



February 1, 2010

MEMORANDUM

TO: Montgomery County Planning Board /

FROM: Damon B. Orobona, Senior Zoning Analyst *Damon*

VIA: Rose Krasnow, Chief of Development Review *RK*
Ralph Wilson, Supervisor of Zoning *RW*

SUBJECT: Local Map Amendment G-886

RECOMMENDATION: *Denial.*

The subject property is located on Liberty Mill Road in Germantown. The applicants are requesting a rezoning of the property to the C-T Zone.

To obtain approval for a C-T rezoning, the applicant must show either (1) the site is designated for the C-T Zone in the relevant master or sector plan, or (2) the site is located in an area that is between single-family residential areas and high intensity commercial areas.

The core issue in the case is the treatment of the site in the 1989 *Germantown Master Plan*. Staff, after a careful review of the site's planning and zoning history, concluded that the use of the words "[t]he property" in the Master Plan in describing an area suitable for C-T transitional use applies to the only property located along the CSX railroad tracks, which is not the subject property in this application. The applicants argue, in part, that if the words "[t]he property" were intended to limit the C-T designation to only the site along the tracks, the Plan could have specifically identified the property by a specific property address. The applicants also cite the longstanding shared access, driveway, and parking between the two properties as evidence that the term "property" refers to the two adjoining parcels south of the CSX tracks. Staff does not find the applicants arguments persuasive and concludes that the application fails to satisfy either of the two alternative eligibility requirements of the C-T purpose clause.

SUMMARY OF REPORT

- Public Hearings: February 11, 2010 (Planning Board)
February 26, 2010 (Hearing Examiner)
- Overview of Site: The site is a 16,552 square foot parcel within the 1989 *Germantown Master Plan* boundary located along Liberty Mill Road, directly west of the Germantown Commuter Rail Station. The land is shown as R-T 6 through a technical error – the zoning map should reflect R-200 zoning. The site is currently developed with a single-family home.
- Proposed Zone and Use: The applicants are proposing to rezone the property to the C-T Zone and continue its use as a dental office. No construction is anticipated with the application. If approved, the C-T Zone will allow the applicants more flexibility with the dental office operations.
- Master Plan Consistency: The 1989 *Germantown Master Plan* specifically designates the R-T 6 Zone for the subject property. The C-T Zone on this site is not consistent with the Master Plan.
- Zoning Provisions: The project does not satisfy the purpose clause of the C-T Zone. The C-T Zone is not designated by the Master Plan for this site, and the proposal does not qualify as a transition between a single-family residential area and a high intensity commercial area.
- Subsequent Review: If the County Council approves the rezoning request, the applicant will need to undergo subdivision and site plan review if any modifications are proposed to the existing structure.

I. PROCEDURAL HISTORY

Application G-886 seeks a local map amendment (rezoning), pursuant to §59-H-1.1 of the Montgomery County Zoning Ordinance, to reclassify a 16,552 square foot site from the R-T 6 Zone to the C-T Zone.

The applicants currently operate a dental office on the site under a non-resident medical practitioner special exception.¹ At the time the special exception was granted, the site was zoned R-200. In 2004, when the adjoining site to the south was reclassified to the RT-6 Zone, the RT-6 Zone was inadvertently placed on the applicants' property. Because of the applicants' concern over the limitations of the special exception, the applicants are requesting reclassification of the site to the C-T Zone.

The application was filed under the optional method of application process, which allows the applicant to restrict development standards or use of the property to less than the maximum permitted in the requested zone. Such binding limitations are shown on a schematic development plan that is submitted with the application, and these limitations, if approved, must also be reiterated in covenants filed in the land records of Montgomery County.

The Office of Zoning and Administrative Hearings has scheduled a public hearing date on this application for February 26, 2010, in the Stella B. Werner Council Office Building at 100 Maryland Avenue, Rockville, Maryland. Before the Hearing Examiner's proceedings, the Montgomery County Planning Board will conduct an initial public review of the application on February 11, 2010, at 8787 Georgia Avenue, Silver Spring, Maryland.

¹ S-728 (1980), Modified in S-728-A (1985).

II. THE PROPOSAL

A. Overview

The Site. The subject site is located at 19330 Liberty Mill Road in Germantown. The site is 16,552 square feet in size and rectangular in shape, measuring approximately 70 feet wide and 200 feet deep, with about 70 feet of street frontage along Liberty Mill Road. The site is relatively flat. The site adjoins an existing landscape contractor to the north and two townhouse developments to the south. The Germantown Commuter Rail Station is immediately across Liberty Mill Road from the subject property.

The subject property is currently shown on the zoning maps as R-T 6, rather than R-200, due to a mapping error that occurred when the abutting property to the south was reclassified to the R-T 6 zone in 2004. A one-story single-family house, constructed in 1946, exists on the property. As part of the special exception on the property, the applicant reserved space in the basement level of the home for residential use. The dental office has 11 parking spaces associated with it. Both the driveway and the 11 parking spaces are shared through a right-of-way easement with the adjacent landscape contractor business.

Front of Dental Office



Back of Dental Office



The Surrounding Area. A surrounding area must be identified in a floating zone application so compatibility can be properly evaluated. For the subject site, the surrounding area is generally formed by the CSX railroad tracks to the north, Blunt Avenue to the east, the southern boundary of the Liberty Heights townhouse community to the south, and relocated Germantown Road (MD Route 118) to the west. This area is appropriate for determining whether the proposed zone will be compatible with surrounding uses, as this area captures virtually all nearby properties that may be affected by the rezoning and demonstrates the predominant land use patterns of the area.

The surrounding area is largely residential in character, made up of a mix of older single-family homes zoned R-200 and newer townhouse communities zoned R-T 6. A few commercial properties under the C-T Zone are within the surrounding area, including the landscape contractor business directly north of the subject property. Portions of the area on the east side of Liberty Mill Road are within the Germantown Historic District. The Germantown Commuter Rail Station is directly across Liberty Mill Road from the subject site. The surrounding area is outlined in black below.



The Schematic Development Plan. This application is unusual in that the applicants are not proposing any construction or changes to the current use of the property. The C-T zone, with the proposed binding elements, would allow the applicant to continue operation of the dental office on a permitted use basis, rather than under the existing special exception.

The current non-resident medical practitioner's office special exception limits the number of dentists practicing on site to two, with further limitations to the office's hours of operation. If rezoned to C-T, the dental office could continue as a general office or a clinic, and there would not be as many restrictions on the day-to-day operations of the office. As stated by the applicant, the uncertainty of a special exception and the burden of restricted operations may create a significant barrier to the future alienability of the property.

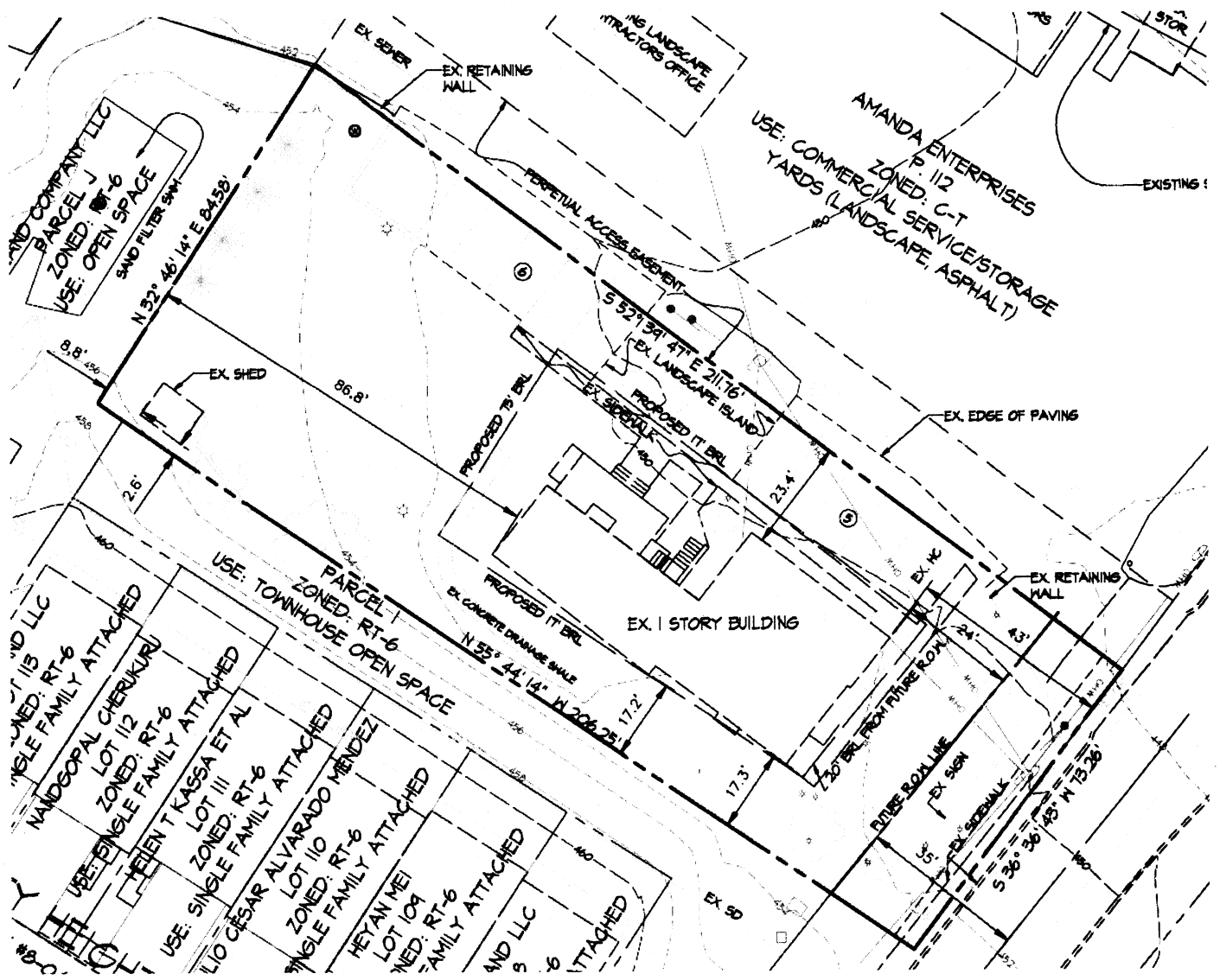
The applicant's schematic development plan differentiates between elements of the proposal that are legally binding and elements that are merely illustrative.² The applicant has proposed binding elements to the schematic development plan intended to retain the single-family character of the property with only minimal potential for expansion or redevelopment. Any future structural changes proposed for the property must undergo subdivision and site plan review.³ The binding elements for the subject application are shown below, followed by the illustrative portion of the plan.

<u>BINDING ELEMENTS</u>	
Lot Coverage:	25% maximum*
Maximum Building Height:	35 feet maximum**
Gross floor area of all buildings:	Not to exceed 40% increase in existing gross floor area
Building Setbacks: (Main Building)	
From any master plan street right-of-way	20 Ft from future r-o-w
From any other lot line:	
- side yard	17 feet minimum**
- rear yard	75 feet minimum
- with windows or apertures	
- adjoining lot is in a residential zone	
Minimum Green Area	25% (minimum 4,119 sf)**
Off-street Parking	
Use	Office (medical) and Residential. Any increase or expansion of use on the property that exceeds the current maximum potential peak hour vehicle trips of 10 trips must undergo an Adequate Public Facilities review and approval

* Same development standard as R-200 zone.
 ** More restrictive standard than R-200 zone (or no standard in R-200 zone.)
 *** Except as modified by the presence of windows or apertures, and if adjoining lot is residential.
 **** For a building existing at the time the C-T zone is granted, the board may approve a setback of less than 15 feet, provided the smaller setback is not less than the setback at the time of rezoning.

² §59-H-2.5
³ See Development Review Interoffice Memorandum at attachment 6.

Illustrative Portion of Schematic Development Plan



B. Compliance with Development Standards

The application and associated schematic development plan satisfy the development standards of the C-T zone:

Development Standard	Permitted/Required	Proposed	Applicable Zoning Provision
Maximum Lot Coverage	35 percent	12 percent (25 percent binding)	§59-C-4.303(b)
Maximum Building Height	35 ft	14 ft (35 ft binding)	§59-C-4.303(b)
Maximum Floor Area	0.5 FAR	0.2 FAR	§59-C-4.304
Building Setback from Street Right-of-Way	10 ft	43 ft (20 ft binding)	§59-C-4.305(a)
Building Setback for Building w/ Windows	15 ft	17 ft	§59-C-4.305(b)(1)
Building Setback from Adjoining Residential Zone	15 ft	17 ft	§59-C-4.305(b)(2)
Minimum Green Area	10 percent	72 percent (25 percent binding)	§59-C-4.306
Parking	3 spaces per 1,000 square ft = 10 spaces total	11 spaces	§59-C-4.307 and §59-E-3.7

C. 1989 Germantown Master Plan

The 1989 *Germantown Master Plan* gives specific recommendations for the subject property and the two properties that adjoin the subject property to the north and the south. The Master Plan designates the subject site and the property adjoined to the south for R-T 6 zoning, whereas the property adjoined to the north is designated for the C-T Zone. The exact Plan designations are set forth below, labeled as paragraph (1) and paragraph (2), respectively:

(1) The property along the railroad tracks, between the existing and relocated MD 118 is appropriate for transition uses under the C-T (Commercial Transition) Zone.

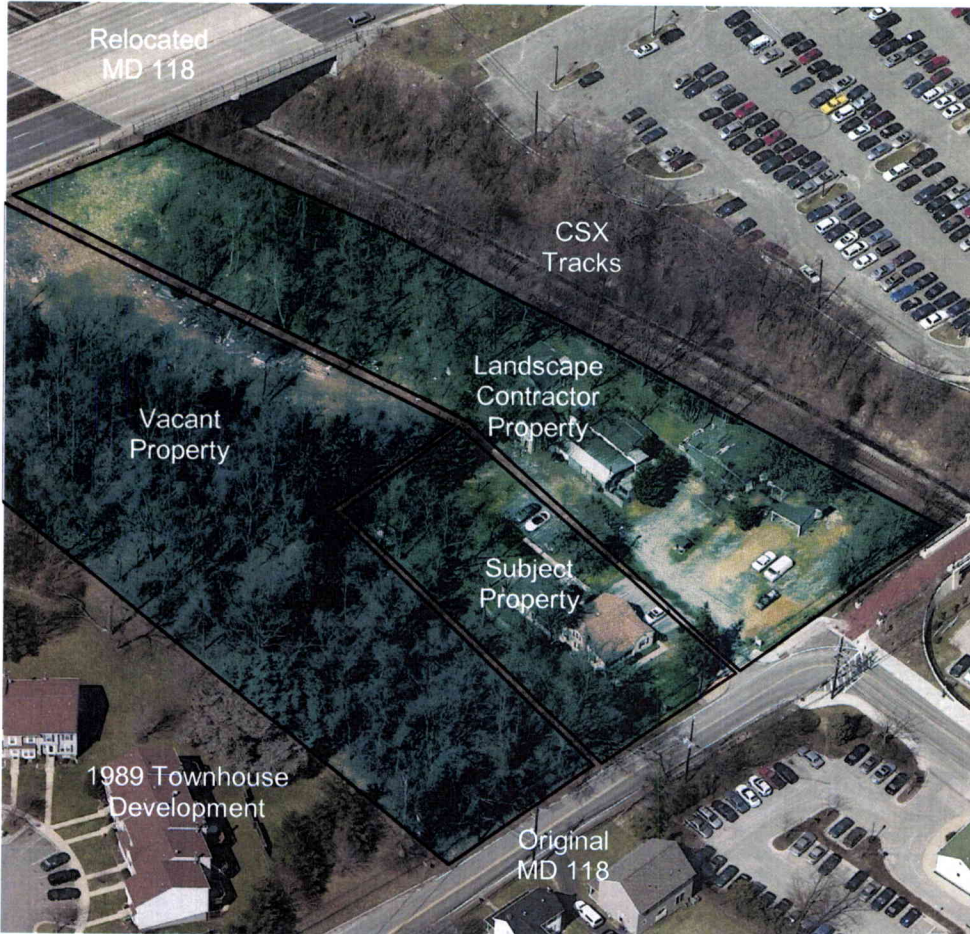
...

(2) The area between the above property and the existing RT-6 Townhouse subdivision is suitable for the RT-6 (Residential Townhouse – six units per acre) Zone.

...

*emphasis added

Aerial Photo Circa 1989



Landscape Contractor Property. The Master Plan designates this site for C-T zoning.

Subject property. The Master Plan designates this site for R-T 6 zoning.

Vacant property. The Master Plan designates this site for R-T 6 zoning.

1989 Townhouse development. Existed at the time of the 1989 Master Plan.

At the time of the 1989 Plan, the subject property was much like it is today, a single-family dwelling that operated a dental office by special exception under

the R-200 Zone. The property immediately to the north, which is now a landscape contractor, is located entirely along the CSX tracks between existing and relocated MD 118. The landscape contractor property was zoned C-O at the time, but the Plan designated it for C-T zoning. The property immediately south of the subject property was vacant in 1989. This vacant property, along with the subject site, is located between the landscape contractor property and an existing townhouse development shown at the bottom left-hand corner in the aerial photo.

The designation in paragraph (1) solely references the landscape contractor property when it designates “[t]he property along the railroad tracks” as suitable for the C-T Zone. The language used – *the property* – is a singular term of identification. Although the subject site is *near* the railroad tracks, it is clearly not *along* the railroad tracks, another means of identification used in paragraph (1). The distinction of being the only property located along the tracks between existing and relocated MD 118 belongs solely to the landscape contractor property. In fact, the landscape contractor property was promptly rezoned to the C-T Zone through a 1990 sectional map amendment that duly followed the 1989 Plan.⁴

Paragraph (2) designates “[t]he area” between the landscape contractor property and the 1989 townhouse development as suitable for R-T 6. “The area” is a means of identification that can denote more than one property. The subject site and the vacant property to the immediate south are located between the landscape contractor property and the 1989 townhouse development. Both of these properties are designated as suitable for the R-T 6 Zone in paragraph (2). After the Plan was adopted, the vacant property to the immediate south of the subject property was rezoned and developed under R-T 6 zoning.⁵

The applicants’ position is that the term “[t]he property” in the Master Plan can be read to include both the landscape contractor property and the subject property, and therefore the C-T designation applies to the subject site. In

⁴ See G-652 Sectional Map Amendment

⁵ See G-811 (2004).

furthering this position, the applicants note that the subject property is not referenced by a specific property address like some other sites designated in the Plan. Although using a property address can be a useful means of property identification, it is commonplace for a master plan to use other means of identification as well. In the Germantown Plan, landmarks were used to establish the subject property's location instead of a street address.

The applicants also emphasize that the Master Plan designates the subject property and its adjoining neighbors for either the C-T Zone or the R-T 6 Zone. According to the applicants, by denying the C-T application, the subject property will be rezoned through a corrective map amendment to the R-200 Zone, the base zoning for the property. As with any floating zone, the applicants here must demonstrate to the County Council that the C-T application is consistent with zoning regulations, compatible with surrounding development, and in the public interest. If the applicants cannot meet all of these standards, the base zone is always appropriate for the property, regardless of whether the master plan designates the property as suitable for an alternative floating zone.

Further, the applicants argue that the integration of the subject property and the landscape contractor property by way of joint driveway and parking access is evidence of the Plan's intent to designate both the subject property and the landscape contractor property for C-T as one "property along the railroad tracks." Staff is not persuaded by this reasoning. There are many properties in the County that share joint-use easements, many of which are in different zoning categories. Further, the tax map in place at the time of the 1989 Master Plan demonstrates that both the subject property and the landscape contractor property were separate parcels at the time the Plan was being drafted.

Lastly, the applicants cite the age of the Germantown Master Plan. As the applicants correctly point out, a master plan ages over time, and conditions on the ground change and County policies evolve. With age, there is sometimes a need to consider more heavily the spirit or intent of a master plan rather than just the exact words. While this is sound policy, the distinction in this case is that the zoning ordinance requires a *specific* designation for the C-T Zone on the subject

property for the rezoning to be approved. A specific designation for a particular property cannot change over time due to conditions on the ground.⁶

In conclusion, staff finds that the subject property is not designated for the C-T Zone in the 1989 Master Plan.⁷

III. ZONING PROVISIONS

A. The Purpose Clause

To satisfy the purpose clause of the C-T Zone, one of two possible locational requirements must be met: The proposed rezoning must (1) be designated for the C-T Zone in the relevant master or sector plan, or (2) be proposed on a property that acts as a buffer between single-family residential homes and high intensity commercial areas with buildings taller than 40 feet.⁸ The proposal does not satisfy either of these requirements.

Designation on Master Plan. To satisfy the purpose clause requirement for a master plan designation, the applicant must show that the applicable master or sector plan designates the subject property for the C-T Zone. For the reasons previously discussed, staff concludes that the subject property is not recommended for the C-T Zone in the 1989 Germantown Master Plan. Instead, the property is designated as suitable for development under the R-T 6 Zone.

⁶ For the applicants' argument in full, see attachment 2.

⁷ See Community-based Planning (Vision Division) Interoffice Memorandum at attachment 1.

⁸ §59-C-4.301. Purpose.

The purpose of the C-T zone is to provide sites for low-intensity commercial buildings which, singly or in groups, will provide an appropriate transition between one-family residential areas and high-intensity commercial development. The C-T zone is intended to constitute a margin of limited width at the border between a commercial area and a one-family residential area. For that reason, the C-T zone can only be applied:

- (a) In areas designated for the C-T zone on adopted and approved master or sector plans; or
- (b) On property so located that it is between and adjoining or separated only by a street, highway, or utility right-of-way from both of the following uses:
 - (1) Existing or proposed one-family residential uses; and
 - (2) Existing high-intensity commercial uses. As used herein, the term "high-intensity commercial use" refers to any commercial or central business district development with an existing height that is greater than 40 feet. The term "high-intensity commercial use" does not include development in the C-1 zone.

Therefore, the property does not satisfy the designation requirement of the C-T purpose clause.

Transition. To satisfy the transition prong of the C-T purpose clause, the applicant must show the property would serve as a suitable transition between existing or proposed single-family homes and an existing commercial area containing buildings taller than 40 feet in height. Here, the subject property is located between single-family townhomes and an existing commercial zone, but the adjacent commercial use is a landscape contractor's office housed in a structure much less than 40 feet in height. Because the adjacent landscape contractor development doesn't qualify as a high intensity commercial use, the application does not satisfy the transitional element required to meet the C-T Zone's purpose clause. The size of the adjacent landscape contractor office is shown on the following picture.

Landscape Contractor Property



B. Compatibility

The proposal, considering the binding elements shown on the schematic development plan, is compatible with adjacent development in the surrounding

area. Many of the binding elements are similar to standards permitted in the R-200 Zone, which will ensure that only a structure of residential proportions is located on the site. Additionally, the Board of Appeals already established the medical office use as compatible when they approved the special exception for a non-resident medical practitioner's office.

C. The Public Interest

The C-T Zone requires that the proposed rezoning bear sufficient relationship to the public interest to justify its approval. When evaluating the public interest it is customary to consider master plan conformance and other public interest factors such as adverse impacts on public facilities or the environment. Although there are some positive public interest elements associated with the application, it would not serve the public interest to reclassify the site to a zone not recommended on the Plan. As previously stated, the Plan does not designate the subject property for the C-T zoning category. The proposal would not negatively impact public facilities or have any adverse environmental impacts.

IV. SECONDARY CONSIDERATIONS

A. Adequate Public Facilities

Water and Sewer. The rezoning application and schematic development plan were reviewed by the Washington Suburban Sanitary Commission (WSSC). WSSC found that the reclassification from the R-200 Zone to the C-T Zone would not burden the water or sewer systems of the area.⁹

Transportation and Roadways. The proposed development is expected to generate a maximum of eight weekday peak hour trips during the morning and evening weekday periods. As the site would generate fewer than 30 peak hour vehicle trips, a full Local Area Transportation Review (LATR) study is not

⁹ See WSSC Memorandum at attachment 3.

required. Further, since the site is located in the Germantown West Policy Area, there is no Policy Area Mobility Review (PAMR) requirement. Therefore, there are no transportation-related concerns with the proposed rezoning.¹⁰

Schools. Staff has not received comments from Montgomery County Public Schools (MCPS) regarding the proposal's potential impact on the school system. However, due to the commercial nature of the application, no impact should result on the school system.

B. Other

There are no environmental features of concern on this proposal.¹¹ As of the date of this report, no correspondence from the community has been received.

V. CONCLUSION

Staff recommends that Local Map Amendment G-886 be denied.

VI. ATTACHMENTS

1. Community-based Planning (Vision Division) Interoffice Memorandum
2. Applicants' Position on Master Plan designation
3. WSSC Memorandum
4. Transportation Planning Interoffice Memorandum
5. Environmental Planning Interoffice Memorandum
6. Development Review Interoffice Memorandum

¹⁰ See Transportation Planning Interoffice Memorandum at attachment 4.

¹¹ See Environmental Planning Interoffice Memorandum at attachment 5.



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: January 22, 2010

TO: Damon Orobona, Zoning Analyst, Zoning Office - Development Review/Build Division

VIA: Glenn Kreger, Acting Division Chief – Vision Division *GK*
Sue Edwards, Team Leader, North Central Transit Team, *Sue*
Community-Based Planning/Vision Division

FROM: Vanessa N. Francis, Senior Planner, North Central Transit Team, *VNF*
Community-Based Planning/Vision Division

SUBJECT: **Zoning Application No. G-886 – 19330 Liberty Mill Road, Germantown, Maryland**

Recommendation: Denial

The applicant is requesting a rezoning of a site consisting of 16,475 square feet (0.3885 acres) from the RT-6 zone to the C-T zone. The site is located on Liberty Mill Road in the 1989 Germantown Master Plan (not in the 2009 Germantown Employment Area Sector Plan). It is situated in between a townhouse development that is zoned RT-6 and a landscaping contractor business that is zoned C-T (Commercial Transition) which shares a common driveway with the subject site. The property located on the site is a single family detached unit that is being used as dental office (Germantown Dental Village). The property has a basement level residence that is currently unoccupied.

Community-Based Planning staff finds that the proposed rezoning is **inconsistent** with the Approved and Adopted 1989 Germantown Master Plan.

Background

The subject property, zoned R-200 in the 1974 and 1990 Sectional Map Amendments (F-939 and G-652 respectively) has operated as an office-medical use (dental office) since March 1980. This use is allowed by special exception in the R-200 zone. The following conditions for this special exception are:

- Hours of operation are limited to 9:00 am to 8:00 pm Monday through Friday and Saturday from 8:00 am to 5:00 pm; and
- A maximum of two dentists are allowed to practice at the site.

The special exception also mentions that there are 10 off-street parking spaces available on the site, eight (8) of which are available for dental office use.

In 2004, the subject property, which was zoned R-200, was inadvertently rezoned to the RT-6 zone at the time the adjacent community Liberty Heights Townhomes) was rezoned

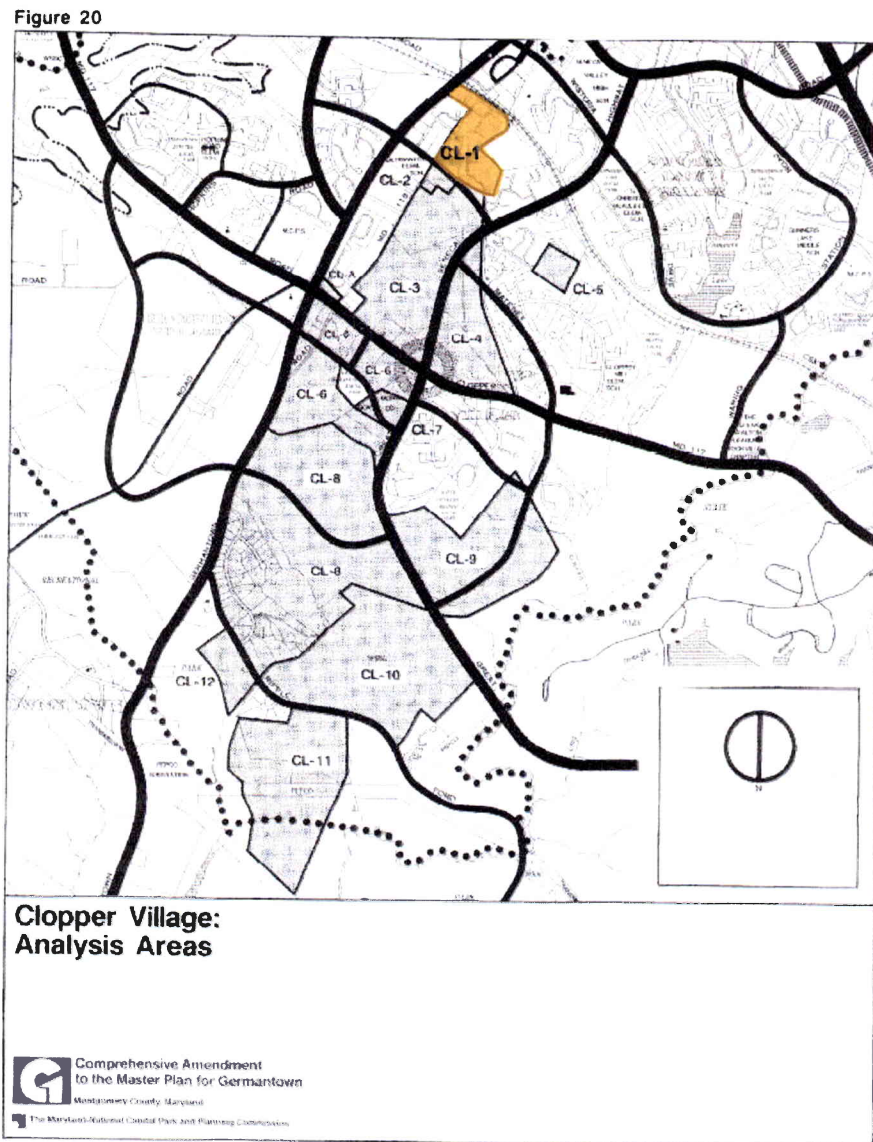
to RT-6 (Local Map Amendment – Case No. G-811). This townhouse community was developed in approximately 2005 to 2006 and is comprised of 11 units.

A corrective map amendment from RT-6 zone to R-200 zone was proposed by staff to remedy this error, however, the applicant decided to file for a reclassification of the zone.

Analysis

The site is located in within the CL-1 Analysis Area of the 1989 Germantown Master Plan.

Figure 1: Clopper Village Analysis Areas



The analysis area narrative mentions the subject property (“...and a medical clinic in a converted residence.” p. 59, para. 1) and provides language for which properties and

areas of the analysis area should be rezoned by Sectional Map Amendment. The following describes the Analysis Area CL-1 further:

This Master Plan recommends changing the non-residential zoning classifications to the R-200 Zone in order to retain the existing residential visual character of this historic area. Four properties, however, are suitable for either high intensity residential use or low-intensity office use:

1. *The property along the railroad tracks, between the existing and relocated MD 118 is appropriate for transition uses under the C-T (Commercial Transition) Zone, but the following issues of compatibility need to be addressed at the time of subdivision and site plan review:*

- *Maintenance of overall compatibility with residential land uses planned for other parts of this Analysis area.*
- *Preservation of the existing single-family detached residential character and setbacks.*
- *Provision of visual buffering of parking areas.*
- *Retention of existing trees.*
- *Limitation of building height to two stories.*
- *Provision of building setback equal to that of adjacent building.*

(Paragraph 1)

2. *The area between the above property and the existing RT-6 Townhouse subdivision is suitable for the RT-6 (Residential Townhouse – six units per acre) Zone, but the following issues of compatibility need to be addressed:*

- *Provision of building and parking setback similar to existing residences.*
- *Provision of visual and acoustic buffer along relocated MD 118.*
- *Visual screening of parking areas.*
- *Retention of existing trees.*

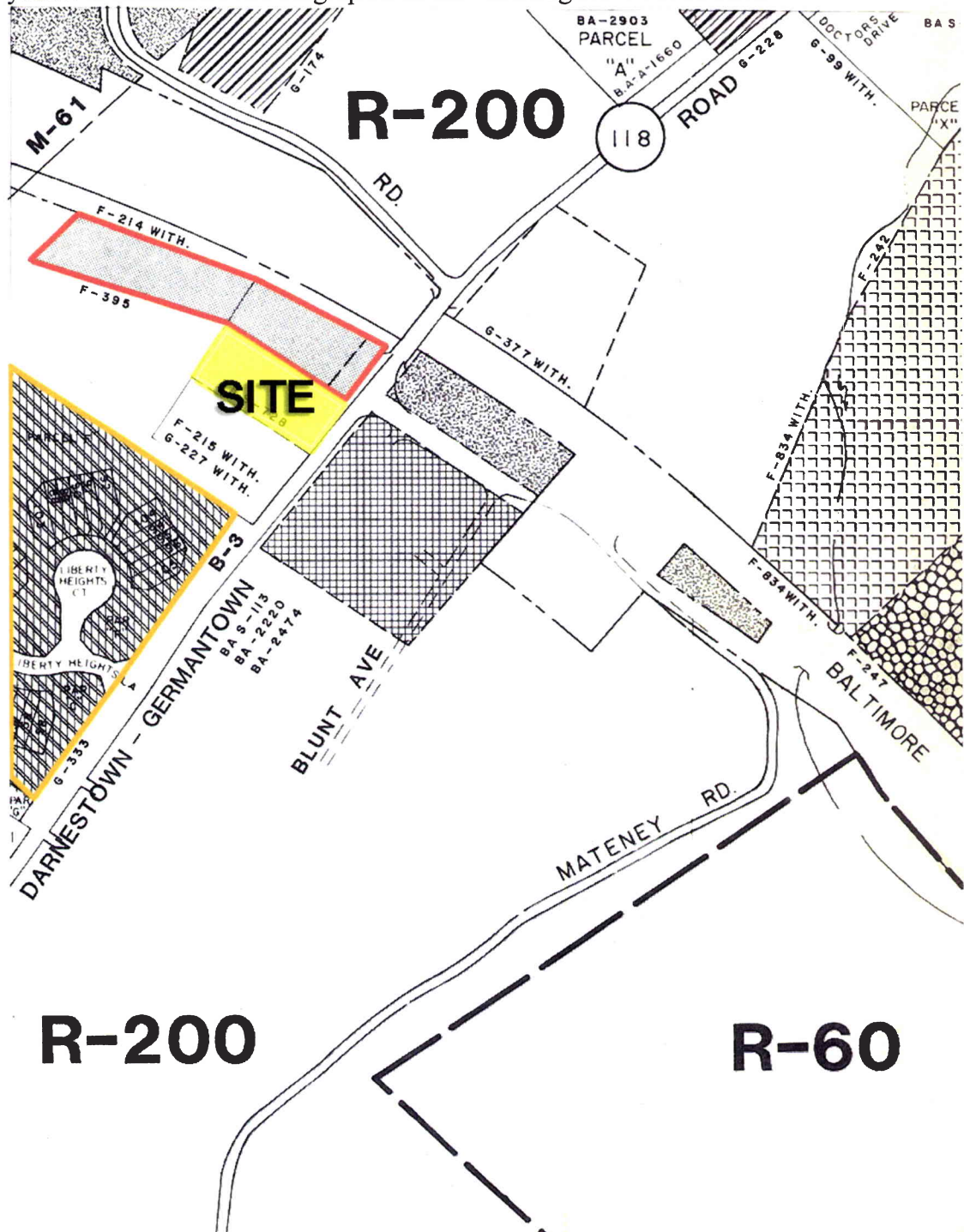
One way to address these compatibility issues would be through a rezoning application for the RT-6 Zone, using the optional method development of application and the use of a schematic development Plan

(Paragraph 2)

After reviewing the 1974 Sectional Map Amendment (SMA) map, staff determines that Paragraph 1 refers to the approximately 1.2 acre property owned by Amanda Enterprises, LLC located at 19340 Germantown Road (Figure 2). This property was rezoned from C-O (Commercial Office Building) to C-T by the 1990 Sectional Map Amendment (Figure 3). Staff also determines that Paragraph 2 refers to the multiple properties located between the “existing RT-6 Townhouse subdivision.” These multiple properties include the new RT-6 townhouses and the R-200 subject property.

Figure 2: 1974 Sectional Map Amendment Map (226 NW 13)

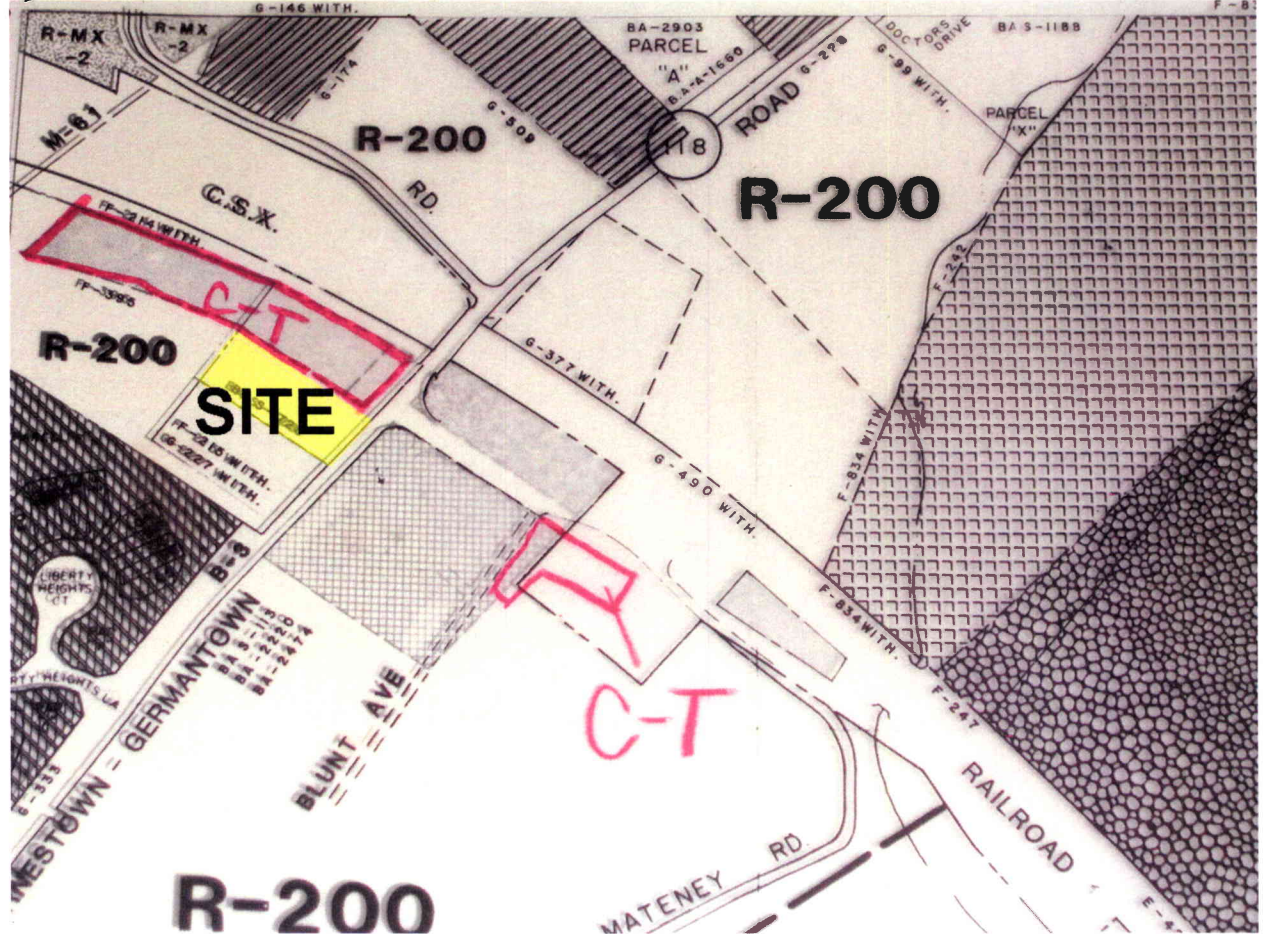
*The property mentioned in Paragraph 1 is outlined in orange. The property outlined in yellow is mentioned in Paragraph 2 as the "existing RT-6 subdivision..."



**Dated October 2, 1986

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Figure 3: Digital Photograph of C-T Properties (226 NW 13), 1990 Sectional Map Amendment (Photograph of Mylar Page)



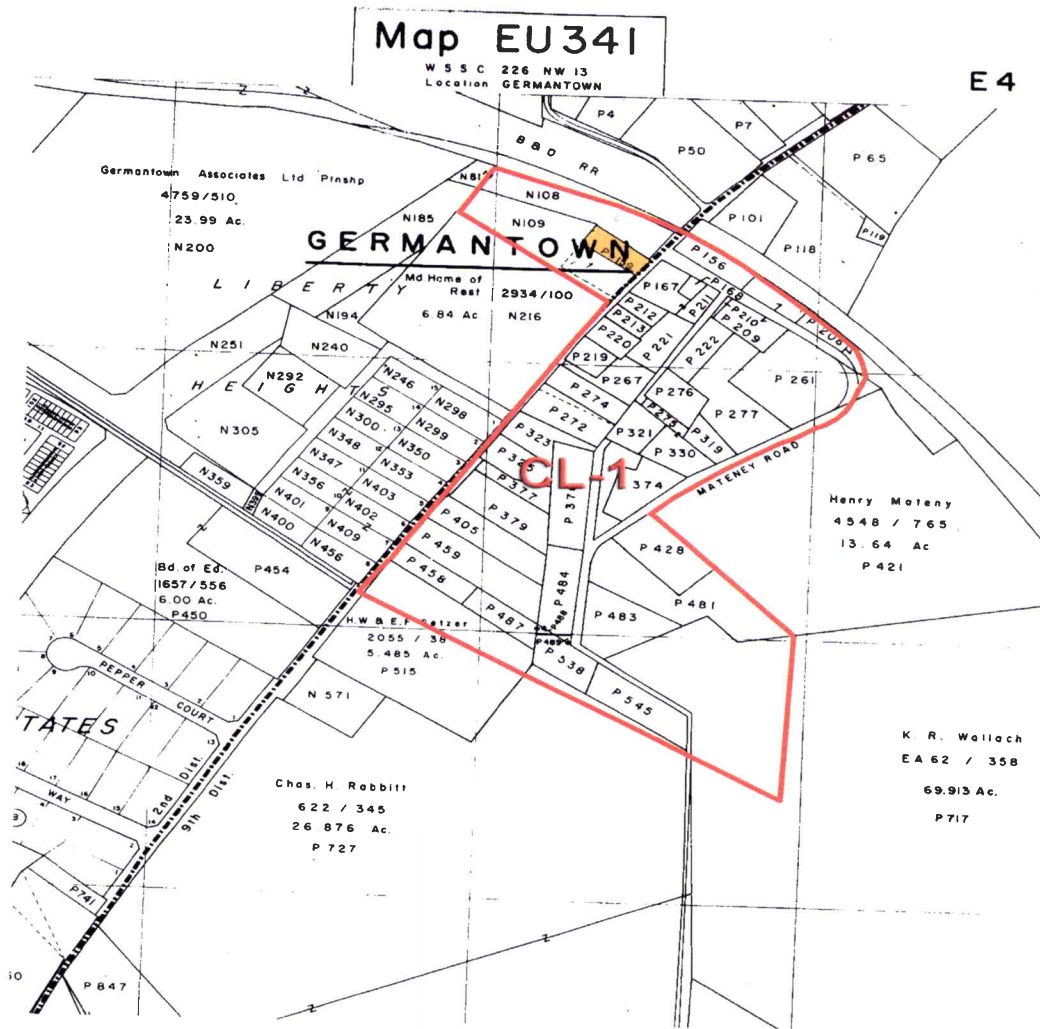
**Photo Taken January 21, 2010

The applicant argues due to the above language in Paragraphs 1 and 2, the subject property can either be zoned C-T or RT-6 (Land Use and Zoning Report, pp. 11-13) since the language in either Paragraph 1 or Paragraph 2 can be applied to the subject property.

Staff reviewed the tax map (Figure 4) used for the 1989 Germantown Master Plan to determine if the subject property could be interpreted as being a part of the property noted in Paragraph 1. After reviewing the tax map, staff established that the Master Plan language did not leave room to interpret the subject property to be included in Paragraph 1 since the tax map demonstrates that both properties were separate parcels of land prior to the Plan being adopted (the tax map shows a date of 1979). The boundary lines and uses for these two properties are also reflected in the 1974 SMA and the 1990 SMA. The applicant reported the subject property and the property in Paragraph 1 were once the same property in addition to sharing a common driveway. However, property deed records estimate that these two properties have been separate parcels since the late 1940s.

Figure 4: Tax Map EU 341 (1979)

*Subject property is light orange.



Source: REDI Real Estate Data, Inc. (1979)

The applicant further argues that the Plan’s intent was to include the subject property as C-T along with the property in Paragraph 1 and that it would be impractical to consider the subject property to be considered a part of the area in Paragraph 2 since the subject parcel is not large enough to accommodate six townhouse units possible for a RT-6 zoned property.

Conclusion

Based on Master Plan language, staff recommends DENIAL of this application on the basis of inconsistency with the 1989 Germantown Master Plan.



MEMORANDUM

Attachment 2

TO: Françoise M. Carrier
Office of Zoning and Administrative Hearings

FROM: Kevin Foster
Debra S. Borden
Anne C. Martin

DATE: January 21, 2010

RE: Addendum to Land Use Report for LMA Application No. G-886 (the "Zoning Application") -Master Plan Recommendation for 19330 Liberty Mill Road, Germantown (the "Property")

This Memorandum is intended to supplement the Land Use Report submitted in the Zoning Application for the Property (the "Land Use Report", Ex. 15), specifically regarding the master plan recommendation for the C-T (Commercial Transition) zone for the Property in the Germantown Master Plan, approved and adopted in July 1989 (the "Master Plan") (Ex. 12). Concurrent with the submission of this Memorandum, the Applicant has submitted an amended Schematic Development Plan ("SDP") to add Binding Elements consistent with the Master Plan recognition of the "medical clinic in a converted residence" on the Property that will restrict the future use on the Property to only medical offices (with residential unit) and that requires preservation of the existing residential structure. These new Binding Elements strengthen the adherence of the Zoning Application to the Master Plan and are in addition to the previously proposed Binding Elements that restrict the future development on the Property and retain the "existing single-family detached residential character and setbacks" as recommended for the Property in the Master Plan.

As noted in the Zoning Application materials, the Property was inadvertently re-classified from the R-200 zone to the RT-6 zone in 2004, due to a mapping error. Instead of requesting the Planning Board to seek a Corrective Map Amendment to reclassify the Property back to the R-200 zone, the Applicant used the opportunity to submit the Zoning Application to reclassify the Property to the C-T zone, in accordance with the Master Plan recommendation for the Property, and consistent with the approved commercial use of the Property for over 30 years.

As stated in the Land Use Report, the Property is in the Clopper Village Analysis Area (CL-1 Area) in the Master Plan, which is defined as a 39-acre area which includes the western portion of the proposed Germantown Historic District, is located on both sides of MD118, west of the B&O Railroad tracks to Proposed Road A-254 (Mateny Road). An outline of the CL-1 Area is shown on Figure 20 on page 60 of the Master Plan (Ex. 12). The Master Plan recognized that the

existing development in the CL-1 Area at that time included single-family residences, the Germantown commuter rail station, a church, and a medical clinic in a converted residence (a reference to the approved special exception use on the Property).

The Master Plan states in pertinent part:

This Master Plan recommends changing the non-residential zoning classifications to the R-200 Zone in order to retain the existing residential visual character of this historic area. Four properties, however, are suitable for either higher intensity residential use or low intensity office use:

(1) The property along the railroad tracks, between existing and relocated MD 118, is appropriate for transition uses under the C-T (Commercial Transition) Zone, but the following issues of compatibility need to be addressed at the time of subdivision and site plan review:

- o Maintenance of overall compatibility with residential land uses planned for other parts of this Analysis Area.*
- o Preservation of existing single-family detached character and setbacks.*
- o Provision of visual buffering of parking areas.*
- o Retention of existing trees.*
- o Limitation of building height to two-stories.*
- o Provision of building setbacks equal to that of adjacent building.*

(2) The area between the above property and the existing RT-6 Townhouse subdivision is suitable for the RT-6 (Residential Townhouse six units per acre) Zone but the following issues of compatibility need to be addressed: ...

In contrast to the recommendations for “the property” for the C-T zone in #(1) and “the area” for the RT-6 zone in #(2), the properties referenced in the recommendations in Sections #(3) and #(4) of the CL-1 Area of the Master Plan are specifically referenced and identified by address and/or parcel number (19320 Germantown Road, Parcel P209, 19323 Germantown Road and its adjoining vacant lot) and by existing use (the historic commercial building adjacent to the commuter rail station).

As noted in the Land Use Report and the Zoning Application, the Property is located by the railroad tracks (less than 100 feet) and between existing and relocated MD 118 (as referenced in the #(1) recommendation), and between the railroad tracks and the RT-6 townhouse subdivision that existed in 1989 (referenced in the #(2) recommendation). However, the Property was not included with the rezoning of the adjacent site to the northeast of the Property, which is owned by Amanda Enterprises, to the C-T zone (the “Amanda Property”), nor was the Property included

with the rezoning of the adjacent site to the southwest of the Property in the RT-6 zone (the "RT Property") in 2004.

Although the Master Plan did utilize the singular term "the property" for recommendation #(1), if the Master Plan intended to limit the specific C-T zone recommendation in #(1) to only the Amanda Property, as it had limited the recommendations in #(3) and #(4), it could have easily limited the recommendation by identifying the site as "Parcel 112" or by owner or use at that time. Further, the Amanda Property was the only site in the area at the time that was in the C-O zone, so that would have been another way to easily identify only the Amanda Property had the intent of the Master Plan been to limit the recommendation of the CT zone as appropriate exclusively to the Amanda Property.

Similarly, if the Master Plan intended to specifically include the Property in the recommendation for the RT-6 zone in #(2), the Master Plan could have specifically identified the Property by owner, address or as "Parcel P159" (or, as it had already identified the Property by use as "the medical clinic property") in the #(2) recommendations. However, the Master Plan did not specifically reference the Property in those recommendations.

It is also critical to note that the Master Plan does not reference keeping any property located between the C-T zoned "property" referenced in #(1) and the RT-6 zoned "area" in #(2) in the R-200 zone. Further, in recommendation #(2), the Master Plan recommends the "area between (the #(1) property) and the existing RT-6 townhouse subdivision" as suitable for RT-6 zoning, such that the CT and the RT-6 transition zones should abut each other. Otherwise the result would be as exists today (except for the mapping error) with one single-family residentially zoned property sandwiched in between two more intense transition zones, with no "transition" to the single-family zoning of the majority of the rest of the Cl-1 Area as the Master Plan intended.

In addition to the location of the Property meeting the description of "the property" recommended for the CT zone in the language #(1) of the Master Plan, the Property and the Zoning Application also satisfy the specific recommendations of the Master Plan for the CT zone on the Property. The CT zone on the Property will "preserve the "existing single-family detached residential character and setbacks, " and will maintain the "overall compatibility with the residential uses planned for other parts" of the CL-1 Area that are further away from the railroad tracks, MARC station and commercial uses. Further, since the Master Plan recognized the existing medical office use on the Property, the Zoning Application has been amended to include a Binding Element confirming that this use will remain on the Property in the future (and in the existing residential structure).

Another aspect that connects the Master Plan's non-specific description of "the property" to include the Property with the Amanda Property is the integration of the two properties. As noted

by the Planning Board, Hearing Examiner and Council in the LMA application of RT Property in 2004, the Amanda Property and the Property both have commercial uses- a landscape contractor use on the Amanda Property and the dental office use on the Property. The properties have shared an entrance and driveway off Liberty Mill Road well before the 1989 Master Plan, and the shared driveway and a portion of the parking spaces for the Property are on the C-T zoned Amanda Property. Although the agreement for shared access and parking was formalized only recently (Liber 37011 Folio 301, recorded in the Land Records of Montgomery County, Maryland on April 22, 2009) for the Zoning Application, the longstanding shared access and use of driveway and parking on the Amanda Property reflects the integration of the two parcels as the intended "property" along the railroad tracks that is appropriate for the CT zone (and which the RT-6 zone to the southwest should abut). In addition to the continuous integration of the Property and the Amanda Property, the Council's reclassification of the RT Property in 2004 certainly enhances the integration of those commercial properties and the separation from residential uses with the distinctive row of the townhouses backing up to form a wall along the southwest side of the Property and negating the compatibility of any single-family residential use on the Property should the medical office use not be continued.

As part of the analysis of the description of "the property" recommended as appropriate for the C-T zone in the Master Plan in general terms, instead of using any easily identifiable (and thereby exclusive) single address, parcel, owner or use, it is also important to note the age of the Master Plan. It is well established by the Planning Board (and Hearing Examiner) that the age of a master plan is relevant in interpreting the language and intent of the document. The existing Master Plan for the Property is over 20 years old, yet the entire CL-1 Area (including the Property with its incorrect mapping reflecting it as part of the RT-6 zone) was not included in the Germantown Sector Plan Amendment approved by the Council on September 22, 2009. The properties immediately opposite the railroad tracks, however, are in the Town Center District of the recently approved Germantown Sector Plan Amendment and reclassified to the TMX (Transit-oriented, Mixed Use) zone. Further, since 1989, the District Council (the "Council") has recognized the commercial use of the Property and used the commercial use as the basis for approving the reclassification of the RT Property. In Resolution No. 15-464 for the RT Property dated January 13, 2004 (Ex 21), the Council specifically states that the surrounding area contained "two commercial properties adjacent to the subject property to the north," and notes the commercial use of the Applicant's Property as a basis for the appropriate nature of townhomes on the RT Property.

In summary of reasons stated above, the Master Plan description of the "property" as appropriate for the CT zone in recommendation #(1) for the CL-1 Area applies to the Property because: 1) the Property is along the railroad tracks and between existing and relocated MD 118; 2) the recommendation for the CT zone was not specific to be exclusive to the Amanda Property, contrary to specificity used in the Master Plan with other recommendations in the CL-1 Area; 3)

the Master Plan did not recommend the RT-6 zone on the RT Property to abut the R-200 zone on the north and east side of that property, only the C-T zone; 4) the Master Plan did not recommend to isolate or surround a R-200 zoned property between the CT zone and the RT zone; 5) the Master Plan recognized the medical office use on the Property (which use is a Binding Element in the Zoning Application); 6) the Council recognized the commercial use on the Property in 2004 and reclassified the RT Property to the RT-6 zone based on the commercial use on the Property; and 7) the Property shares a driveway entrance with the CT zoned Amanda Property, and the driveway for the Property and a portion of the Parking for the Property are on the CT zoned Amanda Property and integrated with the Property. Further, for practical purposes, the Property has been used for a medical office for 30 years; the Property is not large enough to be a buildable lot in either the R-200 zone or the RT zone, but is large enough for the CT zone (with the existing residential structure); and there is no opposition to the reclassification of the Property to the CT zone.

One question that has not been addressed in our written materials but may be helpful in advance of the hearing is the reason the Applicant seeks the reclassification to the C-T zone, particularly since no site changes are proposed and the existing medical office use has been a permitted special exception use for 30 years. Although the Zoning Application will correct the erroneous RT-6 zone classification and "cloud" it creates on the Property, the Applicant seeks the C-T zone to provide some certainty for longstanding medical office use in the residential structure as a permitted use. As the Master Plan recognized 20 years ago and the Council recognized 6 years ago, the commercial use on the Property is part of the established transition character of the Property and the immediate area. If the Property were to remain in the R-200 zone, the Applicant's special exception use would continue to be subject to unnecessary and burdensome operational requirements (e.g. the number of hours a practitioner can work in a week) and is subject to having to continually reestablish its validity in the R-200 zone, even though surrounded by more intense zones and uses. In the C-T zone, there are still limitations (particularly with the significant Binding Elements proposed in the Zoning Application) and process, but the focus is more appropriately on the compatibility of the structures and improvements on the Property and the adequacy of public facilities, which can be handled through the Site Plan and Subdivision review processes in the C-T zone. Lastly, the uncertainty of a special exception use and the burden of the restricted operations creates a significant impact on the value and future of the Property and negatively impacts the ability to convey the Property to a similar user that will provide a convenient service to the neighborhood and preserve the transition area.

Thank you for your consideration of this supplemental information for the Land Use Report.

WASHINGTON SUBURBAN SANITARY COMMISSION

DEVELOPMENT PROPOSAL REVIEW
FOR A
REZONING APPLICATION

APPLICATION NO.: G-886

DATE: December 21, 2009

APPLICANT: CURTIS L & CAROL L. BENESH

LOCATION: 19330 LIBERTY MILL ROAD, GERMANTOWN

COUNTY: MONTGOMERY COUNTY

200' SHEET NO.: 226NW13

PRESENT ZONING: RT-6

PROPOSED ZONING: CT

SIZE OF PARCEL: 16,475 SQ. FT.

DWELLING UNITS: 1 RESIDENCE

OTHER: DENTAL OFFICE

WATER INFORMATION

1. Water pressure zone: Montgomery High, 660A
2. A 24 - inch water line abuts the property.
3. Local service is adequate.
4. Program-sized water main extensions (16 inches in diameter or greater) are not required to serve the property.
5. The impact from rezoning this property would be negligible.

SEWER INFORMATION

1. Basin: Seneca Creek
2. An 8 and 12 - inch sewer line abuts the property.
3. Flow from the present zoning: 448 GPD
Flow from the requested zoning: 1,152 GPD
Flow from the proposed development: N/A
4. Program-sized sewer mains are not required to serve the property.
5. Interceptor capacity is adequate.
6. The impact from rezoning this property would be negligible.

Statements of adequacy/inadequacy are made exclusively for this application at this time. Further analysis of adequacy will be part of the review at the time of application for water/sewer service.

Reviewed by Shanta Katwal (301)206-7202



January 21, 2010

MEMORANDUM

TO: Damon Orobona, Zoning Analyst
Development Review Division

VIA: Shahriar Etemadi, Supervisor
Transportation Planning

EW KHK

FROM: Ki H. Kim, Planner/Coordinator
Transportation Planning

KHK

SUBJECT: Zoning Application No. G-886
19330 Liberty Mill Road
Germantown West

This memorandum is Transportation Planning staff's adequate public facilities (APF) review of the subject zoning application. The application includes 16,522 square feet of land, the Benesh Property, located at 19330 Liberty Mill Road in the Germantown West Policy Area. The subject site is currently zoned RT-6 and proposed for the CT zone to maintain the existing doctor's office.

RECOMMENDATIONS

Based on our review of the submitted traffic statement and the existing development condition, Transportation Planning staff does not object approval of this zoning application since the existing 3,346 square feet of doctor's office development is not subject to the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) tests.

DISCUSSION

Local Area Transportation Review (LATR)

Based on the traffic statement, the existing doctor's office would generate a maximum of eight (8) weekday peak hour trips during the weekday AM and PM peak periods. Since the site would generate less than 30 peak hour trips, the subject application satisfies the LATR requirement.

Policy Area Mobility Review (PAMR)

The site is located in the Germantown West Policy Area where there is no PAMR mitigation requirement. Therefore, the subject application satisfies the PAMR requirement.

CONCLUSION

Staff concludes that the existing 3,346 square feet of doctor's office development on the Benesh Property proposed to maintain under the CT zone will not have an adverse impact on the surrounding roadway network.

KK:tc

Subject: G-886; Forest Conservation

From: Johnsen, Douglas
Sent: Thursday, January 21, 2010 11:00 AM
To: Orobona, Damon
Subject: RE: G-886; Forest Conservation

Damon,
Environmental Planning has reviewed the rezoning request for the property located at 19330 Liberty Mill Road, Germantown, MD 20874. There are no environmental features of concern on this project site and no environmental impacts due to this rezoning request. If at a future date, the applicant will seek preliminary and/or site plan approval then it will be necessary for the applicant to obtain either a forest conservation plan approval or a forest conservation exemption confirmation.

Mahalo,
Doug Johnsen, RLA
Environmental Planning Div.
M-NCPPC
8787 Georgia Ave.
Silver Spring, MD 20910
301-495-4712 (off)
301-495-1303 (fax)
<http://www.mncppc-mc.org>



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

ATTACHMENT 6

MEMORANDUM

Date: January 5, 2010

To: Damon Orobona
Development Review Division

From: Patrick Butler 
Development Review Division

Subject: Zoning Application G-886

The application proposes to change the zoning on an unrecorded parcel (P159 Map EU41) approximately 16,475 square feet in size from RT-6.0 to C-T, and retain an existing one-family detached dwelling with a Dental Office.

Pursuant to Section 59-C-4.302(a) of the Montgomery County Zoning Ordinance, a building permit can be issued only on a lot with a minimum front lot line of 100 feet on a public street for new construction in the C-T Zone.

According to the plans submitted with this application approximately 75 feet of frontage exists, thus the property does not appear to have adequate frontage to meet the development standards of the C-T zone. Therefore, any increase in the building footprint or change in use on this unrecorded parcel that requires modification of the existing structure may require preliminary plan, and record plat approvals. Without adequate frontage, staff would not be able to recommend approval of a preliminary plan or record plat for the subject property.