



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

MCPB
Item #
5/20/10

May 10, 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 *RDW*

SUBJECT: Diagrammatic Plan Amendment 10-3: An amendment to allow a private educational institution with the approved diagrammatic plan associated with G-718.

Staff recommends approval of the Diagrammatic Plan Amendment.

Summary. The applicant, Shangri-La Limited Partnership, seeks an amendment to an approved 1996 diagrammatic plan. The amendment will allow the applicant's existing child daycare center to also operate a Montessori school. A Montessori school is characterized as a private educational institution under the zoning ordinance's terminology.

Rezoning application G-718 and its accompanying diagrammatic plan were approved on July 2, 1996, and reclassified 198 acres of the Traville tract in Shady Grove from the R-200 and R-200/TDR Zones to the MXN Zone. The 1.68 acre subject property is part of an area identified on the 1996 diagrammatic plan as the *R&D-1 land bay*, with a note that limits non-residential development of this land bay to those uses allowed in the R&D Zone. The applicant's child daycare center is identified on the diagrammatic plan as an approved use in the land bay, but a private educational institution is not, although it is an allowed use under MXN zoning.

On October 8, 2009, the applicant brought a site plan amendment before the Board to change his approved child daycare site plan to include both a child daycare facility and a private educational institution. Site plan staff determined at the time that the only recourse for obtaining a site plan amendment and a use and occupancy permit for the private educational institution was for the diagrammatic plan to be amended through the diagrammatic plan amendment process.

The applicant is now proposing an amendment to the diagrammatic plan that will modify the plan to allow a daycare *and private educational institution* so that it will be possible

to operate both the child daycare and Montessori school in the applicant's existing facility. No construction or exterior modifications are proposed to the existing 12,000 square foot daycare facility as part of this application. Staff does not anticipate that allowing a private educational institution in the *R&D-1* land bay area of the plan will have any substantive impact on the non-residential development objectives for the area. According to the applicant, the scope of the building's current operations will remain the same other than the inclusion of the Montessori curriculum.

Unless there is public opposition, staff does not recommend that the Hearing Examiner conduct a public hearing on the proposed diagrammatic plan amendment. The amendment does not alter the compatibility of the project with surrounding development or compliance with the purposes of the MXN Zone.

Site Description and Previous Approvals. The subject property is 1.68 acres in size and described as parcels *L* and *O*, located on Traville Gateway Drive approximately 500 feet south of Darnestown Road. The Gardens of Traville senior living center and the Human Genome Sciences headquarters are adjacent to the site. The site is in the vicinity of numerous office, residential, and commercial uses. There are no significant environmental or historic features on the site.

As previously stated, the applicant currently operates a child daycare center on the site. The child care center is 12,000 square feet in size and has capacity for up to 200 children. The educational curriculum is intended for children up to the third grade level.

The child care facility was built in 2007 after receiving site plan approval under application 820060340. The site plan approval specifically conditioned that the child daycare must comply with the binding elements listed on the 1996 diagrammatic plan.

On October 8, 2009, the applicant came before the Board for Limited Site Plan Amendment 82006034A, in an effort to add the private educational institution as an operation of the approved daycare facility. Site plan staff recommended denial of the site plan amendment because the use *private education institution* is not spelled out on the diagrammatic plan. In the discussion of the item, the Board indicated that although there did not appear to be any significant reasons that a private educational institution could not be permitted at this location, the applicant must go through the proper diagrammatic plan amendment process to allow the use at the site.

Master Plan. The DPA is consistent with the 1990 *Shady Grove Study Area Master Plan*. The requested modifications do not propose or result in changes to the approved and developed building square footage of the total project.

Approval by District Council. The District Council approved Local Map Amendment G-718 and the accompanying diagrammatic plan for the MXN Zone on July 2, 1996. At that time, the District Council had to make certain findings that the diagrammatic plan satisfied the criteria for approval. The findings are shown below.

§59-D-4.61 – Findings. The District Council must in general find that the MXN Zone at the location in question:

- (a) Fulfills the purposes of the zone;*
- (b) Is in accordance with all pertinent recommendations of the relevant approved and adopted master or sector plan, and does not conflict with the general plan, the County capital improvements program, or other applicable County plans and policies;*
- (c) Provides for the maximum safety, convenience, and amenity of residents living in the Mixed Use Neighborhood and employees working there; and*
- (d) Provides, to the fullest extent possible, for a pattern of external access and internal circulation that encourages travel by public transit, bicycle and on foot and discourages reliance on travel by private automobile.*

In addition, a diagrammatic plan may be amended as set forth in §59-D-4.7:

§59-D-4.7 – Amendment. A diagrammatic plan may be amended in accordance with the procedures prescribed for amendments to a development plan by Section D-1.7.

Staff finds that the proposed diagrammatic plan amendment is consistent with the findings made by the District Council at the time of the original diagrammatic plan approval.

Conclusion. The application is consistent with the Shady Grove Master Plan. The proposed modifications will not change any building structures themselves, but rather will allow a private educational institution as an approved use on the diagrammatic plan. The proposed amendment does not alter the project's compliance with the purposes of the MXN Zone or the compatibility of the project with surrounding development, and satisfies all applicable standards for approval. For these reasons, staff recommends approval of DPA 10-3.

The amended diagrammatic plan language is shown at attachment 1, and the 2009 Site Plan Amendment staff report is shown at attachment 2.

Attachment 1

Non-Residential Uses	Sqft	Residential Uses	#DU
Conference Center	175,000	Mid-Rise	216
Health Club	45,000	Garden Apartments	436
Village Center (Non-Residential)	70,000	Apartments Above Retail	90
Parcel L and O only		Townhouses	8
Day Care and Private Educational Institution	12,000		
Community Center	12,000		
Subtotal	314,000	Total Dwelling Units	750
* Other Non-Residential	1,186,000		
uses limited to those allowed in the R & D zone		Market Rate Units	500
TOTAL	1,500,000	Affordable Units	250

Land Use Statistics

Land Use*	Types of Units	Floor Area Square Feet (sf)	Res. sf % of Total sf	Land Area (acres)	Density (FAR)	Dwelling Units (du)	Residential Density (du/acre)
* R&D -1		1,048,600		56	0.42		
* R&D -2		137,400		13	0.24		
VC - Non-Residential		70,000		14			
- Housing / Apartments		234,000	10.4	14	0.54	234	
- Community Facilities		24,000					
CC - Lodging		220,000		24	0.21		
P - Park				13			
Shady Grove Road				9			
H-1 Garden Apts.		208,000	9.2	24	0.20	208	8.7
H-2 Midrise/Garden Apts. Townhouses		316,000	14.0	37	0.20	308	8.3
TOTALS		2,258,000	33.6	192	0.27	750	3.9

* R&D Non-Residential uses (limited to those allowed in the R & D zone)
 - with the exception that Private Educational Institute
 is permitted in parcel L and O, Block A, Map - FR 43

VC village center
 CC conference center and health club
 H housing



**Staff Report: Limited Site Plan Amendment 82006034A, Children's Manor
Montessori School (formerly Traville Day Care)**

ITEM #: 09

MCPB HEARING DATE: October 8, 2009

REPORT DATE: September 28, 2009

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Robert Kronenberg, Supervisor *RAK*
Development Review Division

FROM: Joshua Sloan, Coordinator *JS*
Development Review Division
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APPLICATION

DESCRIPTION: MXN zone; 1.68 acres; amendment to change the use to include both a day care facility and private educational institute; located at the southwest quadrant of the intersection Darnestown Road and Traville Gateway Drive; Gaithersburg Master Plan

APPLICANT: Children's Manor Montessori School

FILING DATE: September 1, 2009

RECOMMENDATION: Denial

EXECUTIVE

SUMMARY: This amendment would allow the center to function as a private school as well as a daycare by adding "private educational institution" to the allowed use on site. Although minor in nature, any change to an approved use or development standard is brought to the Planning Board as a limited site plan amendment in order to ensure proper public notification. Staff finds that this use, although allowed by the MXN zone, is not allowed due to stipulations of the rezoning application and associated diagrammatic plan.

SITE DESCRIPTION

Vicinity

The subject site, delineated "Parcel L", is located on Traville Gateway Drive approximately 500 feet south of Darnestown Road. Adjacent to the site are the Gardens of Traville senior living center and the Human Genome Sciences headquarters. The site is in the vicinity of numerous office, housing, and commercial uses.



Vicinity Map

Site Analysis

The subject site is currently constructed per site plan 820060340 as a day care facility; however the Applicant filed a use and occupancy permit for two separate uses including a day care and public educational institution. The site is currently served by public water and sewer. There are no known rare, threatened, or endangered species on site; there are no forests, 100-year floodplains, stream buffers, wetlands, or steep slopes on site. There are no known historic properties or features on site.

PROJECT DESCRIPTION

Previous Approvals

A Diagrammatic Plan and an accompanying rezoning application G-718 of this and other properties for the MXN zone, was approved on July 2, 1996. This zoning approval specifically limited the total amount of development by type and the allowed uses for each section of the diagrammatic plan. The subject property is part of the area delineated "R&D-1", which was specifically limited to "Non-Residential uses (limited to those allowed in the R&D zone)". A 12,000 square foot day care center was also approved by the diagrammatic plan; it is use allocated for this building square footage that is the subject of this site plan amendment application.

Preliminary Plan 119970220 was approved on April 23, 2001 for 572,500 square feet of office and research and development uses. This approval revised previous approvals regarding phasing, "Pay-and-Go" expedited development, and traffic mitigation and finalized the conditions of approval for the entire Traville subdivision that included 1,322,500 million square feet of "retail, office, and R&D development". This approval specifically conditioned approval on "the applicant abiding by and complying with the conditions of approval of the diagrammatic plan under zoning application G-718".

Site plan 820060340 was approved on December 6, 2007 for a 12,000 square foot day care center, final water quality plan, and a waiver of 14 parking spaces. This approval specifically conditioned that the development must "comply with the binding elements listed in the zoning map amendment (G-718) and associated diagrammatic plan" as well as the previous preliminary plan approvals.

Proposal

The Applicant requests that "private educational institution" use be approved in addition to the existing approved "day care center" use for this site plan. While the definitions are similar, there are specific differences related to Maryland Statutes and they are separately listed in the zoning ordinance.

- "Child day care facility: A dwelling or building in which child day care services are provided in accordance with all applicable state and county laws and regulations."
- "Educational institution, private: Every private school or educational or training institution, however designated, which offers a program of college, professional, preparatory, high school, junior high school, elementary, kindergarten, or nursery school instruction.... "

ANALYSIS AND RECOMMENDATION

Our recommendation is based on our review of the rezoning that occurred on this property through Local Map Amendment (LMA) No. G-718 and the corresponding diagrammatic plan, which specified the land uses allowed on the property and included textual stipulations that were binding on the applicant and all subsequent property owners. To ensure that we are correct in

our interpretation, staff reviewed the M-NCPPC technical staff report, the Planning Board's recommendation to the County Council, the original applicant's Land Planning Report, the hearing examiner's recommendation to the Council, the Council's opinion, and the signed and approved copy of the original diagrammatic plan mylar. In all of these documents, the terms "private educational institution" or "school" (or any approximation) do not appear in any discussion of the proposed uses that were to be allowed as part of the LMA.

In 1996, the subject property, along with many others in the Traville tract, was rezoned by the County Council from the R200 and R200/TDR to the MXN zone. Rezoning to the MXN zone requires that the local map amendment application include a diagrammatic plan that has associated findings and conditions of approval. One specific limitation set forth in the diagrammatic plan was that non-residential uses in those areas zoned R&D are "limited to those allowed in the R&D zone". The R&D zone does not allow private educational institutions, either as a permitted or a special exception use. Therefore, we find that the only recourse for obtaining a use and occupancy permit for a private education institution is to amend the diagrammatic plan via the development plan amendment process prescribed by section D-1.7 of the zoning ordinance.

Staff recommends denial of site plan amendment 82006034A, Children's Montessori School to include a private educational institution as an additional use for the site.

~~APPENDICES~~

- ~~A. Diagrammatic Plan Detail from the Land Use Table, Highlighted~~
- ~~B. Preliminary Plan Opinion~~
- ~~C. Site Plan Opinion~~