bank, the Friends Meeting House and Meeting House Road. Approximately 5½ acres of O-M zoned land are located on the south side of MD 108, including the subject property. About 3½ acres of C-2, general commercial zoned land, are located north of MD 108 and approximately a half acre of C-2 zoned land is located south of MD 108, to accommodate the Sandy Spring Bank. To the east, across Meeting House Road, a three-story, vacant brick building that formerly housed the Sandy Spring Volunteer Fire Station is in the O-M Zone, and two single-family dwellings are in the R-200 zone. To the south are the

Sandy Spring Friends Meeting House (built in 1817) and several large undeveloped parcels of land in the RE-2 Zone. To the west and southwest is the Sandy Spring Village condominium and townhouse development in the RT-10 Zone.

LMA G-627, approved in 1989, called for only a parking lot and three buildings located on the eastern half of the site – the Stabler, Moore and Bentley Buildings. The new proposal, DPA 08-2, would add the Thomas Building and a parking facility on the western side of the subject site. The dimensions of the Thomas Building and the applicable development standards would be restricted by binding elements which will be discussed below. Applicant's vision is that the proposed building will be similar in scale to the other buildings along the west side of Meeting House Road, and will be compatible with the neighborhood. Architectural details will be worked out at site plan review. Applicant argues that the new building will help create a "main street" character and assist in the revitalization of the Sandy Spring village center by providing more office space within the village center.

A private pre-school for up to 196 children, the Goddard School, will be located on the first floor of the Thomas Building, with commercial office space, unassociated with the School, provided on the second floor. The school's operations will be governed by state law. The first floor may also include a small commercial use, such as a coffee shop, deli, or office space.

The school's drop-off and pickup procedures require that parents park their cars and bring their children into the building. There will be no central place to drop children off. Parents must go in to the classroom and present the child to the teacher. This process usually takes between five and eight minutes. The same thing happens in the afternoon, but the afternoon pickup is spread out over a longer period of time, depending on work schedules and other factors. The school's parking for drop-off and pickup is immediately adjacent to the school's entrance on ground level, in the rear. Thus, the distance to the building itself will not endanger the safety of the children. The staff would be parking in the more distant, less

desirable spaces, as their vehicles would stay during the day. Parking spaces would be designated on site. The evidence is that this arrangement will not result in queuing outside of the site.

The school also has a half-day program. For safety sake, the school must be located all on one floor, the ground floor. The facility will open from 7:00 a.m. to 6:00 p.m., but three staff members will arrive about 6:45 a.m. to turn on the lights in the building, make sure that there are no problems and open the facility. Staff will increase in half-hour increments based on the attendance and arrival of the children. It usually goes up to full staff around ten, and then changes during lunch time. There are no scheduled evening activities, and there are no holiday programs that go on at night or weekend activities.

The Applicant in this case obtained a rezoning of the subject site in LMA G-627 on April 25, 1989, through the "optional method" of development, pursuant to Zoning Ordinance § 59-H-2.52. In accordance with that rezoning method, the Council approved, in Resolution 11-1397, not only the zoning reclassification to the O-M Zone, but also a schematic development plan (SDP) and certain binding elements which were filed as covenants in the County land records. The original binding elements were:

- A. The number of buildings proposed at this time shall not exceed 3.
- B. The height of buildings shall not exceed thirty-five (35) feet.
- C. The amount of square footage of buildings shall not exceed 52,100 square feet.
- D. Development of the subject property will be in accordance with, and will not exceed, the standards of the C-T zone, as they existed as of the date of final approval of Zoning Application No. G-627.

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.

Now the Applicant seeks to modify the use of the site, as previously described. To do so, it must obtain approval of an amended SDP (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 are reviewed are the same as those applied to the review of the original SDP,

The revised binding elements proposed by Applicant are:

BINDING ELEMENTS

1. The number of buildings proposed at this time shall not exceed four (4).
2. The height of the Thomas building shall not exceed thirty (30) feet or 2 1/2 stories.
3. The gross floor area of all buildings shall not exceed 86,077 square feet and the gross floor area of the Thomas building shall not exceed 35,000 square feet.
4. Development of the subject property will be in accordance with and will not exceed the existing 2008 C-T Zone development standards.⁴
5. The total length of the Thomas building shall not exceed 225 feet.
6. The Thomas building shall be constructed in a minimum of two contiguous sections, with a minimum setback offset between these sections of 25 feet and with no section exceeding 165 feet in length.
7. The main entrance to the Thomas building shall be in the northeast corner of the building.
8. The northern setback from Route 108 of the primary section of the Thomas building shall be a minimum of 15 feet and a maximum of 20 feet.
9. The western setback of the Thomas building shall be a minimum of 64 feet and the eastern setback shall be a minimum of 30 feet to the adjacent Sandy Spring Bank property line.
10. The maximum number of parking spaces on the top deck of the parking structure shall be 55 on that area of the property proposed for the parking structure.
11. The proposed parking structure shall be setback a minimum of 25 feet from the southern property line and a minimum of 50 feet from the western property line.

These self-imposed limitations were designed to keep the structures' scale and size compatible with other properties in the immediate area. The first four binding elements were approved by Technical Staff, modified by the Planning Board, and agreed to by the Applicant. Binding elements numbered 5 through 11 were added at the hearing, after consultation with community members and the People's Counsel. They

⁴ The existing 2008 C-T Zone development standards do not differ from those in effect in 1989.

were then reviewed by Technical Staff, which suggested minor modifications that have been incorporated by the Applicant and accepted by all parties. Additionally, five "Site Plan Notes" were added by the Applicant to indicate Applicant's willingness to address design elements of the proposed building and parking facility so as to alleviate concerns of the community. Technical Staff recommended no changes in these five notes.

The Site Plan Notes are:

SITE PLAN NOTES

1. The Thomas building shall include dormers on the top floor.
2. The facades of the Thomas building shall be primarily cultured stone and/or brick.
3. The facades of the Thomas parking structure shall be primarily cultured stone and/or brick.
4. At Site Plan, the applicant shall determine the number of spaces to be delineated exclusively for the school drop off, specify the effective hours and the method to enforce said drop off parking.
5. Final massing of the Thomas building to be determined at Site Plan.

These are not "binding elements" because they may be modified by the Planning Board at Site Plan. This flexibility will permit the Planning Board to approve the best architectural design and parking facility design to accommodate the area.

The District Council finds that the proposed Binding Elements and Site Plan Notes will achieve the desired end of keeping the building scale and parking facility size compatible with other properties in the immediate area. The Planning Board will have the flexibility at Site Plan to reduce the size of the proposed structures if necessary to achieve compatibility.

A floating zone is a 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 1989 when the subject site was rezoned to the O-M floating zone; however, binding elements established additional requirements at that time, including compliance with the more restrictive C-T Zone development standards and other limitations. The Schematic Development Plan Amendment proposed now must be evaluated under these same standards, plus those of the Sandy Spring/Ashton Rural Village Overlay Zone (SSRVO Zone) and the additional and modified binding elements, listed above.

The O-M 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 review discussed above, the purposes and requirements of the applicable zones, compatibility with land uses in the surrounding area, and relationship to the public interest.

Purpose Clauses of the O-M and SSRVO Zones

The purpose clause for the O-M Zone, Zoning Ordinance §59-C-4.310, provides:

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 first and second criteria are clearly met in this case because the subject site is located outside of a central business district and is in a residential/light commercial area where high intensity uses would not be appropriate. As to the third criterion, the District Council finds that the area, which is already in a commercial zone, is not intended for predominantly one-family residential use and the proposed school/office use will not have an adverse impact, if properly limited at site plan review.

The surrounding area is a collection of commercial and institutional uses, as well as residential uses. It is not predominantly a one-family residential area. Moreover, the proposed Thomas Building will be set back and broken into two sections. The western section, at two stories, is comparable in height to the townhouses to the west, and the two and a half story portion, over toward the east, is comparable to the commercial development on that side of the property. There is also a landscape buffer. Access to the lower grade of the parking garage is not at the edge where there would be noise and activity near residences. Those features create compatibility with the surrounding residential and commercial uses.

Technical Staff agreed that the proposed development would be compatible with its surroundings, and noted (Exhibit 38, p. 13):

. . . By limiting the development to the standards of the C-T zone, which are more restrictive than the Development Standards of the O-M zone and overlay zone, the schematic development plan proposes an overall design that would be compatible with existing improvements on the property and nearby development, and in keeping with the character of the surrounding area.

The subject site is already in the O-M Zone, and three commercial buildings already exist on the site. The newly proposed Thomas Building will not fundamentally change the impact of site development upon surrounding uses, if its final design is determined at site plan review with compatibility in mind. Based on this record, the District Council finds that the proposal conforms with the O-M Zone's purpose clause.

The purpose clause for the Sandy Spring/Ashton Rural Village Overlay Zone, Zoning Ordinance §59-C-18.181, provides:

It is the purpose of this overlay zone to:

(a) Preserve and enhance the rural village character of the Sandy Spring and Ashton village centers by ensuring an attractive and traditional pattern of houses, commercial establishments, open spaces and their relationship to roadways.

(b) Encourage a compatible relationship between new or expanded houses or businesses and traditional neighboring structures that reflects the best of local village character, particularly in terms of scale, siting, design features, and orientation on the site.

The District Council finds that the proposed development would be consistent with the purpose clause of the SSRVO Zone for a number of reasons. The proposed building would face out onto MD 108, with an active front, and with no parking between the building and the street. It will be generally aligned with the Sandy Spring Bank building and the Stabler Building. It will also be divided into two sections, a two and a half story section with a gable and a dormer, and a smaller section to the west, with dormer and gable, closer to the townhouses. Applicant has reduced the amount of surface parking, pushed one level of parking below grade, and provided a play area in the front of the building. The storm water management area will have greenery, though not trees, above it, and the landscape area will provide open space between the proposed building and the adjacent townhouses. The pattern of buildings and open spaces will continue. The proposed building will be similar in scale to the two existing Montgomery Mutual Insurance buildings, the Moore and Bentley buildings. They are connected by a two-story walkway, and the Thomas Building's sections will also be connected. The village character and design features will come at site plan, when more of the architecture is refined.

Technical Staff and the Planning Board agree that the proposed office/school building will not have an adverse impact on the adjoining neighborhood, especially given the limits on intensity of the use contained in the binding elements. Staff concluded that "the proposed project would be consistent with the design characteristics of the existing developments within the Sandy Spring Historic District and the Rural Village Overlay zone in terms of massing, architecture, and height of the proposed building." Exhibit 38, p.

The Opposition clearly disagreed with much of this assessment, and their arguments have been addressed at length in Part III.E. of the Hearing Examiner's report, regarding Master Plan compliance, compatibility and historic preservation. The District Council adopt's the Hearing Examiner's analysis regarding those issues.

The District Council finds that there will be no adverse impact upon the adjoining uses because the intensity of the use will be strictly limited by the binding elements and site plan review. In sum, the proposed rezoning will satisfy the requirements of the applicable purpose clauses.⁵

The development standards for the C-T, O-M and SSRVO Zone were set forth by Technical Staff in a Table which was reproduced on page 90 of the Hearing Examiner's report and recommendation. As is evident, the application meets all the specific requirements of the applicable Zones, except for one pre-existing parking setback, which is not in the area of the site where the development is proposed and will not be affected by it. There is much opposition to a parking facility being located on this site; however, the SSRVO Zone contains a very specific list in Zoning Ordinance §59-C-18.182(b)(1) of those uses which are not permitted in the Overlay Zone, and that list of prohibited uses does not include a parking facility or garage. That section also specifies that except for those uses listed as prohibited, "*[a]ll permitted or special exception uses allowed in the underlying zones are allowed in the commercial portion of the overlay zone.*" Thus, a parking facility use is not *per se* prohibited, and may be allowed if it can be designed to be compatible both with the adjacent townhouses and the adjacent historic district. The District Council agrees with the Hearing Examiner's conclusion that, as a condition of approval, this matter should be referred by the Planning Board to the HPC in conjunction with site plan review and subdivision. The HPC can then determine its own jurisdiction and review the substance of this proposal, if appropriate.

The Binding Elements restrict building height to 30 feet, although a 60 foot height is permitted in the

⁵ Although the development standards of the C-T Zone were adopted into the binding elements because they are more restrictive than the O-M development standards, the purpose clauses of the actual zones in which the site is located, the O-M and SSRVO Zones, are the governing purpose clauses, not the C-T Zone's purpose clause, which is not adopted in the binding elements.

O-M Zone and a 35 foot height is permitted in the C-T Zone.⁶ The Binding Elements also restrict floor area of the Thomas Building to 35,000 square feet, resulting in a total building coverage on the whole site of about 16.1% (not counting the parking facility), although a building coverage of 60% is permitted in the O-M Zone and 35% in the C-T Zone.⁷ Similarly, the floor area ratio (FAR) of the site will be about 0.42, though a FAR of 1.5 is permitted in the O-M Zone; 0.5 is permitted in the C-T Zone; and 0.75 is permitted in the SSRVO Zone. The binding elements also restrict many other aspects of the proposed development.

Moreover, the proposed development will require a later approval of a site plan by the Montgomery County Planning Board, in accordance with Chapter 59-D-3 of the Zoning Ordinance. The SSRVO Zone contains very explicit instructions to the Planning Board regarding its site plan review.

Under Zoning Ordinance §59-C-18.184, “[i]n the course of site plan approval, the Planning Board must make a finding as to whether or not the proposed development substantially conforms with the design guidelines for new development contained in the approved and adopted Sandy Spring/Ashton Master Plan.”

Pursuant to §59-C-18.186:

The procedures for Planning Board approval under Section 59-D-3.4 are modified for this overlay zone to require the following additional findings:

- (a) The site plan is consistent with the recommendations in the approved and adopted Sandy Spring/Ashton Master Plan;*
- (b) The site plan meets all of the requirements of this overlay zone as well as the applicable requirements of the underlying zone; and*
- (c) Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

Based on the entire record, and on the statutorily mandated review required by the Planning Board at site plan review, the District Council finds that the proposed development meets the purposes and

⁶ The SSRVO Zone permits a height of 30 feet if the Planning Board, at site plan review, finds that the additional height is compatible with the adjoining uses and consistent with the intent of the Master Plan. Otherwise, height is limited to 24 feet. Zoning Ordinance §59-C-18.182(b)(2)(A).

⁷ If the term “building coverage” is interpreted to include the parking facility, the coverage would be 34% in this case, still within the maximums specified in the O-M and C-T Zones. The SSRVO Zone does not limit building coverage.

requirements of the applicable zones, to the extent they can be evaluated at this stage of the proceedings, and that the proposed development's binding elements will permit the Planning Board to approve a design at site plan review which will meet all applicable standards.

Compatibility

Compatibility issues were discussed at length in Part III.E. of the Hearing Examiner's report (pp. 33 - 53). Based on the record discussed there and on the above analysis of the applicable purpose clauses, the District Council 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 and consistent with applicable historic preservation law. As already mentioned, the Planning Board will also evaluate compatibility at the site plan stage, and the Council's resolution will require the Planning Board to submit this matter to the Historic Preservation Commission (HPC) for a determination of its jurisdiction and for HPC review of the development, if it finds it appropriate to do so.

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 and possible adverse effects on the surrounding area, public facilities and the environment.

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

Technical Staff and the Planning Board found that the proposed development, as limited by the binding elements, is appropriate and consistent with the Master Plan. Exhibits 38, 42, 64 and 86. For the reasons discussed in Part III. E. of the Hearing Examiner's report, the District Council also finds that the proposed SDPA is consistent with the Sandy Spring /Ashton Master Plan, approved and adopted in 1998.

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 the Hearing Examiner's report (pp. 25-30). 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 the Hearing Examiner's report (pp. 31-33). As mentioned there, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject property, and Environmental Planning Staff found that the revised Preliminary Forest Conservation Plan (Exhibit 36(e)) complies with Section 22A of the Montgomery County Code and the M-NCPPC Environmental Guidelines. It recommended conditional approval.

The stormwater management facility is proposed for an area on the west end of the site at the recommendation by Technical Staff to avoid impingement on the historic district. Unfortunately, that placement will result in the removal of a significant portion of the existing forest, which the community argues is contrary to the recommendations of the Master Plan. Although the Department of Permitting Services has approved the stormwater management concept plan (Exhibit 69), the Planning Board should consider whether any other location for the stormwater management facility can be found to avoid the need for removing so much forest.

While a portion of the forest may be removed along the western part of the site, a 25 foot wide tree buffer will remain, and other landscaping will be added by the Applicant to provide screening for the

western neighbors. Moreover, Applicant will be required to plant 1.27 acres of forest off site. Thus, the evidence indicates that the proposed SDPA will not likely have an adverse impact on public facilities or the environment. Technical Staff concluded that the amended Schematic development plan would prevent soil erosion and would preserve the natural features of the site.

In sum, given the record in this case and the strict requirements specified in the SSRVO Zone for site plan review, the District Council finds that the proposed use will not adversely affect surrounding development, will be consistent with the goals of the Master Plan, will provide a useful service to the community and will not adversely affect public facilities or the environment. The District Council therefore concludes that its approval would be in the public interest and appropriate for the comprehensive and systematic development of the County.

VI. CONCLUSIONS

Technical Staff concludes its report with the following statement (Exhibit 38, p. 26):

The proposed development is generally consistent with all applicable standards of the C-T Zone and applicable requirements of the Zoning Ordinance. Moreover, the request is in accord with the land use recommendations of 1998 Sandy Spring/Ashton Master Plan and bears sufficient relationship to the public interest to justify approval. The concern raised regarding the parking element of the schematic proposed plan is such that can be addressed at Site Plan review process, where the plan will be presented with more developed and refined design, architecture, and landscaping details.

Based on the foregoing analysis and after a thorough review of the entire record, the District Council reaches the following conclusions with respect to DPA 08-2:

1. That the requested SDPA complies with the purpose clauses of the O-M and SSRVO Zones and the development standards of the O-M, C-T and SSRVO Zones;
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.

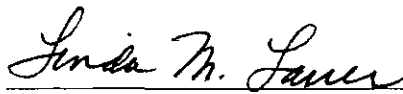
For these reasons and because granting the instant SDPA application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

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:

Schematic Development Plan Amendment DPA 08-2, seeking to amend the Schematic Development Plan and Covenants approved by Council Resolution No. 11-1397 on April 25, 1989 in LMA G-627 for 14.84 acres (210,993 square feet) of land located at 900 Olney Sandy Spring Road (MD 108), Sandy Spring, Maryland, is **approved**, subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 94; 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; that the Declaration of Covenants (Exhibit 93) is filed in the County land records in accordance with § 59-H-2.54 of the Zoning Ordinance; and that the Planning Board refers this matter to the Historic Preservation Commission (HPC) in conjunction with Subdivision and Site Plan review, so that the HPC may determine its jurisdiction and review this proposal, as appropriate.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council