





Wildwood Medical Center, Local Map Amendment H-117

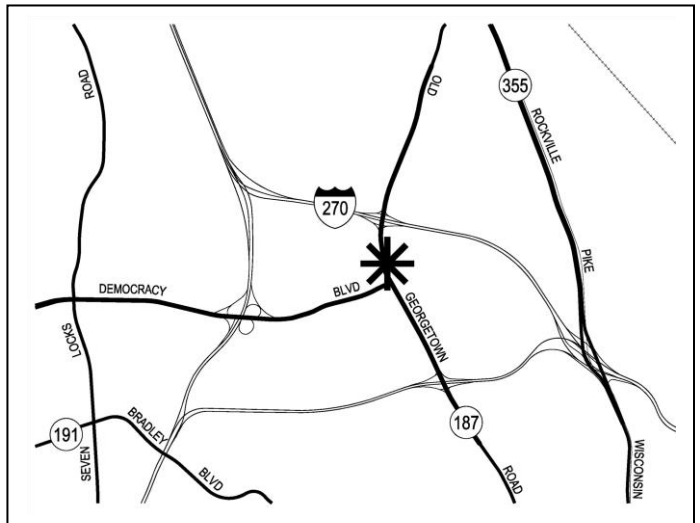
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Completed: 2/6/17

Description

- Request to rezone 3.50 acres from the CRT-1.25, C-0.5, R-0.75, H-50 Zone to the CRTF-1.25, C-0.5, R-0.75, H-60 Zone to construct up to 64 dwelling units and 10,925 sf of retail;
- Located at 10405 Old Georgetown Road, Bethesda;
- 1992 *North Bethesda/Garrett Park Master Plan*;
- Applicant: Alvin Aubinoe;
- Filing Date: July 29, 2016;
- Public Hearing by the Hearing Examiner: March 3, 2017.



Summary

- Staff recommends denial of the Local Map Amendment because the proposed floating zone plan does not demonstrate compatibility with the surrounding neighborhood and the proposed development does not serve the public interest.
- The County Council approved a schematic development plan amendment with nine binding elements for this Property in 2013 after negotiations between the Applicant and the neighborhood. The proposed development is not consistent with the purpose of the binding elements, which was to ensure that the previously approved building was compatible with the established residential neighborhood.
- Although the proposed residential and retail uses are appropriate for this Property, the height and massing of the proposed building are a significant departure from the 2013 approval, and are not compatible with the adjacent single-family neighborhood.
- The proposal to increase the building height on this Property to accommodate a poorly sited retail establishment runs counter to the public interest.

REASON FOR DENIAL

Staff recommends denial of the request to rezone the subject property from the Commercial Residential Town Zone (CRT-1.25, C-0.5, R-0.75, H-50) to the CRT Floating Zone with a higher height (CRTF-1.25, C-0.5, R-0.75, H-60) because the proposed development is incompatible with the adjacent residential neighborhood and not in the public interest. The proposed mixed-use building, with 64 dwelling units and 10,925 square feet of retail, is a significant departure from the development that was approved for this Property by the County Council in 2013 (Schematic Development Plan Amendment SDPA 12-1). SDPA 12-1 included nine binding elements and a detailed set of design criteria. The Applicant does not plan to retain any of the binding elements from the prior approval, many of which were agreed upon to create a building that would be compatible with the adjacent residential neighborhood.

The height and massing of the proposed building are of particular concern in terms of compatibility. The building height proposed in this Application (58 feet) has increased from the previously approved building height of 50 feet, which was a binding element of the prior approval. The proposed 58-foot building will be significantly taller than the houses in the adjacent neighborhood. Further, the point at which building height will be measured (average finished grade along the front of the building) is nearly 10 feet higher than the adjacent residential neighborhood. The perceived building height from the neighborhood will be significantly taller than the measured height of 58 feet.

The Applicant asserts that the requested increase in height is necessary to add ground floor retail to the previously approved apartment building. However, the proposed retail establishment will face the back of the gas station on the abutting property, with little or no visibility from Old Georgetown Road. Staff finds that the requested increase in height to accommodate a poorly sited retail establishment runs counter to the public interest.

A binding element connected with the SDPA 12-1 approval required that the building be setback a minimum of 60 feet from the Berkshire Drive right-of-way, and the setback has been reduced to 31 feet in this Application. Although the east (neighborhood) side of the proposed building steps down, the proposed building reaches its tallest point within 60 feet of the Berkshire Drive right-of-way, which brings the building mass too close to the neighborhood. The massing and setback of the building approved in 2013 were significantly more compatible with the adjacent neighborhood than the building proposed in this Application. The County Council approval of SDPA 12-1 established that a 50-foot building, set back 60 feet from the Berkshire Drive right-of-way, was compatible, and Staff does not find that a 58-foot high building set back 31 feet from the same right-of-way is now compatible, absent any major changes in the area. Staff does not believe that the public interest would be served by approving a building that is significantly less compatible with the neighborhood while offering no additional benefits to the community.

STAFF RECOMMENDATION

Staff recommends denial of the proposed Local Map Amendment, but if the County Council approves the Local Map Amendment, Staff recommends that the following binding elements be added to the floating zone plan:

1. The maximum building height is 50 feet.
2. The overall mass of the building must not appear to be more than five stories tall facing east, and it must taper down from five stories to three stories.
3. The building massing along Berkshire Drive must be limited to a maximum height of three stories, or 35 feet, within 50 feet of the Berkshire Drive right-of-way.
4. The Property must have an open space buffer with a minimum width of 30 feet along Berkshire Drive.
5. A six to eight-foot-wide landscaped buffer must be installed between the parking lot and the new public open space to screen views of the parking lot from Berkshire Drive and the residential neighborhood to the east.
6. The minimum required public open space must not include any storm water management facilities.
7. Roof top mechanical equipment on the proposed residential building must be located as far westward on the building as is practicable (to reduce visibility from residences to the east) and must be screened in such a manner as to reduce visibility and the appearance of height.
8. Vehicular access between the Property and Berkshire Drive is prohibited.

PROJECT DESCRIPTION

Site Description

The 3.5-acre Property is located on the east side of Old Georgetown Road, between Democracy Boulevard and Rock Spring Drive, approximately 30 feet south of the intersection of Old Georgetown Road and Rock Spring Drive. The Property is a through-lot, fronting on Old Georgetown Road to the west and Berkshire Drive to the east, and classified in the CRT-1.25, C-0.5, R-0.75, H-50 Zone.



Figure 1: Vicinity Map

The Property is improved with a three-story, 36,423-square-foot medical office building, a 3,471-square-foot, stand-alone bank with drive-thru service, and associated surface parking. The medical office building is surrounded with a landscape bed containing trees and shrubs. The northern portion of the Property contains a landscaped open space area with trees and shrubs, and a grassy area with a picnic table and trash receptacle. The Property contains some mature trees that would be demolished to accommodate the proposed mixed-use project. There is a six-foot board-on-board fence lined with trees and shrubs along the Property's Berkshire Drive frontage. The Property slopes moderately down from the northwest corner to the southeast corner and sits approximately 10 feet above Berkshire Drive.

The Property has access to Old Georgetown Road via a driveway located at the northern end of the property (across from Rock Spring Drive) via an easement on the abutting property to the north. Internal driveways also connect the Property with the Wildwood Shopping Center to the south and the gas station to the southwest. The gas station also has direct access to Old Georgetown Road. Although

there is no vehicular connection between Berkshire Drive and the Property, there are pedestrian connections available just to the south and north of the Property.



Figure 2: Aerial View of Property (outlined in red)



Figure 3: View from Old Georgetown Road (facing northeast)



Figure 4: View from Berkshire Drive (facing northwest)

Neighborhood Description

The Staff-Defined Neighborhood is consistent with the Neighborhood described by the County Council for the most recent Schematic Development Plan Amendment (SDPA 12-1) approved for this Property in 2013. The Neighborhood is generally defined by Interstate I-270 to the north; Democracy Blvd., Old Georgetown Road, and Cheshire Drive to the south; Old Georgetown Road and the Georgetown Square Shopping Center to the west; and Farnham Drive and Rossmore Drive to the east. The Neighborhood contains both residential and commercial uses. The area to the north and east of the Property is residential in nature with detached houses in the R-90 Zone; the neighborhood to the north has a Transferable Development Rights (TDR) Overlay Zone. Two shopping centers occupy the southern and western portions of the Neighborhood. The Wildwood Shopping Center abuts the Property to the south and contains a variety of retail and service uses in the NR -0.75, H-45 Zone with associated surface parking allowed by special exception/conditional use in the R-90 Zone. The Georgetown Square Shopping Center is located on the western edge of the neighborhood, across Old Georgetown Road from the Property, and includes retail and restaurant uses in the NR-0.75, H-45 Zone. A gas station is located adjacent to the Property to the southwest and is classified in the CRT- 0.75, C-0.75, R-0.25, H-35 Zone.



Figure 5: Staff Defined Neighborhood

Zoning History/ Background

A history of prior approvals is summarized in the table below:

Approval Date	Application Number	Approval
1964	BA-1631	The Board of Appeals approved a special exception to allow construction of a medical office building on the R-90 zoned property.
1992	G-706	The North Bethesda/Garrett Park Master Plan reaffirmed the Property's R-90 Zone.
November 2, 2007	G-851	County Council approved a Local Map Amendment to rezone the Property from R-90 to the O-M ¹ (Office building, moderate intensity) Zone, under optional method, to allow the construction of a second, three-story office building and a single-story bank. The schematic development plan included several binding elements that limited the maximum FAR to 0.46 and the maximum height to three stories or 42 feet. In addition, no point along the east side of the building could exceed 56 feet in height (Attachment 1).
February 5, 2009	11989271A / 820080240	The Planning Board approved Preliminary Plan 11989271A and Site Plan 820080240 to construct the second office building and the bank. The bank was constructed but the second office building was not.
November 20, 2012	S-2830	The Board of Appeals approved Special Exception S-2830 to substitute a five-story residential building (with a minimum of 35% productivity housing) for the previously approved, but unbuilt, office building (Attachment 2).
January 22, 2013	SDPA 12-1	County Council approved Schematic Development Plan amendment SDPA 12-1, associated with Special Exception S-2830, which included the binding elements described below (Attachment 3).
2013	11989271B/ 82008240A	Preliminary Plan amendment 11989271B and Site Plan amendment 82008240A were submitted to implement the residential building approved under SDPA 12-1 and Special Exception S-2830, but were subsequently withdrawn by default because the applications were inactive.
October 30, 2014	G-956	District Map Amendment G-956 rezoned the property to CRT-1.25, C-0.5, R-0.75, H-50 to accommodate the approvals under SDPA 12-1 and S-2830.
2015	SDP 2016-01	The Applicant submitted a Schematic Development Plan amendment under the 2004 Zoning Ordinance. The Application was withdrawn after Staff determined that the requested rezoning would not be technically allowed using the standards and procedures of the 2004 Zoning Ordinance.

¹ The O-M Zone no longer exists in the 2014 zoning ordinance.

Schematic Development Plan Amendment SDPA 12-1 included the following binding elements:

1. Uses Permitted
 - A. Existing three-story building. (Offices, general and offices, professional and business).
Leasable office space must not exceed 30,000 square feet.
 - B. Existing 3,471- square-foot building. (Offices, general and professional (bank), excluding medical practitioners).
 - C. Proposed five-story residential apartment building containing not more than fifty-eight (58) residential dwelling units, including a minimum of 35% Productivity Housing Units (PHUs).
2. There will be no vehicular access between the Subject Property and Berkshire Drive.
3. Roof top mechanical equipment on the proposed residential building will be located as far westward on the building as is practicable (to reduce visibility from residences to the east) and will be screened in such a manner as to reduce visibility and the appearance of height.
4. Running the entire length of the Subject Property between the easternmost property line of the Subject Property (the right-of-way for Berkshire Drive) and the paved area for vehicular circulation on the Subject Property, there must be a green space, at least 30 feet wide, as a buffer to screen the parking area, including the blocking of headlights of cars exiting the garage, and to screen the lower portions of the buildings. Within this green space the only land uses will be: (1) An approximately 6-foot high board-on-board fence; (2) Shade trees; (3) Evergreen plantings on both sides of the fence selected and located to block headlight glare.
5. The residential building has been designed to rise in height as it progresses from east to west. As a result, there will be a rooftop over a three-story section of the building and a rooftop over a four-story section of the building. On these rooftops . . . Applicant will install and maintain, and replace as necessary, trees in planters or appropriate tree planting containers, intended to provide extensive screening and to reduce the visibility year round of the east facing fourth floor and fifth floor facades from the homes in Wildwood Manor located east of Berkshire Drive...
6. The residential building shall be not greater than 5 stories or 50 feet in height....
7. The building design, including height of respective floors, will be substantially consistent with elevations submitted in companion Special Exception Case No. S-2830....
8. Setbacks:
 - Bank Building*
 - Not closer than 50 feet to Old Georgetown Road right-of-way
 - Office Building*
 - Not less than 113 feet to abutting property line (north)
 - Not less than 145 feet to rear (Berkshire Drive) property line
 - Residential Building*
 - Not less than 16 feet to abutting property line (south)
 - Not less than 60 feet to rear (Berkshire Drive) property line
9. FAR shall not exceed 1.3.

The binding elements were included in the schematic development plan and in an Amended Declaration of Covenants filed in the County's land records. The legal effect of the covenants was to obligate present and future owners of the property to comply with the binding elements specified in the covenants.

Under Section 7.7.1.B.5 of the Zoning Ordinance, a property with a zoning classification on October 29, 2014 that was the result of a Local Map Amendment must satisfy any binding element until one of the following occurs:

1. The Property is subject to a Sectional Map Amendment that implements a Master Plan;
2. The Property is rezoned by a Local Map Amendment; or
3. The binding elements are revised by the procedures in effect on October 29, 2014.

Since this Property was classified in the O-M Zone through Local Map Amendment G-851 on October 29, 2014, the binding elements still apply until the County Council takes action under the provision described above. If the requested Local Map Amendment is approved, the Applicant will no longer have to satisfy the binding elements imposed by SDPA 12-1. If this Local Map Amendment is not approved, the Sectional Map Amendment adopted in conjunction with the pending Rock Spring Master Plan would remove the binding elements.

In addition to the binding elements, SDPA 12-1 also included a set of design criteria that were to be addressed at the time of site plan review. Design criteria concerned storm water management, lighting, streetscape improvements along Berkshire Drive, landscaping, and the name or identifier of the project. The special exception (S-2830) approved in conjunction with SDPA 12-1 also included a number of conditions of approval. Many of the conditions of approval echoed the binding elements approved under SDPA 12-1, but they also included further requirements and limitations on the proposed development including:

- A requirement that a minimum of 225 parking spaces be located onsite and a stipulation that the applicant could not charge fees for parking spaces within the apartment building not reserved for residents.
- A requirement for sidewalks with at-grade crossings or handicap ramps.
- A provision ensuring that the development would not result in more storm water running off the site than occurred at the time.
- A requirement that garbage dumpster pick-ups occur between the hours of 8:00 a.m. and 5:00 p.m. on weekdays.

Proposal

The Applicant's initial proposal was to rezone the Property from the Commercial Residential Town Zone CRT-1.25, C-0.5, R-0.75, H-50, to the Commercial Residential Town Floating Zone with the same density, but a maximum height of 70 feet (CRTF -1.25, C-0.5, R-0.75, H-70). The original floating zone plan showed a 70-foot tall mixed-use building with townhouses fronting on Berkshire Drive. Staff informed

the applicant that they would not support a proposed building height above 50 feet, or a plan with townhouses fronting on Berkshire Drive.

The Applicant submitted an amended application on December 29, 2016, to request the CRTF Zone with a maximum building height of 60 feet (CRTF-1.25, C-0.5, R-0.75, H-60). The proposed building had 63 dwelling units, and included building step-backs at each story on the eastern (Berkshire Drive) side of the building. On January 5, 2017 the Applicant submitted a revised application to add another dwelling unit and reduce the proposed number of terraces, bringing the building mass closer to Berkshire Drive.

The Applicant proposes to remove all the binding elements associated with the prior approval and construct a mixed-use building which is 58 feet at the highest point. The proposed building has five stories facing west (Old Georgetown Road) and six stories facing east (Berkshire Drive). It tapers down to five and then three stories on the eastern end of the building facing Berkshire Drive. The building would be setback approximately 31 feet from the Berkshire Drive right-of-way and 15 feet from the shared property line with the Wildwood Shopping Center. The existing medical office building and bank will be retained.

The main entrance to the residential uses and the ground floor retail will be on the west side of the building facing the existing gas station that occupies the adjacent property to the west. The residential section will also have a pedestrian entrance along the Berkshire Drive façade of the building. The building would contain 10,925 square feet of retail and 64 one and two-bedroom dwelling units including eight MPDUs. The gross building area, including covered balconies, would be 99,408 square feet. A proposed retail plaza is located on the south side of the building facing the Wildwood Shopping Center's parking lot. The entrance to the proposed three-level underground parking garage, containing 176 spaces, is located on the north side of the building adjacent to the loading dock.

The existing parking lot around the medical office building would be reconfigured and the existing open space area to the north of the medical office building would be replaced with parking spaces. The Property would have a total of 293 parking spaces, of which 176 would be located in the new garage and 117 would be in surface parking lots distributed around the Property. The existing parking area to the east of the office building would be converted into an open space area with a lawn, path, and storm water management facilities (Attachment 5). The proposed path would provide pedestrian access to the Property from the adjacent neighborhood to the east. The Applicant proposes to retain the existing six-foot high, board-on-board fence that screens the Property from the residential neighborhood across the street. The floating zone plan shows storm water management facilities distributed around the eastern portion of the Property, including two large micro-bioretenion facilities located within the public open space area.

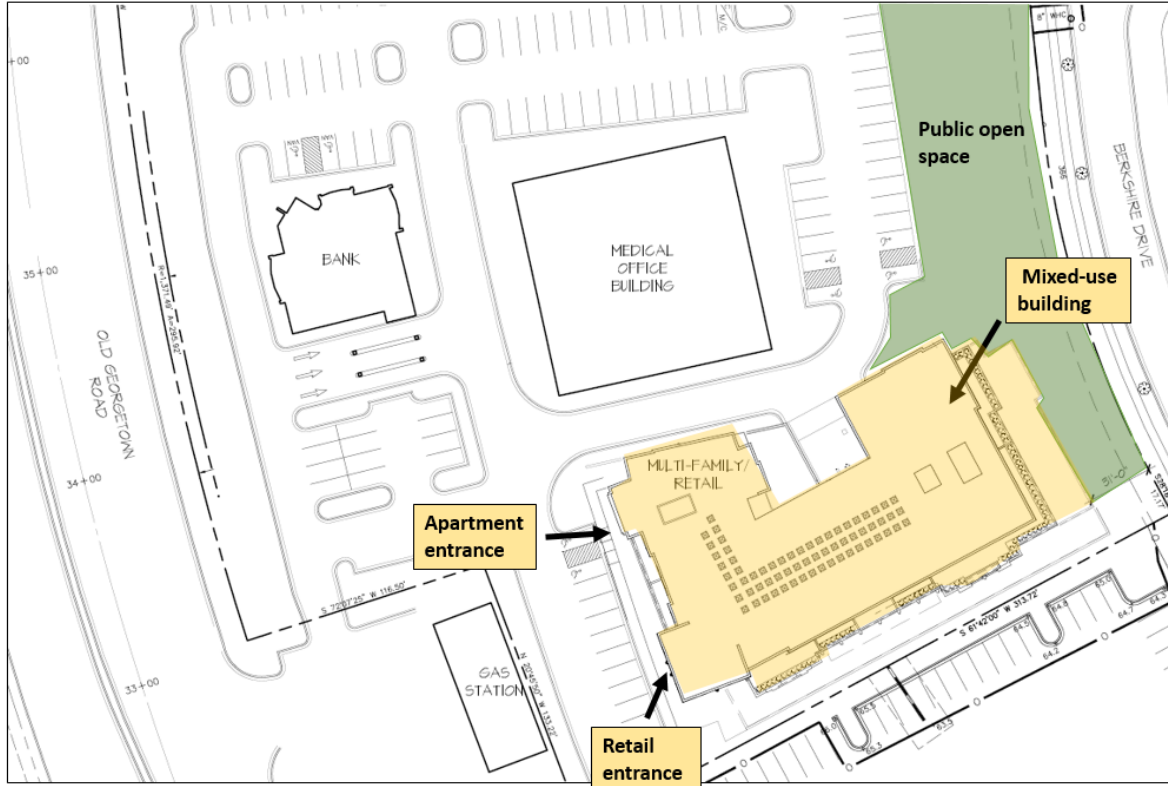


Figure 6: Simplified Floating Zone Plan



Figure 7: West Elevation (facing gas station/ Old Georgetown Road)



Figure 8: South Elevation (facing Wildwood Shopping Center)



Figure 9: East Elevation (facing Berkshire Drive/ neighborhood)

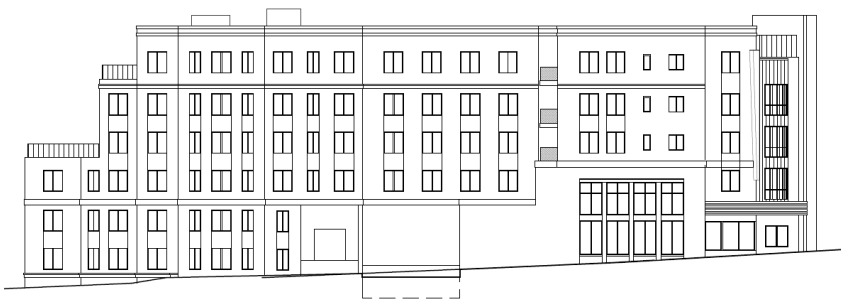


Figure 10: North Elevation (facing medical office building)

ANALYSIS

Master Plan

The Property falls within the boundary of the Approved and Adopted 1992 *North Bethesda/Garett Park Master Plan* (North Bethesda Plan) and within the area of the pending *Rock Spring Master Plan* (Rock Spring Plan). Although there are no specific recommendations in the North Bethesda Plan for the Property, the first land use objective of the Plan is, “to protect and reinforce the integrity of existing residential neighborhoods” (p.33). The Property is located on the edge of an existing single-family residential neighborhood, and the height and location of the proposed building are important factors in maintaining the integrity of that neighborhood. The proposed 58-foot building will be significantly taller than the houses in the adjacent neighborhood. Further, the point at which building height will be measured (average finished grade along the front of the building, or 373.4 feet) is nearly 10 feet higher than Berkshire Drive (grade of 364 feet). The perceived building height from Berkshire Drive will be significantly taller than the measured height of 58 feet.

Aside from Staff concerns about the impact of the proposed building’s height on the neighborhood, several other land use objectives from the North Bethesda Plan would be implemented with this mixed-use development, including increasing “the variety of housing stock, including affordable housing,” and encouraging “a mixture of land uses in redeveloping areas to promote variety and vitality” (p.33). Further, the location of the development along Old Georgetown Road is appropriate since it is within an area that is “best served by transportation infrastructure” (p.33).

Old Georgetown Road is identified in the North Bethesda Plan as a Green Corridor. The Green Corridors policy is intended to address “the visual effects of roadways and abutting properties. The Green Corridors policy is recommended to “protect and enhance the residential character of the Planning Area” (p. 250). Street trees are planted in the right-of-way along the Property’s Old Georgetown Road frontage, and trees and shrubs planted on the Property provide some screening of the existing bank and parking area from Old Georgetown Road.

The pending *Rock Spring Master Plan* is in the Public Hearing Draft stage. While the proposed floating zone plan conforms with some elements of this Plan, the proposed height is inconsistent with the Plan’s recommendation to confirm the existing zone on the Property with a maximum height of 50 feet (page 24), and to concentrate larger commercial uses and mixed-use development along Old Georgetown Road (page 27). The Rock Spring Plan indicates that “redevelopment that is adjoining or confronting existing R-90 zoned neighborhoods should be compatible with the low-scale character of these residential areas” (page 27). Given that the 2013 County Council approval of SDPA 12-1 established that a 50-foot building, set back 60 feet from the Berkshire Drive right-of-way, was compatible, Staff does not find that a 58-foot high building set back 31 feet from the same right-of-way is now compatible as no major changes have occurred in the neighborhood.

The proposed development is consistent with language in the Rock Spring Plan that limits the building massing along Berkshire Drive to a height of 35 feet within 50 feet of the Berkshire Drive right-of-way. The Rock Spring Plan also indicates that this Property should provide a green space of at least 30 feet in width measured from the Berkshire Drive right-of-way to provide a buffer to screen the Property from the adjacent neighborhood (page 27). The proposed floating zone plan is consistent with this recommendation.

Transportation

Master-Planned Roadways and Bikeways

In accordance with the 1992 *North Bethesda/Garrett Park Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, the master-planned roadway and bikeway designations are as follows:

1. Old Georgetown Road is designated as a major highway, M-4, with a recommended 120-foot right-of-way and a Class III bikeway. According to the *Countywide Bikeways Functional Master Plan*, a shared use path, SP-1, is designated along Old Georgetown Road between Democracy Boulevard and Cheshire Lane.

As a requirement for Preliminary Plan No. 11989271A, the Applicant recorded Record Plat No. 24091 on May 20, 2010 that included dedication for an additional 3.5 feet of right-of-way for a total of 60 feet from the centerline of Old Georgetown Road.

2. Rock Spring Drive is designated as an arterial, A-81, with a recommended 80-foot right-of-way and a Class I bikeway. According to the *Countywide Bikeways Functional Master Plan*, a signed shared roadway, SR-59, is designated along Rock Spring Drive between Old Georgetown Road and Fernwood Road.
3. Democracy Boulevard is designated as a major highway, M-5, with a recommended 120-foot right-of-way from Bells Mills Road to Old Georgetown Road and a Class I bikeway. According to the *Countywide Bikeways Functional Master Plan*, a shared use path, SP-2, is designated along Democracy Boulevard between Old Georgetown Road and Gainsborough Road.
4. I-270 East Spur is designated as a freeway, F-1, with a recommended 300-foot right-of-way.
5. Berkshire Drive is not listed in the Master Plan but is considered a tertiary residential street with a 50-foot right-of-way.

Traffic Mitigation Requirements

The Applicant does not have to enter into a Traffic Mitigation Agreement with MCDOT and the Planning Board to participate in the North Bethesda Transportation Management District (TMD) because the site is located outside the TMD's boundary.

Pedestrian Facilities

The sidewalks along Old Georgetown Road are approximately 8-feet wide with a 13-foot wide green panel.

Available Transit Service

Ride On routes 6 and 70 and Metrobus routes J-2 and J-3 operate on the adjacent Old Georgetown Road frontage.

Local Area Transportation Review (LATR)

The Adequate Public Facilities (APF) approval to add a 30,000-square-foot general office and a 3,470-square-foot bank to the Property under Preliminary Plan No. 11989271A remains valid until March 5, 2020. The Applicant can credit the trips generated by the approved, but unbuilt, 30,000-square-foot office building towards LATR requirements. If this Local Map Amendment application is approved, the Applicant will need to amend the Preliminary Plan to reflect the proposed 64-unit residential building and 10,925 square foot retail space.

The table below shows the net increase in peak period trips in the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) periods generated by the proposed mixed-use building as compared to the development approved under Preliminary Plan 11989271A.

Land Uses	Square Feet Or Units	Site-Generated Peak-Hour Trips	
		Morning	Evening
Prior 2009 Approval under Preliminary Plan No. 11989271A			
Phase I Drive-In Bank	3,470	17	34
Phase II General Office	30,000	43	63
Approved Subtotal		60	97
Proposed Land Uses under this application			
Phase I Drive-In Bank	3,470	17	34
Phase II Mid-Rise Apartments	64	28	31
Phase II General Retail	10,925	21	34
Proposed Subtotal		66	99
Net Increase in Peak-Hour Trips		+6	+2
Equivalent Retail Square Footage		2,150 square feet	

The trips generated by the bank and retail spaces in the table above are primary or new trips to/from the site that exclude pass-by and diverted trips who have origins and destinations to other land uses. Because the use and occupancy permits for the existing medical office building were approved more than 12 years ago, this application does not need to account for trips generated by that use.

In accordance with the *Local Area Transportation Review and Transportation Policy Area Review Guidelines*, a traffic study is not required to analyze the congestion levels at the nearby intersections in order to satisfy Local Area Transportation Review (LATR) test because the net number of new peak-hour vehicular trips generated by the proposed change in land uses is fewer than 30 within the weekday morning and evening peak periods.

The Applicant constructed a second westbound approach lane at Rock Spring Drive/Wildwood Manor Driveway at the intersection with Old Georgetown Road, required by Preliminary Plan 11989271A, to address congestion associated with the unbuilt 30,000-square-foot office building.

Policy Area Review

Preliminary Plan No. 11989271A was approved under the *2009-2011 Subdivision Staging Policy*, when the Policy Area Mobility Review (PAMR) test was the applicable “policy area” test. PAMR was based on the number of new peak-hour trips generated by the proposed 3,470-square-foot bank and 30,000-square-foot office building. The Applicant was required to provide non-automobile transportation improvements equivalent to five new site-generated peak hour trips to construct the bank; and 25 new peak-hour trips to construct the 30,000-square-foot office building. If the Applicant uses the trip credits from the approved, but unbuilt, 30,000-square foot office building, a PAMR payment to MCDOT would be required at the time of building permit.

In addition, a Preliminary Plan amendment would be analyzed under the *2016-2020 Subdivision Staging Policy*, and payment of the transportation impact tax would be required at building permit for the approved development.

Other Public Facilities

Schools

Under the 2016-2020 Subdivision Staging Policy, a 64-unit multi-family high rise would generate approximately five elementary school, two middle school, and three high school students. The schools that serve this area are Ashburton Elementary School, North Bethesda Middle School, and Walter Johnson High School, all of which have adequate capacity under the FY 2017 School Test.

Utilities

Public water and sewer, electricity, telephone, and cable currently serve the Property and could be utilized for the proposed mixed-use building.

Environment

Environmental Guidelines

Staff approved a Natural Resource Inventory/ Forest Stand Delineation (NRI/FSD No. 420160360) on September 21, 2015. There are no forests, wetlands, or other environmental features on the Property, but several specimen size trees are located onsite. The Property is located in the Rock Creek watershed but outside any Special Protection Area. The proposed development complies with the *Environmental Guidelines*.

Forest Conservation

Submission of a Forest Conservation Plan (FCP) is not required for approval of a Local Map Amendment (LMA). If this LMA is approved, a Preliminary Plan Amendment will be required at which time the existing FCP exemption for this Property will become void. A new FCP with a variance application for specimen tree impacts will be required as part of the Preliminary Plan Amendment application. The approved NRI/FSD is valid until September 21, 2017.

Community Outreach

Staff received a letter from the Wildwood Manor Citizens Association (WMCA) and Wildwood Estates Homeowners Association (WEHA) expressing opposition to the proposed floating zone plan (Attachment 6). In reference to the binding elements agreed to under SDPA 12-1 in 2013, WMCA and WEHA explain that they “negotiated in good faith with Aubinoe over an extended period regarding Aubinoe’s building proposals for this site, at considerable expense to [them] for legal representation and with many hours of volunteer community participation.” The community has particular concerns with the size, height, and setback of the proposed building from the Berkshire Drive right-of-way in addition to concerns about water runoff, traffic, parking, and excessive noise.

Staff agrees that the proposed floating zone plan is a significant departure from the binding elements agreed to under SDPA 12-1, and the proposed building would not be compatible with the adjacent residential neighborhood.

FINDINGS

Section 7.2.1.E.2.

For a Floating zone application, the District Council must find that the floating zone plan will:

Section 7.2.1.E.2.a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;

As discussed on pages 13-14 of this report, the uses proposed in this floating zone plan are consistent with the general recommendations in the approved and adopted *North Bethesda/Garrett Park Master Plan*, but the height and massing of the proposed building do not “protect and reinforce the integrity” of the adjacent residential neighborhood as recommended in the Plan.

The height of the proposed building does not conform to the 50-foot height recommendation in the pending *Rock Spring Master Plan*.

Section 7.2.1.E.2.b. further the public interest;

Given the existing binding elements approved by the County Council in 2013, Staff does not find that the current proposal serves the public interest. The proposed development is not consistent with the purpose of the binding elements from the prior approval, which was to ensure that the previously approved building was compatible with the surrounding neighborhood, especially the single family houses located across Berkshire Avenue from the Property.

The 50-foot building height was an essential element of the 2013 approval for a residential development on this Property, and Staff believes it should be retained. The joint letter from WMCA and WEHA notes that the 50-foot height limit was developed with public input to balance the public interest and protection of the public with the rights of property owners. The neighbors have a reasonable expectation that the key elements of the 2013 approval would continue to apply to this Property.

While an eight feet difference might seem relatively inconsequential, the difference in grade between the Property and Berkshire Drive would make the building appear almost ten feet taller from the adjacent neighborhood. Absent the extensive screening on the rooftops (required under the existing binding elements), the building will be more visible from the Neighborhood. In addition, the proposed building is almost 30 feet closer to Berkshire Drive compared to the prior approval. The proposed building’s increased height and reduced setback is far less compatible with the neighborhood, and offers no additional benefits to the community.

The Applicant asserts that the requested increase in height is necessary to add ground floor retail to the previously approved apartment building. However, the location of the proposed retail, fronting on a gas station, is less than ideal. Staff finds that the requested increase in height to accommodate an awkward retail location does not further the public interest.

Section 7.2.1.E.2.c. satisfy the intent and standards of the proposed zone and, to the extent the Hearing Examiner finds it necessary to ensure compatibility, meet other applicable requirements of this Chapter;

Section 5.1.2. Intent Statement

The intent of the Floating zones is to:

A. Implement comprehensive planning objectives by:

- 1. furthering the goals of the general plan, applicable master plan, and functional master plans;*
- 2. ensuring that the proposed uses are in balance with and supported by the existing and planned infrastructure in the general plan, applicable master plan, functional master plan staging, and applicable public facilities requirements; and*
- 3. allowing design flexibility to integrate development into circulation networks, land use patterns, and natural features within and connected to the property; and*

The retail and residential uses proposed in this floating zone plan are consistent with the general recommendations in the approved and adopted *North Bethesda/Garrett Park Master Plan*, but the height and massing of the proposed building do not “protect and reinforce the integrity” of the adjacent residential neighborhood as recommended in the Plan. Further, the proposed building is not well integrated into the existing land use patterns. The proposed 58-foot building will be out of scale with the adjacent neighborhood to the east, and the proposed retail space will be in an awkward location that is not visible from Old Georgetown Road.

The proposed uses are in balance and supported by existing and planned infrastructure in the general plan and the applicable master plans. The proposed mixed-use building replaces a previously approved (Preliminary Plan 11989271A) but unbuilt, 30,000 square feet of office space. The proposed development would add a negligible number of additional peak hour trips (six in the morning peak period and two in the evening peak period) to the number of trips approved under Preliminary Plan 11989271A. The area schools have adequate capacity for the number of students that would be generated by the proposed development. If the Local Map Amendment is approved, a Preliminary Plan amendment will be required at which time the impacts on schools, transportation, and other public facilities will be analyzed in more detail.

B. Encourage the appropriate use of land by:

- 1. providing flexible applicability to respond to changing economic, demographic, and planning trends that occur between comprehensive District or Sectional Map Amendments;*
- 2. allowing various uses, building types, and densities as determined by a property's size and base zone to serve a diverse and evolving population; and*
- 3. ensuring that development satisfies basic sustainability requirements, including open space standards and environmental protection and mitigation; and*

The uses and density proposed in the floating zone plan are generally appropriate for the Property. However, the height and massing of the proposed building are not appropriate given the proximity of the single-family residential neighborhood.

The floating zone plan satisfies the basic open space requirements, although a significant amount of the open space would be occupied by storm water management facilities. The Property would be required to meet storm water management regulations that would be an improvement over the current situation. If the Local Map Amendment is approved, a Preliminary Plan amendment will be required. At that time, the Applicant will be required to submit a Forest Conservation Plan that will require existing specimen trees to be preserved, or onsite mitigation to be provided for the loss of those trees.

C. Ensure protection of established neighborhoods by:

- 1. establishing compatible relationships between new development and existing neighborhoods through limits on applicability, density, and uses;*
- 2. providing development standards and general compatibility standards to protect the character of adjacent neighborhoods; and*
- 3. allowing design flexibility to provide mitigation of any negative impacts found to be caused by the new use.*

The proposed retail and residential uses are generally compatible with the established neighborhood to east, but the height and massing of the proposed building are not. The proposed floating zone plan does not ensure protection of the established neighborhood. Previous approvals, and the pending *Rock Spring Master Plan*, have established that a compatible maximum height for this Property is 50 feet. Staff continues to believe that any height over 50 feet is incompatible given the difference in grade between the Property and Berkshire Drive. In addition, the Applicant has eliminated mitigation measures approved under SDPA 12-1.

Section 5.1.3. Applicability

The Property is currently zoned CRT, so no prerequisites or locational criteria are required to apply for a Local Map Amendment.

Section 5.3.2. Purpose

The purpose of the Commercial/Residential Floating zones is to:

- A. allow development of mixed-use centers and communities at a range of densities and heights flexible enough to respond to various settings;
- B. allow flexibility in uses for a site; and
- C. provide mixed-use development that is compatible with adjacent development.

As previously discussed, the uses proposed for this Property are generally appropriate, but the height and massing of the proposed mixed-use building is not compatible with the adjacent development.

Section 5.3.3. Land Uses

Multi-Unit Living, Retail/Service Establishments up to 50,000-square-foot in size, and Medical and Dental Clinics are all permitted uses in the CRTF Zone.

Section 5.3.4. Building Types Allowed

Any building type is allowed in the CRTF Zone.

Section 5.3.5. Development Standards

	Required/Allowed	Proposed
Property Area		
Tract	n/a	3.50 acres
Lot	n/a	3.42 acres
Density		
Total	1.25 FAR ¹	0.99 FAR
Commercial	0.5 FAR	0.34 FAR
Residential	0.75 FAR	0.65 FAR
Setbacks		
Front (west)	Established by floating zone plan ²	47'
Side (north)		113'
Side (south)		15'
Rear (east)		31'
Height		58' ³
Public Open Space	10%	12.7%

¹Under Section 5.3.5.A.2, the Applicant can request a maximum density of up to 4.0 FAR, with a maximum commercial or residential density of up to 3.0 FAR.

²The height must satisfy the compatibility standards under Section 4.1.8.B. The diagram in Attachment 7 demonstrates that the proposed height technically satisfies this requirement.

³The requested zone allows a height up to 60 feet, but the proposed building is 58 feet.

Vehicle Parking Requirements

Use	Min	Max	Proposed
Medical/ Dental Clinic (30,000 sf) ¹	1 per 1000 sf= 30	4 per 1000 sf= 120	120
Retail/ Service Establishment (14,396 sf)	3.5 per 1000 sf= 51	6 per 1000 sf= 87	87
Residential			
– Market rate one- bedroom (16 units)	1/unit= 16	1.25/ unit= 20	20
– Market rate two- bedroom (40 units)	1/unit= 40	1.5/ unit= 60	59
– MPDU one-bedroom (4 units)	.5/unit= 2	1.25/unit= 5	3
– MPDU two-bedroom (4 units)	.5/unit= 2	1.5/unit= 6	3
Total	141	298	292

¹6,423 sf of Medical storage is excluded from the required parking calculation.

²The proposed number of parking spaces for each use adds up to 292 spaces, not 293 as indicated on the floating zone plan.

Open Space

Under Section 5.3.5.D.2.a, 10% public open space must be provided. The proposed public open space technically meets the design requirements under Section 6.3.6.B.1. because it abuts a public sidewalk, is a minimum of 15 feet wide in a contiguous space, and includes seating and shade. However, a significant amount of the proposed open space is also occupied by storm water management facilities.

Public Benefits

Development above the greater of 1.0 FAR or 10,000 square feet of gross floor area in the CRTF zone requires public benefits. The density proposed for the Property is 0.99 FAR, which is just under the threshold that requires the Applicant to provide public benefits.

Section 7.2.1.E.2.d. *be compatible with existing and approved adjacent development;*

The proposed 58-foot building will be significantly taller than the houses in the adjacent neighborhood to the east of the Property. The perceived building height from Berkshire Drive will also be significantly taller than the measured height of 58 feet due to the difference in grade between the Property and Berkshire Drive.

In addition, this Application has removed binding elements from the previous approval (SPDA 12-1) that helped establish compatibility with the neighborhood in 2013. The proposed building, at 58-feet in height, is eight feet taller than the building approved in 2013. The building setback from the Berkshire Drive right-of-way, adjacent to the single-family neighborhood, has been reduced from 60 feet to 31 feet. Although the east (neighborhood) side of the proposed building steps down, the proposed building

reaches its tallest point within 60 feet of the Berkshire Drive right-of-way, which brings the building mass too close to the neighborhood. The massing and setback of the building approved in 2013 were significantly more compatible with the adjacent neighborhood than the building proposed in this Application.

This proposal also does not include trees planted in containers on the rooftops to screen views of the building from the adjacent neighborhood as agreed to in SDPA 12-1. The proposed increase in height combined with the decreased setback and the lack of container trees to screen the upper stories result in a building that is not compatible with the adjacent residential development.

Section 7.2.1.E.2.e. generate traffic that does not exceed the critical lane volume or volume/ capacity ratio standard as applicable under the Planning Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and

In accordance with the *Local Area Transportation Review and Transportation Policy Area Review Guidelines*, as discussed on page 15 of this report, a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the net number of new peak-hour vehicular trips generated by the proposed change in land uses from the approved Preliminary Plan is fewer than 30 within the weekday morning and evening peak periods. Thus, a traffic study is not required to analyze the congestion levels at the nearby intersections.

Section 7.2.1.E.2.f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely affect the character of the surrounding neighborhood.

This finding is not applicable because the Property is in the CRT Zone which is not a Residential Detached Zone.

CONCLUSION

Staff recommends denial of the Local Map Amendment because the proposed floating zone plan does not demonstrate compatibility with the neighborhood or a sufficient nexus with the public interest to warrant approval.

ATTACHMENTS

1. Council Resolution for G-851
2. Board of Appeals Resolution for S-2830
3. Council Resolution for SDPA 12-1
4. Floating Zone Plan
5. Open Space Concept Plan
6. Community Correspondence
7. Height Compatibility

ATTACHMENT 1

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

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

By: County Council

SUBJECT: APPLICATION NO. G-851 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,
Jody Kline, Esquire, Attorney for Applicant, OPINION AND RESOLUTION ON
APPLICATION

Tax Account No. 07-03281496

OPINION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Floor area ratio shall not exceed 0.46.

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

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

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

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

59-C-4.310. Purpose.

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

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

The fact that an application complies with all specific requirements and purposes set forth herein shall not be deemed to create a presumption that the application is, in fact, compatible with surrounding land uses and, in itself, shall not be sufficient to require the granting of any application.

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

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

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

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

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

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

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

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

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

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-851, seeking reclassification from the R-90 Zone to the O-M Zone of 3.5 acres of land located at 10401 Old Georgetown Road in Bethesda, Maryland, on property known as Lot N541, Parcel B, Wildwood Manor Shopping Center, in the 7th Election District, is hereby approved in the amount requested, subject to the specifications and requirements of the approved schematic development plan, Exhibit 65(a); provided that, within 10 days of receipt of the District Council's approval resolution, the Applicant must submit to the Hearing Examiner for certification a reproducible original and three copies of the approved schematic development plan, in accordance with §59-D-1.64, and provided that the Declaration of Covenants is filed in the county land records in accordance with § 59-H-2.54 of the Zoning Ordinance.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

ATTACHMENT 2

BOARD OF APPEALS for MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2830

PETITION OF WILDWOOD MEDICAL CENTER, LLC

OPINION OF THE BOARD

(Opinion Adopted October 24, 2012)

(Effective Date of Opinion: November 21, 2012)

Case No. S-2830 is an application for a special exception, under Section 59-G-2.36.2 of the Zoning Ordinance, to permit the construction and operation of a residential apartment building in a commercial zone. The subject property is Lot N-541, Wildwood Manor Shopping Center Subdivision, located at 10401 Old Georgetown Road, Bethesda, Maryland 20814, in the O-M Zone.

A Hearing Examiner for Montgomery County held a hearing on the application on July 27, 2012, in conjunction with the hearing on a related Schematic Development Plan Amendment (SDPA) and held the record in the case open until August 27, 2012 for additional filings and comments. A second Hearing Examiner was assigned to review the entire record for both cases and write reports and recommendations to the Board of Appeals and the County Council. He extended the record-open date for the special exception until August 31, 2012, for additional comments, and, on October 5, 2012 issued a Report and Recommendation for approval of the special exception, with conditions.

Decision of the Board: Special Exception **Granted** Subject to
the conditions enumerated below.

The Board of Appeals considered the Report and Recommendation at its Worksession on October 24, 2012. The Board made slight changes to proposed Condition 13, to clarify the language, adopted the Report and Recommendation and granted the special exception subject to the conditions as follows:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in the Hearing Examiner's report and recommendation and in this opinion.

2. The Petitioner must limit subsequent preliminary and site plan amendments to a maximum of 58 mid-rise apartments in addition to the 36,423 square feet of existing medical office space, limited to 30,000 square feet of leasable office space, and 3,470 square feet of bank uses.
3. The Petitioner must provide a minimum of 225 total parking spaces on-site; the Board of Appeals approves shared parking in accordance with the provisions of Zoning Ordinance §59-E-3.1.
4. The Petitioner must receive approval of an amended preliminary plan and site plan by the Planning Board.
5. At the time of preliminary plan amendment, the Petitioner must satisfy the Policy Area Mobility Review (PAMR) test by installing and/or funding off-site non-auto transportation improvements as determined by the total number of units and unit types approved by the preliminary plan.
6. At the time of preliminary plan amendment, the Petitioner must provide sidewalks with at-grade crossing or handicapped ramps around the entire proposed apartment building and to the nearby buildings on the site.
7. At the time of the site plan amendment, the Petitioner must provide the number and location of parking spaces for the proposed residences and existing office visitors/employees as required in the County Code and Zoning Ordinance, while demonstrating security for the residential parking.
8. At the time of the site plan amendment, the Petitioner must provide bicycle parking for visitors and residents as determined by the total number of units and unit types approved by the site plan.
9. Prior to release of any building permits for each proposed phase, Petitioner must provide the non-auto transportation improvements by making a payment via an acceptable financial instrument either to the Maryland State Highway Administration (SHA) or Montgomery County Department of Transportation (MCDOT).
10. Shade trees must be provided along Old Georgetown Road in conformance with the Master Plan, as determined at Site Plan.
11. The Petitioner must not charge any parking fees for parking spaces within the apartment building that are not reserved for residents.
12. This special exception is conditioned upon the approval by the County Council, sitting as District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, of SDPA 12-1 in substantially the same form as shown in Exhibit 47(a) in the file of SDPA 12-1, but modified in accordance with Condition 13, below.

13. Petitioner must ensure that this special exception will not result in more stormwater running off the site than currently occurs. In addition, to make it clear that DPS and the Planning Board may elect to impose more stringent stormwater management conditions, Petitioner must amend SDPA 12-1 Design Criterion 1 to read:

1. Development of the Subject Property will be in accordance with the conditions of approval of a stormwater management plan relating to certain features of "green building" technology for the proposed residential building and any other conditions imposed by DPS or the Planning Board. If any of the major assumptions on which the stormwater management plan approval is predicated change, due to unforeseen circumstances, the applicant must reapply to Montgomery County, Maryland for a new stormwater management plan approval. [Underlining added to note change.]

14. Since the proposed use will require an amendment to the existing preliminary plan of subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of an amendment to the preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required by the subdivision amendment process, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.

15. During the preliminary plan amendment process, Petitioner must demonstrate to the satisfaction of the Department of Permitting Services and the Planning Board that stormwater runoff from the entire site will comply with current State and County regulations and will not worsen the stormwater runoff conditions that currently exist downstream from the site.

16. The lighting for the site is permitted at the levels specified in photometric lighting plan (Exhibit 6(d)), to the extent the Planning Board finds that measurements exceeding 0.1 footcandles at the side and rear property lines are appropriate for this mixed use area "to improve public safety," as authorized by Zoning Ordinance §59-G-1.23(h).

17. If signage is added to the site, an amended special exception site plan must be filed with the Board of Appeals, so indicating. A sign permit must be obtained for any proposed sign, and a copy of the permit for the approved signage must be submitted to the Board of Appeals before any sign is posted.

18. There must be no direct vehicular access between the subject site and Berkshire Drive.

19. The Petitioner shall install, maintain and replace, as necessary, trees in planters or appropriate tree planting containers, on the third and fourth floor roofs, intended to provide extensive screening and to reduce the visibility year round of the east facing fourth and fifth floor facades from the homes on Wildwood Manor

located to the east of Berkshire Drive. The species of trees, size and time of planting, planter locations and spacing shall be as specified in Special Exception Landscaping Plan dated July 20, 2012 and designated Exhibit 26(b).

20. Garbage dumpster pick-ups must occur between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, in accordance with the agreement of the parties. Tr. 66.

21. In accordance with the agreement of the parties (Tr. 66-67), the word "Wildwood" will not be used in the title of the proposed residential building, so as to preserve it as a name pertaining to the adjacent neighborhood of single-family, detached homes.

22. If the community seeks a parking permit program or a program to control non-resident parking on Berkshire Drive and/or other nearby streets, Petitioner must carry out its promise made at the hearing (Tr. 238-239; 279-280) to support those efforts.

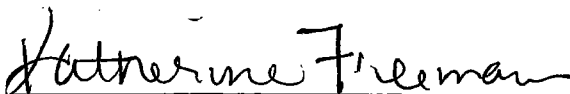
23. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, Vice-Chair, and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of November 2012.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

ATTACHMENT 3

Resolution No.: 17-653
Introduced: January 22, 2013
Adopted: January 22, 2013

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

By: District Council

SUBJECT: APPLICATION SDPA 12-1 FOR SCHEMATIC DEVELOPMENT PLAN AMENDMENT of LMA G-851, Previously Approved by the District Council on November 27, 2007 in Resolution 16-392; Jody Kline, Esquire, and Soo Lee-Cho, Esquire, Attorneys for the Applicant, Wildwood Medical Center, L.L.C; OPINION AND RESOLUTION ON APPLICATION; Tax Account No. 07-03669303.

OPINION

On February 24, 2012, Applicant Wildwood Medical Center, LLC, filed an application for approval of Schematic Development Plan Amendment 12-1 (SDPA 12-1) to modify the Schematic Development Plan (SDP) in Local Map Amendment G-851 (LMA G-851), which had been approved by the County Council on November 27, 2007, in Resolution 16-392.

The subject site consists of approximately 3.47 acres (151,220 square feet) on the eastern side of Old Georgetown Road (MD Route 187), just north of its intersection with Democracy Boulevard. The site is described as Lot N-541, Wildwood Manor Shopping Center Subdivision, and it is located at 10401 Old Georgetown Road, in Bethesda, Maryland.

Council Resolution 16-392 reclassified the property from the R-90 Zone to the O-M Zone and approved a Schematic Development Plan (Exhibit 8), which included a new bank building and the then-proposed three-story, general office building on the southern end of the site. A medical office building had been constructed on the site in the 1960s pursuant to Special Exception CBA-1667. The bank building was added following approval of the rezoning.

Finding that recent market conditions did not warrant the addition of the previously planned general office building (Exhibit 28(a), pp. 3-4), Applicant now seeks permission to substitute a five-story, 58-unit, residential building on the southern end of the site, which will provide "productivity housing," at the location originally planned for the general office building. To do so requires both Council approval of the instant SDPA application as well as the granting of a special exception by the Board of Appeals pursuant to §59-G-2.36.2 of the Zoning Ordinance. The special exception petition, S-2830, was filed on February 22, 2012, and approved by the Board of Appeals on November 21, 2012, with conditions.

The SDPA and the special exception petition were amended a number of times by Applicant in an effort to address concerns raised by the Technical Staff of the Maryland-National Capital Park and Planning Commission and by the Wildwood Manor Citizen's Association (WMCA). The proposed final version of SDPA 12-1 is labeled Exhibit 56(a).

Based on these amendments, which include commitments to binding elements in the proposed SDPA 12-1 and conditions for the special exception, WMCA indicated that it would not oppose the special exception or the SDPA. Exhibit 31. However, strong opposition was voiced by individual residents of the neighborhood.¹ The opposition raised concerns about adequacy of parking, traffic congestion, pedestrian safety, school impacts, stormwater management, environmental issues and the placement of the posted notices.

Technical Staff, in a memorandum dated June 29, 2012, recommended approval of both the special exception petition and the SDPA, subject to specified conditions. Exhibit 27, pp. 16-17. On July 12, 2012, the Planning Board voted unanimously to recommend approval of both the special exception and SDPA 12-1. Exhibit 34.

A combined public hearing for both cases was held, as scheduled, on July 27, 2012. Although WMCA did not oppose these applications, six individual neighbors testified in opposition – Joseph Dias, Melitta Carter, Patricia Broderick, Wendy Calhoun, Andrea Gabossy and Brenda Sandler.² At the end of the hearing, the record was held open for 30 days, until August 27, 2012, for additional filings and comments by interested parties. Tr. 297-298.

Because of notice issues regarding the SDPA, the Hearing Examiner scheduled and noticed an additional hearing date for SDPA 12-1. See Order of August 31, 2012 in the SDPA case (Exhibit 50). The follow-up hearing in SDPA 12-1 went forward as scheduled on October 19, 2012, but no opposition parties appeared to testify or further cross-examine Applicant's witnesses.

The proposed SDPA contains binding elements that require consistency with any special exception approved by the Board of Appeals in this case. Therefore, action by the Board of Appeals on the special exception petition was a prerequisite to consideration by the Council of the SDPA application. In order to ensure that the Board of Appeals' resolution would be part of the record in the SDPA case, the Hearing Examiner's August 21, 2012 Order in the SDPA case (Exhibit 40), directed, *inter alia*, that the record in SDPA 12-1 would remain open until 10 days after the effective date of the Board of Appeals' resolution in this special exception case.

On November 21, 2012, the Board of Appeals granted the special exception with conditions. Exhibit 55. Applicant filed the proposed final version of SDPA 12-1 (Exhibit 56(a)) on November 28, 2012, and filed executed covenants (Exhibit 56(b)) on the same date. The record in SDPA 12-1 closed as scheduled on December 3, 2012.

¹ Numerous e-mails from neighbors in opposition to SDPA 12-1 were sent to Technical Staff and also were copied directly to Council members. To avoid *ex parte* contacts, the e-mails were forwarded to OZAH by Council staff to be placed in the public record. SDPA Exhibits 25(a)-(k) and 26. These opposition e-mails raise the same concerns addressed in the opposition letters cited in the main text and discussed at length in the Hearing Examiner's report.

² Two tenants of the adjacent medical office building, Nick Attretti and Adrienne Batten, participated in the hearing by cross-examining one of Applicant's witnesses regarding concerns about the adequacy of parking. They did not testify, nor express opposition to the project. Tr. 74-79 and 86-89.

On December 10, 2012, the Hearing Examiner filed his Report and Recommendation, recommending approval of the schematic development plan amendment, based on his conclusion that the proposed SDPA would be consistent with the purpose and regulations of the O-M Zone, compatible with surrounding development and in the public interest. 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. 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.

The concerns raised by the opposition witnesses were discussed at length in Parts III. C. E. and F. of the Hearing Examiner's report. As will appear more fully below, in spite of their concerns, the record amply supports the approval of this SDPA, with the binding elements recommended by the Planning Board and the Hearing Examiner.

Technical Staff provided the following zoning history of the subject site (Exhibit 27, p. 4):

The subject property was classified under the R-90 zone in the 1954 comprehensive zoning of the area. In 1964, the Board of Appeals approved special exception number BA-1631, allowing construction of a medical office building on the property. The R-90 zoning was reaffirmed by Sectional Map Amendment in 1992 (G-706). The subject property was rezoned from the R-90 zone to the O-M zone by Local Map Amendment G-851 on November 27, 2007, which was submitted under the Optional Method of development requiring an SDP and establishing binding elements with respect to land use, development standards, and staging. The Opinion issued by the County Council is appended to [the] staff report [as Attachment 11]. In 2009, the Planning Board approved a Preliminary Plan 11989271A and Site Plan 820080240. . . .

The subject property consists of 3.5-acres of land in the O-M Zone. It is recorded as Lot N541, Parcel C of the Wildwood Manor Shopping Center subdivision. The site, which is immediately north of the shopping center, is described by Technical Staff as follows (Exhibit 27, p. 2):

. . . The property is located in the southeast quadrant of the intersection of Old Georgetown Road (MD 187) and Rock Spring Drive. The property is developed with a three-story 36,423-square foot medical office building, a 3,460-square foot bank and associated surface parking. There are approximately 206 surface parking spaces on-site. The property has approximately 340 feet of frontage on Old Georgetown Road. The site's parking area interconnects with a gas station abutting the southwest corner of the site and, at three locations along its southern boundary, with the Wildwood Shopping Center. Both the gas station and shopping center have direct access to Old Georgetown Road. The subject property abuts Berkshire Drive to the west, but has no vehicular connection to it.

The property slopes moderately down from the northwest corner to the southeast corner. It is landscaped with trees and shrubs near the existing office building and

bank within the parking area and along Old Georgetown Road. The site contains no sensitive environmental features.

The Applicant, Wildwood Medical Center, LLC, is the owner of the property, per Maryland property tax records, of which the Hearing Examiner took official notice. The property is about 1200 feet south of the I-270 Interchange with Old Georgetown Road (MD 187). Exhibit 27, Attachment 11.

Vehicular access to the site is available from the north by way of a stub road, which in effect extends Rock Spring Drive eastward, a short way across Old Georgetown Road onto an ingress/egress easement. The extension does not continue all the way to Berkshire Drive on the east. The site may be accessed by vehicles from the south via driveways which exist on both the eastern and western sides of the property and connect directly to the northern parking lot of the Wildwood Shopping Center. That parking lot primarily serves customers of Balducci's market, the northernmost retailer in the Shopping Center.

The subject site was further described by Victoria Bryant, Applicant's land planner. There is a significant number of trees along the northern boundary between the site and the single-family homes to the north, and there is a hedge row between the site and Berkshire Drive to the east. Ms. Bryant indicated that there is about a ten-foot difference in elevation between the site of the proposed building and Berkshire Drive. There are trees (a row of hemlocks), which create "a fairly decent evergreen screen" and an existing six-foot wooden fence separating that street and the site. Although there is no vehicular connection between Berkshire Drive and the property, there are pedestrian connections through openings in the fence. There is also a fairly extensive sidewalk system allowing pedestrian movement through the site. A ten-foot planting island delineates the site from Balducci's parking lot. Tr. 96-101.

The property does not have any existing forest, nor is it in a stream valley buffer or a special protection area. Exhibit 27, p. 24. However, there are issues regarding stormwater management which will be discussed below.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Staff defined the surrounding area as generally bounded by I-270 to the north, Farnham Drive to the east, Old Georgetown Road to the west, and Cheshire Drive to the south.

Applicant's land planner, Victoria Bryant, accepted this definition (Tr. 93-94); however, the evidence presented by Mr. Joseph Dias (Tr. 175-211 and Exhibit 43(a)) and Applicant's civil engineer, Pearce Wroe (Tr. 287-288), convinced the Hearing Examiner that the surrounding area boundaries should be extended to include the area where there is an outfall of stormwater runoff, a portion of which is generated by the subject site.

It is undisputed that the area immediately around Mr. Dias's home is severely affected by stormwater runoff, some of which comes from the subject site. Although the definition of the surrounding area is usually influenced by distance from the site and natural and man-made barriers (e.g. rivers and roads), the term is generally taken to be that area which will be most directly affected by the proposed development, as discussed by Ms. Bryant at the hearing. Tr. 132-134. While it appears from the evidence that the subject site is but one of many contributors

to the stormwater runoff problem, the Hearing Examiner concluded that a fair definition of the surrounding area should include the area around Mr. Dias's home at 5917 Rudyard Drive, which is just east of Farnham Drive (Technical Staff's proposed eastern boundary). This additional area would project the defined surrounding area eastward to the intersection of Rudyard Drive and Rossmore Drive, as shown by a blue dashed line on the surrounding area map depicted in the Hearing Examiner's report.

In addition, the Hearing Examiner recommended extending the surrounding area definition to include the properties confronting the subject site directly across Old Georgetown Road, as shown by a blue dotted line on the surrounding area map depicted on page 11 of his report. This expansion would incorporate the commercial properties in the shopping center across Old Georgetown Road from the site because they will be affected by the traffic generated along Rock Spring Drive and Democracy Boulevard by the proposed development. According to the testimony, those roads would be major access routes for the subject site. Tr. 49-52; 259-278. Therefore, the affected properties should be included within the surrounding area definition, even though they are separated from the site by a major roadway. The District Council agrees with both of these extensions of the surrounding area definition proposed by the Hearing Examiner.

Technical Staff described the surrounding area as follows (Exhibit 27, p. 3):

The surrounding area is characterized by a mixture of residential, office, and institutional uses classified in the R-90 and C-1 zones. Surrounding properties to the north and east are developed with one-family detached dwellings in the R-90 and R-90/TDR zones. Properties to the west are developed with a retail shopping center in the C-1 zone and a mix of one-family detached dwellings and townhouses in the R-60 zone. Properties to the south are developed with a retail shopping center in the C-1 zone (Wildwood Shopping Center). Although the shopping center is classified in the C-1 zone, the center's parking lot that is adjacent to the subject property operates pursuant to a special exception (CBA-1667) under the R-90 zone. A gasoline station, zoned C-1, abuts the subject property to the west. A special exception (S-1903) was approved in 1992 for an upgrade and rebuild of this site.

Applicant's land planner added to Staff's description of the surrounding area, noting that across Old Georgetown Road to the west, there is a Giant supermarket, a Chipotle and a couple of other restaurants in the C-1 Zone, and the Walter Johnson High School is behind them. There's an MXPD site that has been partially developed with apartment buildings along Interstate 270, and there are plans for a mixed-use development for the remainder of the site. Tr. 94-95. There are single-family homes to the north and to the east, and commercial uses in the surrounding area. The Hearing Examiner therefore found, and the District Council agrees, that this area is a mixed-use community, rather than solely a single-family, residential community. Tr. 105-108.

Applicant seeks approval of SDPA 12-1, as well as a special exception pursuant to Zoning Ordinance §59-G-2.36.2, to permit the construction of a residential dwelling in a Commercial (O-M) Zone. It would consist of a five-story, 58-unit, residential apartment building, with maintenance services to be handled by employees of the Applicant. Fifty-six of

the apartments would be two-bedroom units and two would be one-bedroom units. Thirty-five percent of the units (*i.e.*, 21 units) will be made available for tenants at “productivity housing” rates for households with incomes below the area-wide median income, as provided for in Chapter 25B, Article IV, of the County Code, and applicable regulations. There would also be 37 market rate units, and 225 parking spaces to serve the entire site, of which 114 spaces would be located in a garage underneath the apartment building and 111 spaces would be available in the surrounding surface parking lot that serves the existing medical office building and bank.

The project was described by Technical Staff as follows (Exhibit 27, p. 5):

The proposed building will be five stories (50 feet) at its highest point, tapering down to four stories and then three stories on the eastern end of the building. The Applicant is proposing landscape screening on the east facades of the fourth and fifth floor roof tops in an effort to soften the view of the building from the Wildwood residential community. A 30-foot buffer, between the right-of-way line Berkshire Drive and the paved area for circulation on the subject property, will include existing trees and enhanced landscaping that will eliminate direct lines of sight to the apartment building. The proposed building will be setback approximately 60 feet from the eastern property line.

These step downs in height along the eastern side of the proposed building will reduce its impact on the residences confronting the site across Berkshire Drive, to the east. With the setback from the property line and the vegetation along Berkshire Drive, Applicant’s architect, Sassan Gharai, testified that it will be very difficult to see the building from the neighborhood to the east. Tr. 33-34. Moreover, the sight lines for an individual standing at the property line along Berkshire Drive will reveal only the lower level of the building, making the structure appear smaller and thus more compatible to the viewer. Tr. 37-40.

According to Mr. Gharai, trees planted on the third and fourth tiers will help to screen those levels from those in the residential neighborhood. Tr. 40-42. Crenulations (*i.e.*, irregularities in the façade) are used to reduce the apparent mass of the building. Tr. 43-44.

The main entrance of the building will be in the center of the lower south bay, which faces the Wildwood Shopping Center and Balducci’s parking lot. There will be a sidewalk that goes around the building and connects to the sidewalk of the existing medical office building. The garage entrance will be on the eastern side of the building, and the loading dock will be located on the north face of the building, in an area between the two commercial buildings. This is where trash will be kept and picked up during the day. In order to avoid odor and noise issues associated with this function, Mr. Gharai tucked the trash area inside the building, and the trash truck will actually pull into the building, pick trash up and remove it with minimal noise and odor. Tr. 47-48. By agreement of the parties, garbage dumpster pick-ups must occur between the hours of 8:00 a.m. and 5:00 p.m. on weekdays. Tr. 66. A condition to this effect is included in the Board of Appeals resolution granting the special exception. The apartment building will have an entry lobby, a community room, a fitness center and a business office.

In order to meet concerns raised by the community and to satisfy points raised by the Planning Board, Applicant has agreed to a series of binding elements in the schematic development plan amendment to LMA G-851 (*i.e.*, SDPA 12-1). These binding elements, which *inter alia* incorporate some requirements of the special exception, will establish enforceable

limits on the proposed development. They are imprinted on SDPA 12-1 (Exhibit 56(a)) and are included in an Amended Declaration of Covenants (Exhibit 56(b)) which will be filed in the County's land records. These binding elements and covenants remove and replace the existing binding elements which had required a general office building on the site where Applicant now seeks to construct a residential building. The new binding elements are, in other respects, similar in format and content to the existing binding elements approved in LMA G-851. Absent approval of the requested SDPA, the existing SDP would prevent construction of the proposed residential building. The new binding elements are reproduced below:

CATEGORY	PERMITTED/REQUIRED	BINDING ELEMENT
LAND USE	See Section 59-C-4.2 for O-M Zone	<p>1. <u>Uses Permitted</u></p> <p>A. Existing three story building. (Offices, general and offices, professional and business) Leasable office space must not exceed 30,000 square feet.</p> <p>B. Existing 3,471 square foot building. (Offices, general and professional (bank), <u>excluding</u> medical practitioners)</p> <p>C. Proposed five story residential apartment building containing not more than fifty-eight (58) residential dwelling units, including a minimum of 35% Productivity Housing Units (PHUs).</p>
		<p>2. There will be no vehicular access between the Subject Property and Berkshire Drive.</p> <p>3. Roof top mechanical equipment on the proposed residential building will be located as far westward on the building as is practicable (to reduce visibility from residences to the east) and will be screened in such a manner as to reduce visibility and the appearance of height.</p> <p>4. Running the entire length of the Subject Property between the easternmost</p>

		<p>property line of the Subject Property (the right-of-way for Berkshire Drive) and the paved area for vehicular circulation on the Subject Property, there will be a green space, at least 30 feet wide, as a buffer to screen the parking area, including the blocking of headlights of cars exiting the garage, and to screen the lower portions of the buildings. Within this green space the only land uses will be:</p> <ul style="list-style-type: none"> (1) An approximately 6 foot high board-on-board fence; (2) Shade trees; (3) Evergreen plantings on both sides of the fence selected and located to block headlight glare.
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CATEGORY	PERMITTED/REQUIRED	BINDING ELEMENT
<p>BUILDING HEIGHT</p>	<p>See Section 59-G-2.36.2(b)(2) (Not greater than 5 stories or 50 feet in height)</p>	<p>5. The residential building has been designed to rise in height as it progresses from east to west. As a result, there will be a rooftop over a three-story section of the building and a rooftop over a four-story section of the building. On these rooftops, in addition to any environmental/stormwater management features that may be located on such rooftops, Applicant will install and maintain, and replace as necessary, trees in planters or appropriate tree planting containers, intended to provide extensive screening and to reduce the visibility year round of the east facing fourth floor and fifth floor facades from the homes in Wildwood Manor located east of Berkshire Drive. The details of the species of the trees, size at the time of planting, planters, location and spacing, are specified in a Landscaping Plan as part of a companion application in</p>

<p>BUILDING SETBACKS</p>	<p>See Section 59-C-4.313</p>	<p>Special Exception Case No. S-2830 [Exhibits 26(b)(i), 26(b)(ii), and 26(b)(iii)] and the applicant will request that the implementation of this Landscape Plan be made a condition of the grant of the special exception.</p> <p>6. The residential building shall be not greater than 5 stories or 50 feet in height as measured from the average elevation of finished ground surface along the front of the building (per Zoning Ordinance).</p> <p>7. The building design, including height of respective floors, will be substantially consistent with elevations submitted in companion Special Exception Case No. S-2830. Pedestrian circulation related to the residential building will be substantially consistent with pedestrian network features shown on the approved Special Exception Plan in companion Special Exception Case No. S-2830.</p> <p>8. Bank Building</p> <ul style="list-style-type: none">● Not closer than 50 feet to Old Georgetown Road right-of-way <p>Office Building</p> <ul style="list-style-type: none">● Not less than 113 feet to abutting property line (north)● Not less than 145 feet to rear (Berkshire Drive) property line <p>Residential Building</p> <ul style="list-style-type: none">● Not less than 16 feet to abutting property line (south)● Not less than 60 feet to rear (Berkshire Drive) property line
<p>FLOOR AREA RATIO</p>	<p>See Section 59-C-4.312 (1.5 FAR)</p>	<p>9. FAR shall not exceed 1.3</p>

The legal effect of the covenants is to obligate present and future owners 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 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.

In addition to the binding elements, certain “design criteria” were specified in the existing SDP, and they are changed in SDPA 12-1 by deleting references to the previously proposed office building and substituting references to the now proposed residential building. Language was also added to make it clear that the Department of Permitting Services and the Planning Board could impose additional stormwater management conditions, and at the request of WMCA, to exclude the word “Wildwood” from the name of the new building. These design criteria will be considered at site plan review by the Planning Board. They are:

DESIGN CRITERIA TO BE CONSIDERED AT SITE PLAN

1. Development of the Subject Property will be in accordance with the conditions of approval of a stormwater management plan relating to certain features of “green building” technology for the proposed residential building and any other conditions imposed by DPS or the Planning Board.³ If any of the major assumptions on which the stormwater management plan approval is predicated change, due to unforeseen circumstances, the applicant must reapply to Montgomery County, Maryland for a new stormwater management plan approval.
2. New freestanding lighting fixtures will be the same as, or similar to existing lighting in terms of style, height, and wattage. Any lighting fixtures affixed to or associated with the residential building on the Subject Property will be designed, located and operated to provide adequate security lighting and to illuminate the parking and walkway areas, not the buildings themselves. The details of a lighting plan are to be determined at the time of site plan review following completion of the zoning phase.
3. In the unpaved portion of the right-of-way of Berkshire Drive, subject to obtaining necessary permits from Montgomery County, Maryland, the following conditions will exist:
 - A. An approximately four foot wide concrete sidewalk will be installed in the Berkshire Drive right-of-way. The sidewalk will be extended beyond the southern limits of the Subject Property to connect to an existing staircase that provides access to the Wildwood Shopping Center.
 - B. Street trees will be planted in the Berkshire Drive right-of-way, per Montgomery County specifications, between said sidewalk and the street curb.

³ The underlined language was added to comply with a condition recommended by the Hearing Examiner and imposed by the Board of Appeals.

- C. Existing trees and shrubs within the Berkshire Drive right-of-way are to be preserved to the extent practicable.
4. Landscaping shown on the companion "Landscaping Plan" (Sheets LS-1 & LS-2) is intended to provide, among other things, a slightly, all season, green buffer along the Berkshire Drive right-of-way. The landscaping shown is illustrative only. Final locations, sizes and species of landscape materials will be determined at the time of site plan review.
 5. At the time of site plan review, the applicant will have selected, and will use exclusively, a name or identifier for the project which will not include the word "Wildwood" in the title.

In addition, Applicant has agreed to conditions recommended by the Planning Board for inclusion in Special Exception S-2830. They are incorporated into the conditions imposed by the Board of Appeals in granting the special exception. The conditions imposed by the Board of Appeals in its Resolution of November 21, 2012 in S-2830 (Exhibit 55) are as follows:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and the representations of its counsel identified in this report.
2. The Petitioner must limit subsequent preliminary and site plan amendments to a maximum of 58 mid-rise apartments in addition to the 36,423 square feet of existing medical office space, limited to 30,000 square feet of leasable office space, and 3,470 square feet of bank uses.
3. The Petitioner must provide a minimum of 225 total parking spaces on-site; the Board of Appeals approves shared parking in accordance with the provisions of Zoning Ordinance §59-E-3.1.
4. The Petitioner must receive approval of an amended preliminary plan and site plan by the Planning Board.
5. At the time of preliminary plan amendment, the Petitioner must satisfy the Policy Area Mobility Review (PAMR) test by installing and/or funding off-site non-auto transportation improvements as determined by the total number of units and unit types approved by the preliminary plan.
6. At the time of preliminary plan amendment, the Petitioner must provide sidewalks with at-grade crossing or handicapped ramps around the entire proposed apartment building and to the nearby buildings on the site.
7. At the time of the site plan amendment, the Petitioner must provide the number and location of parking spaces for the proposed residences and existing office

visitors/employees as required in the County Code and Zoning Ordinance, while demonstrating security for the residential parking.

8. At the time of the site plan amendment, the Petitioner must provide bicycle parking for visitors and residents as determined by the total number of units and unit types approved by the site plan.

9. Prior to release of any building permits for each proposed phase, Petitioner must provide the non-auto transportation improvements by making a payment via an acceptable financial instrument either to the Maryland State Highway Administration (SHA) or Montgomery County Department of Transportation (MCDOT).

10. Shade trees must be provided along Old Georgetown Road in conformance with the Master Plan, as determined at Site Plan.

11. The Petitioner must not charge any parking fees for parking spaces within the apartment building that are not reserved for residents.

12. This special exception is conditioned upon the approval by the County Council, sitting as District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, of SDPA 12-1 in substantially the same form as shown in Exhibit 47(a) in the file of SDPA 12-1, but modified in accordance with Condition 13, below.

13. Petitioner must ensure that this special exception will not result in more stormwater running off the site than currently occurs. In addition, to make it clear that DPS and the Planning Board may elect to impose more stringent stormwater management conditions, Petitioner must amend SDPA 12-1 Design Criterion 1 to read:

1. Development of the Subject Property will be in accordance with the conditions of approval of a stormwater management plan relating to certain features of “green building” technology for the proposed residential building and any other conditions imposed by DPS or the Planning Board. If any of the major assumptions on which the stormwater management plan approval is predicated change, due to unforeseen circumstances, the applicant must reapply to Montgomery County, Maryland for a new stormwater management plan approval.
[Underlining added to note change.]

14. Since the proposed use will require an amendment to the existing preliminary plan of subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9)(A), approval of this special exception is conditioned upon approval of an amendment to the preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required by the subdivision amendment process, Petitioner must file a copy of the revised site and related plans with the Board of Appeals.

15. During the preliminary plan amendment process, Petitioner must demonstrate to the satisfaction of the Department of Permitting Services and the Planning Board that stormwater runoff from the entire site will comply with current State and County regulations and will not worsen the stormwater runoff conditions that currently exist downstream from the site.

16. The lighting for the site is permitted at the levels specified in photometric lighting plan (Exhibit 6(d)), to the extent the Planning Board finds that measurements exceeding 0.1 footcandles at the side and rear property lines are appropriate for this mixed use area "to improve public safety," as authorized by Zoning Ordinance §59-G-1.23(h).

17. If signage is added to the site, an amended special exception site plan must be filed with the Board of Appeals, so indicating. A sign permit must be obtained for any proposed sign, and a copy of the permit for the approved signage must be submitted to the Board of Appeals before any sign is posted.

18. There must be no direct vehicular access between the subject site and Berkshire Drive.

19. The Petitioner shall install, maintain and replace, as necessary, trees in planters or appropriate tree planting containers, on the third and fourth floor roofs, intended to provide extensive screening and to reduce the visibility year round of the east facing fourth and fifth floor facades from the homes on Wildwood Manor located to the east of Berkshire Drive. The species of trees, size and time of planting, planter locations and spacing shall be as specified in Special Exception Landscaping Plan dated July 20, 2012 and designated Exhibit 26(b).

20. Garbage dumpster pick-ups must occur between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, in accordance with the agreement of the parties. Tr. 66.

21. In accordance with the agreement of the parties (Tr. 66-67), the word "Wildwood" will not be used in the title of the proposed residential building, so as to preserve it as a name pertaining to the adjacent neighborhood of single-family, detached homes.

22. If the community seeks a parking permit program or a program to control non-resident parking on Berkshire Drive and/or other nearby streets, Petitioner must carry out its promise made at the hearing (Tr. 238-239; 279-280) to support those efforts.

23. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

The District Council finds that the proposed binding elements, design criteria and special exception conditions will achieve the desired end of keeping the location, scale and size of the proposed structure compatible with other properties in the immediate area and will ensure appropriate screening of the site.

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, as specified in Zoning Ordinance §59-H-2.51, 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 Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012).⁴

These are the standards that were applied in 2007 when the subject site was rezoned to the O-M floating zone by LMA No. G-851. The Schematic Development Plan Amendment proposed now must be evaluated under these same standards, with the binding elements discussed above.

The O-M Zone contains a post-zoning review process, site plan review, 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 Council review discussed above – the purposes and requirements of the applicable zone, compatibility with land uses in the surrounding area and relationship to the public interest.

Purpose Clause of the O-M Zone

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.

Applicant's land planner, Victoria Bryant, testified that the proposed development would comply with the purposes, standards and regulations of the O-M Zone. Tr. 105-108. Technical Staff concurred, stating (Exhibit 27, p. 2):

⁴ Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new "Land Use Article." Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

The proposed development conforms to the purpose clause for the O-M zone in as much as dwellings are a permitted use as a special exception in the O-M Zone. Staff believes that with the recommended conditions as specified on pages 16-17, the proposed use conforms to the applicable requirements and regulations for approval of a Special Exception for a residential dwelling use.

Staff expanded on this point later in their report (Exhibit 27, pp. 15-16):

The proposal would replace a previously approved moderate-intensity non-residential use with a less intense residential use. As a result, the residential character of the proposed apartment building will make it more compatible with existing residential uses adjacent to the site. The proposed residential development will occupy a larger footprint than the approved office building, requiring special design treatments, physical separation, and enhanced landscape features to ensure compatibility of the proposed use with its surroundings. The 58-unit, 5-story building is consistent with the scale of the moderate-intensity level of development for the site that was found to be compatible with existing uses in the surrounding areas when the reclassification of the property to the O-M zone occurred. The proposed structure is consistent with the level of development intended by the O-M zone for areas outside of central business districts and near adjoining residential neighborhoods, where high density intensity uses would not be appropriate. The proposed residential building with the revised binding elements, therefore, will be compatible with its surroundings and be in compliance with the purpose clause of the O-M zone.

The Planning Board reached the same conclusion (Exhibit 34, p. 1):

The Planning Board found that the amendment is consistent with the purpose of the Office Building, Moderate Intensity (O-M) zone and that it satisfies all relevant standards of the O-M Zone.

The Hearing Examiner agreed with Technical Staff and the Planning Board, as does the District Council. The Applicant has committed to an extensive set of Binding Elements, design criteria and special exception conditions, all of which are reproduced above. Those binding elements, design criteria and special exception conditions were formulated to protect the neighborhood from adverse effects. Because on their inclusion in the revised SDPA 12-1, the Wildwood Manor Citizen's Association (WMCA) indicated that it would not oppose the special exception or the SDPA. Exhibit 31. WMCA's representative, Ann Bryan, testified that Applicant had made all the amendments to the plans requested by the WMCA. Tr. 17-18. She observed that these changes will mitigate much of the aesthetic impact of Applicant's proposals.

The District Council concludes that, with the addition of the binding elements, design criteria and special exception conditions, the proposed development should not have an adverse impact on the adjoining neighborhood. Moreover, the new proposal would have less of an impact than the general office building previously approved for this location.

Based on this record, the District Council finds that the proposal, limited as discussed, conforms with the O-M Zone's purpose clause.

Regulations (i.e., Development Standards) of the O-M Zone

The regulations of the O-M Zone are provided in Zoning Ordinance §§59-C-4.311 to 59-C-4.314. Technical Staff found (Exhibit 27, p. 25):

The proposed project satisfies all of the development standards listed above for the O-M zone. The proposed density is 16.6 units per acre. The special exception will provide 35% of its housing incomes for incomes at and below 75% of the area wide medium income level pursuant to Section 25B-17(j) of the County Code and Executive Regulation 19-98. The proposed building will be five stories tall at its highest point and will be no more than 50 feet in height as measured from the average grade along the building's Old Georgetown Road frontage. Green area provided over the entire site is approximately 40%. Lot coverage is approximately 22%.

As mentioned above, the Planning Board agreed, stating that the proposed development "... satisfies all relevant standards of the O-M Zone." Exhibit 34, p. 1. Technical Staff also provided a table demonstrating Applicant's compliance with all the development standards of the O-M Zone (Exhibit 27, pp. 22-23), which was reproduced in the Hearing Examiner's report.

The District Council recognizes that there is considerable community concern about the adequacy of parking planned for the site; however, as discussed at length in Part III.C.5.b. of the Hearing Examiner's report (pp. 44-54), Applicant's proposal to provide 225 parking spaces more than meets the minimum of 204 parking spaces required for the site, using the shared parking calculation authorized in the Zoning Ordinance. The Planning Board expressly endorsed Technical Staff's recommendation to employ the shared-parking calculation for this site, stating (Exhibits 34, p. 2):

The Planning Board agrees with staff's conclusion that the applicant's proposal to use shared parking in accordance with the provisions of 59-E-3.7 adequately satisfies the parking requirement for the existing and proposed uses on the site. The total shared parking requirement is 204 spaces, while the applicant is proposing 225 total spaces. . . .

The Board of Appeals also endorsed using the shared-parking method of calculating parking space requirements, as specified in Condition 3 to its grant of special exception S-2830 (Exhibit 55).

In order to meet the community's concern about providing adequate on-site parking for non-residents who will be utilizing other services on the site (i.e., bank, medical offices, etc.), the Planning Board recommended a special exception condition to ensure that the upper level garage parking provided for employees, visitors, patients and other nonresidents must be free parking. All of the conditions recommended by Staff and the Planning Board, including that one (Condition 11), have been imposed by the Board of Appeals in granting Special Exception S-2830 (with some minor rewording).

Based on the entire record, the District Council finds that the proposed development meets the purposes and requirements of the O-M Zone.

Compatibility

Applicant's architect, Sassan Gharai, testified that, in his opinion, the building design will be compatible with the surrounding neighborhood. It will be buffered from the neighborhood sufficiently and will clearly be part of the commercial zone in front of it. Tr. 61-62. He also noted that the planned residential building would be "a lot more compatible" with the neighborhood than the previously planned office building. Tr. 90-91.

Applicant's land planner, Victoria Bryant, testified that with the limitations imposed by the binding elements and the design criteria, both the use and the design are compatible with the setting of the subject site. "[It] is a great transitional use between the single-family and the commercial [uses] that exists there today." Tr. 116. She noted that along the east side, the building will be only two feet higher than the 35-foot height allowed under the R-90 Zone for a single-family home. Thus, the massing on the back side has been minimized. Tr. 114-116. Ms. Bryant opined that the proposal will result in an internally compatible development with no adverse effect on the surrounding community. Tr. 130. She noted that traditionally a multifamily building is a good transitional use between commercial and single-family residential uses. In her opinion, it is compatible. Tr. 132-135.

Wendy Calhoun, a neighbor testifying in opposition, stated that she does not understand how one after another of the experts can come in and testify that the proposed building will be compatible with the neighborhood, when those who live there completely disagree. She feels that "the renderings are much better this time around than when I saw them before and the landscaping looks very nice . . .," but she is opposed to it not because of how it looks, but because she believes it will add 200 people to the community. Tr. 229-233.

Technical Staff submitted the following opinion regarding compatibility (Exhibit 27, pp. 24-25):

Provided that the project is developed within the binding elements stipulated in the SDPA application and the conditions specified under the recommended approval of the special exception, both the structure and the use of the subject property are compatible with both the commercial and residential uses that surround the property. The use is a mixed-income residential building that will provide attractive, convenient, and affordable housing in close proximity to nearby employment and commercial centers. The use will complement and enliven the commercial uses in the surrounding area. The project proposes a residential density that conforms to the applicable standards of the zone.

There is no expert evidence contradicting the testimony of Applicant's experts and the evaluation of compatibility presented by Technical Staff. Based on this record, the District Council finds that the proposed building and use, as constrained by the binding elements and special exception conditions, will be compatible with the surrounding development. Moreover, the Planning Board will further evaluate compatibility issues at site plan review.

Public Interest

Maryland Land Use Article, Code Ann. § 21-101(a)(4)(i) (2012) requires that:

(i) planning, zoning, or subdivision control powers in the regional district [must be exercised to:]

(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;

(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and

(3) protect and promote the public health, safety, and welfare.

Factors which are usually considered in determining the public interest include Master Plan conformity, the recommendations of the Planning Board and its staff, any adverse impact on public facilities or the environment, and positive factors such as provision of affordable housing.

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

As discussed in Part III. D. of the Hearing Examiner's report, both Technical Staff and the Planning Board recommended approval of this application, finding that the proposed development, as limited by the binding elements, is appropriate and consistent with the North Bethesda/Garrett Park Master Plan, approved and adopted in 1992.

Technical Staff stated (Exhibit 27, pp. 12-13):

The proposed development is consistent with recommendations in the Approved and Adopted (1992) North Bethesda-Garrett Park Master Plan. Although there are no specific recommendations in the Master Plan for subject property at 10401 Old Georgetown Road, several land use objectives of the Master Plan will be implemented with this residential development, including increasing "the variety of housing stock, including affordable housing," and encouraging "a mixture of land uses in redeveloping areas to promote variety and vitality" (p.33). Further, the location of the development along Old Georgetown Road is appropriate since it is within an area that is "best served by transportation infrastructure" (p.33). Old Georgetown Road is identified in the Master Plan as a Green Corridor. The Green Corridors policy is intended to address "the visual effects of roadways and abutting properties. The Green Corridors policy is recommended to "protect and enhance the residential character of the Planning Area" (p.250). The Applicant's landscape plan should be modified at site plan to include street (shade) trees along the frontage of Old Georgetown Road.

The Planning Board adopted Technical Staff's findings in this regard in its July 18, 2012, letter from Francoise Carrier to the Council conveying the Planning Board's recommendation for approval of SDPA 12-1 (Exhibit 34, p. 1):

The Planning Board agrees with staff's conclusions that the proposed amendment is in accord with the land use recommendations of the 1992 North Bethesda-Garrett Park Master Plan . .

It should also be remembered that the Council reviewed the subject site only five years ago when it approved Resolution 16-392, rezoning it to the O-M Zone in LMA G-851. Exhibit 9. On page 8 of that Resolution, the Council stated:

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

The present proposal would change only one aspect of the project being considered by the Council in 2007 when it found Master Plan compliance – it would substitute an apartment building, including 21 “productivity housing” units, for an office building. This change, if anything, would make the subject site more in tune with the Master Plan’s goal of “increas[ing] the variety of housing stock, including affordable housing.” Master Plan, p. 33.

It appears to the District Council that all the evidence introduced in this case supports the proposition that the present proposal is consistent with the 1992 North Bethesda/Garrett Park Master Plan. Given this record, the District Council concludes that the proposed use is consistent with the goals of the Master Plan.

2. Public Facilities and the Environment:

(a) Transportation Facilities:

One of the chief concerns of the community is the possibility that adding the proposed building will increase traffic congestion in the neighborhood, especially at the intersection of Old Georgetown Road and Cheshire Drive, and at the intersection of Old Georgetown Road and Democracy Boulevard. See S-2830 Exhibits 21, 30 and 49(a); and the testimony of Melitta Carter (Tr. 211-224), Patricia Broderick (Tr. 224-228), Wendy Calhoun (Tr. 229-233), Andrea Gabossy (Tr. 234-242) and Brenda Sandler (Tr. 242-248).

Applicant’s evidence addressed traffic issues in general and the problems at both intersections. Applicant’s primary point is that the peak-hour traffic which will be produced by the proposed residential building will be much less than the traffic which would have been produced by the office building previously approved for this location. Moreover, traffic generated by the proposed building is unlikely to aggravate the condition on Cheshire Drive because other, more convenient exits will be used by the residents.

Applicant’s expert in transportation planning, Craig Hedberg, testified that he was involved in the traffic study for the initial rezoning. The previous proposal, the 30,000 square foot office building, would have generated 63 peak-hour trips. In the current modification, with the 58 apartment units, the trip generation drops to about 28 peak-hour trips, much lower than what was reflected in the original traffic study. With that drop in peak hour trips, no further traffic study was required since the property already had an approval for a higher ceiling. Tr. 145-147.

Both Mr. Hedberg and Applicant’s architect, Sassan Gharai, testified that the occupants of the subject site are not likely to progress through the shopping center to its southern exit onto

Cheshire Drive because they have a larger, more convenient exit available just south of the proposed building, across from Democracy Boulevard. Tr. 150-152; 259-278.

Mr. Hedberg stated that in his professional opinion, this project will be served adequately by existing facilities and the transportation network since there is very good access to major roadways, arterials, all the way up to freeways, and Applicant has provided local access improvements to add capacity at the principal access point opposite Rock Spring Drive. Tr. 158.

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. C. 5. a. of the Hearing Examiner's report. All of the expert evidence echoes Technical Staff's conclusion that "The existing traffic problems . . . are not adversely impacted by the proposed apartment building that replaces the previously-approved office building and generates fewer site-generated peak-hour trips." Exhibit 27, p. 12.

Mr. Hedberg also addressed the assertion made by a number of neighbors that the intersection of Democracy and Old Georgetown Road was designated by the Montgomery County Planning Department's 2011 Mobility Assessment Report as the most congested intersection in Montgomery County. Tr. 246. According to Mr. Hedberg, that designation was the result of a calculation error due to a misplacement of numbers in the data sheet. Apparently, the Old Georgetown Road volumes were repeated for the Democracy Boulevard volumes, which completely threw off the calculation. Technical Staff checked this issue just before the hearing with the person that compiled that report and did a recalculation with the correct numbers. The recalculation, as indicated in the Planning Board minutes, revealed that the intersection operates well within the critical lane volume standard. Tr. 285.

Based on this record, the District Council finds that the traffic generated by the proposed building will not have adverse effects on the neighborhood transportation facilities greater than, or even equal to, the effects that would occur if the previously approved office building were erected on the site.

(b) School Facilities:

The adequacy of school facilities was discussed in Part III. C. 5. c. of the Hearing Examiner's report. Wendy Calhoun, the President of the Ashburton Elementary School PTA, testified concerning existing and projected overcrowding in the schools. She observed that the Applicant "can pay a fine to get around that, but that doesn't solve the problem of where these kids go and it doesn't pay for more teachers and more classrooms." Tr. 228-232. Brenda Sandler also testified regarding her concern about the public school impact. She noted that the area schools are already at or above capacity. Tr. 242-243.

Technical Staff reported (Exhibit 27, p. 9):

The estimated student generation for this development is 3 elementary school students, 3 middle school students, and 2 high school students. The property is located in the service areas of Ashburton Elementary School, North Bethesda Middle School, and Walter Johnson High School. Enrollment at Ashburton Elementary School is projected to remain over capacity through 2017-18 school years. A feasibility study for an addition at the school is scheduled for FY 2013. Enrollment at North Bethesda Middle School also is projected to remain over capacity through the 2017-18 school years. A feasibility study for an addition at

the school is scheduled for FY 2013. Enrollment at Walter Johnson High School is projected to exceed capacity in the 2016-17 and 2017-18 school years. There are currently no plans for an addition at this school.

The current Subdivision Staging Policy, school test for FY 2012 requires a school facility payment at the elementary and middle school levels. The FY 2013 school test, that goes into effect on July 1, 2012, will require a school facility payment at the middle and high school levels.

Staff also noted that roads and schools will be further addressed per the subdivision staging policy in effect at the time the Planning Board considers Preliminary Plan Amendment for this site. Exhibit 27, p. 21.

Applicant's land planner, Victoria Bryant, testified that, based on the Technical Staff Report, Applicant will be making a school facilities fee payment, and the schools will accept the students. Tr. 171-173.

The Hearing Examiner found that school overcrowding is a legitimate community concern since the evidence of record indicates overcrowding in the area schools; however, the Planning Board will fully evaluate this situation at the Adequacy of Public Facilities (APF) and Site Plan reviews following the District Council's approval of SDPA 12-1. The District Council therefore finds that the evidence of adequate public facilities is sufficient at this stage to approve the SDPA in question.

(c) The Environment:

Environmental issues were discussed in Part III. E. of the Hearing Examiner's report. As mentioned there, a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) has been approved for the subject property, and Environmental Planning Staff found no environmental issues warranting denial of this application. The subject site is not located within a Special Protection Area. The Technical Staff report notes that this project will require a Preliminary Plan Amendment, at which time the NRI/FSD approval and the Forest Conservation Plan exemption will be re-evaluated. Exhibit 27, p. 13. A stormwater management concept plan has not yet been approved for the site, but that step will be required at preliminary plan amendment. The only environmental issue raised in this case concerns stormwater management, and that concern was discussed extensively on pages 58-65 of the Hearing Examiner's report.

Stormwater management became an issue because of the documentation (Exhibit 43(a)) and testimony of Joseph Dias, who lives at 5917 Rudyard Drive, in Bethesda, just east of Farnham Drive. Tr. 175-211. According to Mr. Dias, stormwater runoff, a portion of which comes from the subject site, has caused significant stream bed and channel erosion adjacent to his home. Exhibit 43(a), p. 2. He states that the area where 44 new homes were built in late 1990s and the 3.5 acre subject site are "encapsulated" by County drains that flow downhill to the stream.

Mr. Dias notes that water runoff from the I-270/495 spur is also a source of his problem, and he is still fighting the County and the State Highway Administration (SHA) over the stormwater management issues; however, he feels it is important to slow down the flow in all cases. Tr. 197-198.

Mr. Dias's request is to require that all stormwater be retained on the subject site for the entire 3.5 acres under consideration. In his opinion, low impact development (LID) facilities such as green roofs, bio-retention, impervious runoff dispersion and permeable pavements are ways to reduce some water runoff, but they do not of themselves ensure that all stormwater will be retained on site. Tr. 183-185.

Applicant's civil engineer, Pearce Wroe, candidly admitted that some of the water runoff from the site does drain towards Mr. Dias's home. He testified there is a storm drain system that cuts across the shopping center, goes down near Chatsworth and Yorkshire, and finds its way over to the outfalls at Rudyard and Farnham. The drainage from the shopping center and the site flows to that outfall. He stated that about 100 to 120 acres of drainage outfalls at this specified storm drain location, and the site connects where it crosses the shopping center. Tr. 287-288. Moreover, the Department of Permitting Services (DPS) denied Applicant's request for an administrative waiver of the applicable stormwater management standards. Applicant then submitted an amended stormwater management concept plan (S-2830 Exhibit 35(a)), which is pending with DPS.

Mr. Wroe further testified that under the applicable regulations, for a redevelopment project, the standard is to do environmental site design (ESD) to the maximum extent practicable. The County asked Applicant to look for all reasonable opportunities to do environmental site design practices on the site. Applicant's engineering analysis determined that a green roof and three micro bio-retention facilities were the maximum extent practicable for stormwater management on site, given the site's limitations with the existing soils which don't infiltrate water very well. Tr. 288-290.

According to Mr. Wroe, the target management rate for the stormwater runoff was around two inches of rainfall. Applicant would provide for only a little more than one inch of rainfall, not for the entire two inches of rainfall, because there aren't feasible or practical opportunities to discharge all the water. The regulations require Applicant to explore all reasonable opportunities for environmental site design to the maximum extent practicable or technically feasible. On the redevelopment sites, it gets very difficult and complicated to reach the target threshold because of the existing utilities, the existing storm drain on site and the density of the site. Tr. 189-190.

In Mr. Wroe's opinion, the onsite management will improve stormwater management that exists on this site today by reducing impervious area and providing stormwater retention where there presently is none. He does not see any way in which it would worsen the situation, and it is certainly positive to reduce the flow off of this property. Tr. 288-290.

Applicant's attorneys argue that what is being requested by Mr. Dias (*i.e.*, that all stormwater runoff be retained on site) would impose conditions on the current proposal above and beyond what the law requires in order to address a problem that is much larger than anything created by this project. Tr. 202-208.

The Hearing Examiner found that Mr. Dias raised a legitimate concern, especially since it is conceded by Applicant's expert engineer that not all of the runoff from the site will be retained on site, and that some of it will end up in the area of Mr. Dias's property. However, there is nothing in the record contradicting Mr. Wroe's testimony that the onsite facilities will improve stormwater management that exists on this site today by reducing impervious area and providing

stormwater retention where there presently is none. He does not see any way in which it would worsen the situation. Tr. 288-290.

The Hearing Examiner recommended two special exception conditions to ensure that the development would not make Mr. Dias's stormwater runoff problem any worse than it already is and that the Planning Board would have flexibility to require improvements to the situation. Conditions 13 and 15, which have been imposed by the Board of Appeals, will provide some protection to Mr. Dias, while not impinging on the prerogatives of the two agencies (DPS and the Planning Board) charged with evaluating stormwater management issues in cases such as this one.

Based on the entire record, the District Council finds no environmental concerns warranting denial of the subject SDPA.

3. Positive Factors:

Another public interest consideration is that the proposed residential building will provide "productivity housing" in Bethesda. Thirty-five percent of the units (*i.e.*, 21 units) will be made available for tenants at "productivity housing" rates, as provided for in Chapter 25B, Article IV, of the County Code, and applicable regulations.

Productivity housing is defined by Code Sec. 25B-17(j) as "a project to build dwelling units for sale or rent at one location where at least 35 percent of the dwelling units are sold or rented to households with incomes below the area-wide median income." This change from the original plan to build a general office building on the site would make the development more supportive of the Master Plan's goal of "increas[ing] the variety of housing stock, including affordable housing." Master Plan, p. 33. It also places this affordable housing adjacent to shopping centers and medical offices, which tends to reduce vehicular traffic.

In sum, 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.

Conclusions

Based on the foregoing analysis and after a thorough review of the entire record, the District Council reaches the following conclusions with respect to SDPA 12-1:

1. That the requested SDPA complies with the purpose clause and the development standards of the O-M Zone;
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.

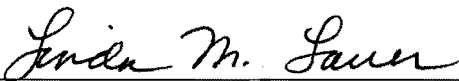
For these reasons and because granting the instant SDPA application would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be granted in the manner set forth below.

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:

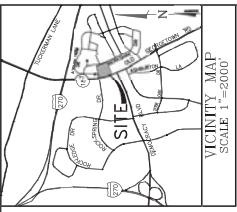
Schematic Development Plan Amendment SDPA 12-1, seeking to amend the Schematic Development Plan and Covenants approved by the Council on November 27, 2007, in Local Map Amendment G-851, for a total of 3.47 acres (151,220 square feet) of land consisting of Lot N-541, Wildwood Manor Shopping Center Subdivision, located at 10401 Old Georgetown Road, Bethesda, Maryland, **is approved** subject to the specifications and requirements of the Schematic Development Plan Amendment, Exhibit 56(a); 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; and that the Declaration of Covenants (Exhibit 56(b)) is filed in the County land records in accordance with §59-H-2.54 of the Zoning Ordinance, and proof thereof is submitted to the Hearing Examiner within the same time frame.

This is a correct copy of Council action.

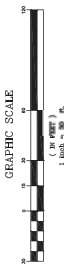
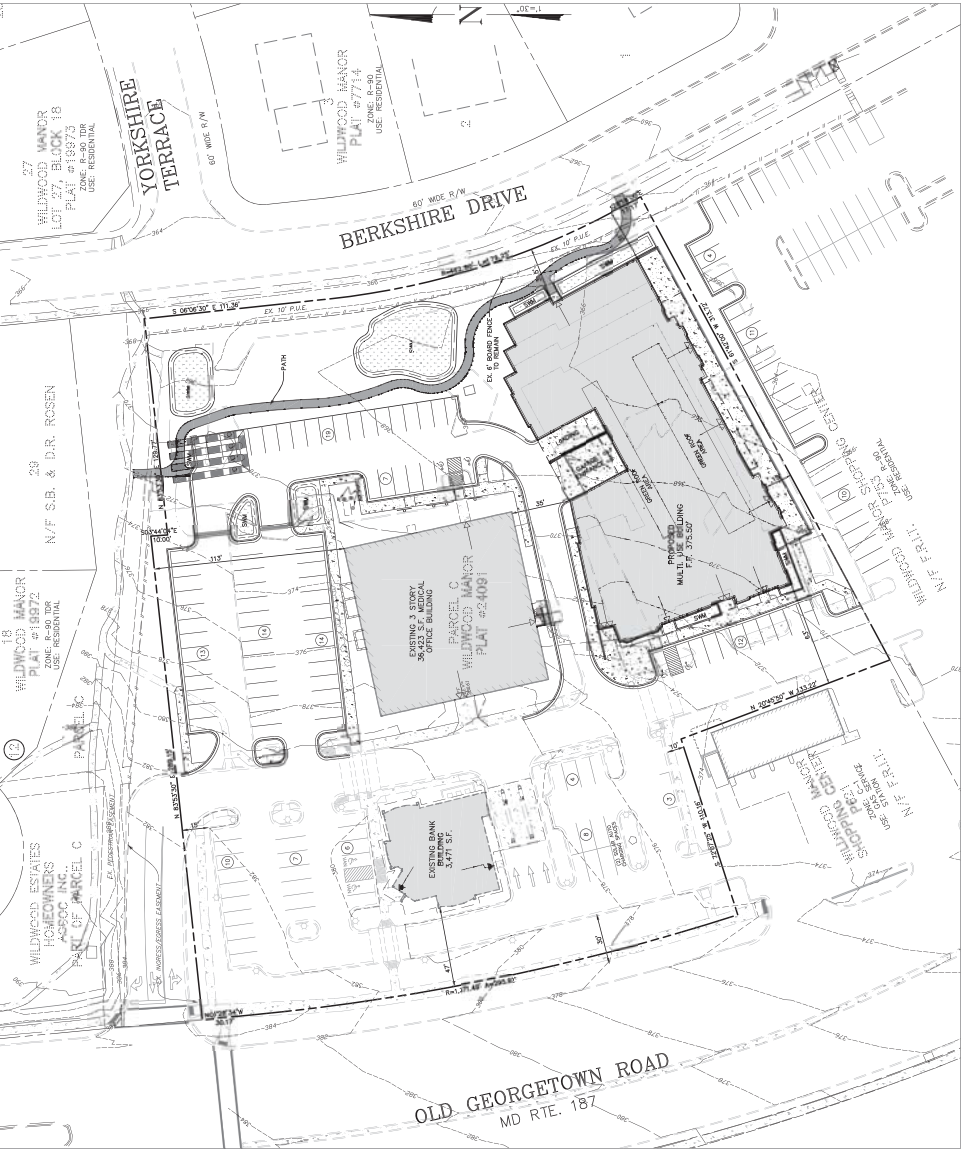


Linda M. Lauer, Clerk of the Council

ATTACHMENT 4



- FLOATING ZONE PLAN NOTES**
- The boundary information was prepared by Morris, Heardsick & Glascock, P.A. and is part of Parcel "C" shown on a site of substitution entitled Wildwood Manor Shopping Center, Parcel "C", recorded among the Land Records in the 2007's.
 - The topography information, including the extent of the forest and tree cover was prepared by Morris, Heardsick & Glascock, P.A. Individual tree location was field surveyed and located.
 - No forest area is located on the site.
 - No trees, trees or other vegetation were observed on the site.
 - The site debris to the Block Check watershed. The portion of the Phreatic River watershed is designated as Class 1 waters by the State of Maryland.
 - There are no any wetlands, springs, seeps, streams, floodplains or stream valley buffer areas on the site.
 - The property is not listed as a Historic Site by the MNCBPC in the 1985 "Localities and Index of Historic Sites"



FLOATING ZONE PLAN
WILDWOOD MANOR SHOPPING CENTER
 PARCEL "C", PLAT 24091
 7TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

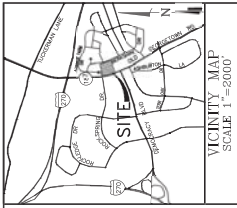
NO.	DATE	REVISIONS	DESCRIPTION

MHG
 Architects, Engineers & Planners, P.A.
 5220 Old Orchard Road, Suite 100
 Montgomery Village, Maryland
 Phone: 301.670.0400
 Fax: 301.648.0500
 www.mhg.com

SITE DATA	
SUBJECT PROPERTY: PARCEL "C", WILDWOOD MANOR SHOPPING CENTER,	
ADDRESS: 15401 OLD GEORGETOWN ROAD, BETHESDA, MD 20814	
ORIG. SITE AREA: 143,184 S.F. OR 3.27 AC.	
NET LOT AREA: 149,110 S.F. OR 3.427 AC.	
EXISTING ZONING: CRT-1-20-CO-5-RD-75-H-50	
PROPOSED ZONING: CRT-1-20-CO-5-RD-75-H-40	
PROPOSED ADDRESS: 15401 OLD GEORGETOWN ROAD, BETHESDA, MD 20814	
PROPOSED USE: BANK, MEDICAL, OFFICE, RETAIL AND RESIDENTIAL	
DEVELOPMENT STANDARDS	
REQUIRED/ALLOWED	PROPOSED
BUILDINGS	30,000 S.F.
NEED ALSO STORAGE	6,425 S.F. (1)
NEED ALSO BANK	10,471 S.F.
TOTAL COMMERCIAL	76,197 S.F. @ 651/FAR
RESIDENTIAL APARTMENTS	114,260 S.F. @ 75/FAR
TOTAL DEVELOPMENT	190,457 S.F. @ 1.25 FAR
BUILDING COVERAGE	88,498 S.F. @ 6%
BUILDING SETBACK	50' (2)
ADJ. TO OLD GEORGETOWN (WEST)	12' PER 20' @ 1.1EA-2.3
ADJ. TO 187 RD ZONE (SOUTH)	5' PER 20' @ 1.1EA-2.3
ADJ. TO 187 RD ZONE (EAST)	5' PER 20' @ 1.1EA-2.3
ADJ. TO 187 RD ZONE (WEST)	5' PER 20' @ 1.1EA-2.3
BUILDING HEIGHT	50' (4)
MAX. USE RESIDENTIAL BUILDINGS	50% @ 14.811 S.F.
PUBLIC OPEN SPACE	12.7% @ 10,000 S.F.
OFF STREET PARKING	MIN. MAX.
NEED ALSO 5 STORAGE @ 403 S.F.	1/1K @ 20' @ 11K @ 100
NEED ALSO 5 STORAGE @ 403 S.F.	3.5/1K @ 10' @ 11K @ 87
RESIDENTIAL APARTMENTS (RH)	
1 BDRM (H)	1 UNIT @ 18.11 SQUANT @ 20
2 BDRM (H)	1 UNIT @ 20.15 SQUANT @ 60
3 BDRM (H)	1 UNIT @ 20.15 SQUANT @ 60
4 BDRM (H)	1 UNIT @ 20.15 SQUANT @ 60
TOTAL SPACES	141 SPACES TO 203 SPACES
	203 SPACES (5)

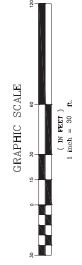
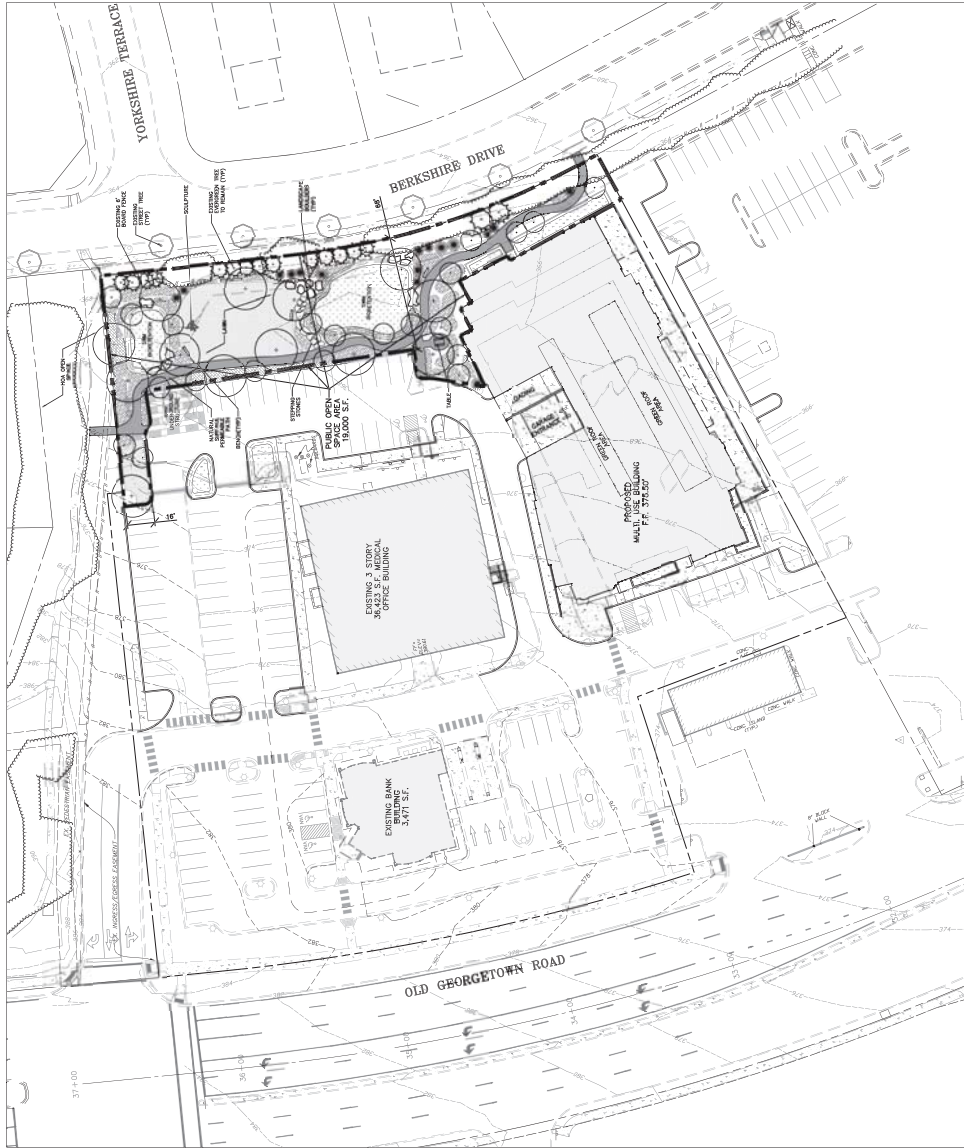
NOTES:
 1. STORAGE AREA EXCLUDED FROM GFA CALCULATION PURSUANT TO FORMER SECTION 94-6-37 OF THE ZONING ORDINANCE.
 2. SET BACK DIMENSION PER PREVIOUS APPROVED SITE PLAN #200624.
 3. SET BACK DIMENSION REDUCED BY 5' IN DECKING PLANT.
 4. SET BACK DIMENSION REDUCED BY 5' IN DECKING PLANT.
 5. BUILDING FACING OLD GEORGETOWN ROAD, AS THE BUILDING IS SET BACK FROM THE STREET LINE 30' OR MORE ON A LOT THAT ENDS THROUGH FROM STREET TO STREET, PURSUANT TO SECTION 94-6-37 OF THE ZONING ORDINANCE.
 6. PROPOSED PARKING INCLUDES 176 SPACES IN THE GARAGE AND 117 SPACES ON SITE.

ATTACHMENT 5



LEGEND

- PROPOSED TREES
- EXISTING TREES
- PROPOSED SHRUB MASSES
- PROPOSED BENCHES
- PROPOSED TABLES
- EXISTING TREE CANOPY TO REMAIN
- PUBLIC OPEN SPACE



OPEN SPACE CONCEPT EXHIBIT

WILDWOOD MANOR SHOPPING CENTER
PARCEL "C", PLAT 24031
7TH ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

MHG
Macelis, Hendricks & Glasscock, P.A.
Engineers, Planners, Architects
2200 Lakeside Lane, Suite 100
Montgomery Village, Maryland
20886-0292
Tel: 301.684.0000
Fax: 301.684.0000
www.mhgpa.com

Proj. No.: 0509
Rev.: 0509
Date: 01-09-17
Scale: 1" = 30'
Project No.: 17-00001
Sheet No.: 1 of 1

ATTACHMENT 6

6311 Berkshire Drive
Bethesda, Maryland 20814

January 24, 2017

Emily Tettelbaum
Maryland - National Capital Park and Planning Commission
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Proposed Aubinoe Apartment and Retail Building -- Local Map Amendment H-117

Dear Ms. Tettelbaum:

The Wildwood Manor Citizens Association (WMCA) and the Wildwood Estates Homeowners Association (WEHA) strongly oppose the revised plans currently proposed by Wildwood Medical Center, LLC (Aubinoe) to construct a large residential and retail building east of Old Georgetown Road, just south of Aubinoe's existing medical building, and directly across Berkshire Drive from our existing neighborhood of single-family homes. We strongly urge that these plans, as currently proposed, not be approved.

WMCA and WEHA represent more than 500 homes adjacent to this property. Aubinoe proposes to include almost 11,000 square feet of retail space in the new building's entry level, and 64 apartments plus party/lounge and fitness rooms in the levels above. Aubinoe proposes to exceed the 50 foot height limit currently applicable to the site by at least eight feet; six stories would face Berkshire Drive and our homes, with a building setback from Berkshire Drive of only 30 feet. The oversized building would significantly exceed the height of Aubinoe's existing Wildwood medical building and all other structures adjacent to our homes. It is too tall for this site at the edge of an established community of single-family suburban homes. The proposed project would have significant adverse impact on our neighborhood -- especially on the homes that are directly across Berkshire Drive from the proposed building.

We negotiated in good faith with Aubinoe over an extended period regarding Aubinoe's building proposals for this site, at considerable expense to us for legal representation and with many hours of volunteer community participation. All parties reached an agreement that includes detailed binding elements. The agreed-on residential apartment building would contain no more than 58 dwelling units. It would have three stories closest to Berkshire Drive and would be stepped back to four stories and then five stories. The building's height could not be greater than 50 feet or five stories, and the building could be no less than 60 feet from the Berkshire Drive property line. The agreement represented a compromise for us; we believe that a building no higher or larger than Aubinoe's existing medical building (three stories in front, four stories in back)

would be more appropriate for this site and more compatible with our adjacent neighborhood, but we agreed to an apartment building stepped back from three to four to five stories as viewed from Berkshire Drive as part of the negotiated agreement.

Now Aubinoe proposes to eliminate the agreement and its binding elements and to build a higher, larger building, closer to Berkshire Drive. We believe that the new building as currently proposed would be too high, too large, and too close to Berkshire Drive. We also have concerns about traffic and parking, noise, and lights. We have potential concerns about stormwater management as well; community residents living at and near the western edge of Wildwood Manor currently face significant problems with water runoff (and mosquitoes breeding in standing water), and we do not want additional water-related problems.

We understand that Aubinoe has requested "flexibility" regarding building height. The current 50 foot height limit for this site was developed with public input (including input from residential communities like ours, as well as from developers, etc.), to balance the public interest and protection of the public with the rights of property owners. Allowing "flexibility" to build a taller building directly adjacent to our suburban single-family homes is a disingenuous, self-serving euphemism for allowing excessive height. It would not be in the public interest to increase the 50 foot height limit for this site.

As noted, we also have concerns about additional traffic and parking problems that would be related to the proposed building. While the plans appear to provide "enough" parking spaces, the problem is where almost all of the spaces are located: in three levels of underground parking to be accessed from the north side of the building. It is clear that people patronizing the retail businesses on the first floor, people visiting residents, and residents who want to park quickly and leave quickly will want to park along Berkshire Drive just east of the building and in the Balducci's parking lot just south. This would lead to more traffic on Berkshire Drive, and would require us to request and try to enforce parking restrictions on Berkshire Drive, and require the Wildwood Shopping Center owners to police the Balducci's parking lot -- because Aubinoe does not provide sufficient convenient, easily-accessible parking.

Current building plans include party/lounge and fitness rooms with a balcony facing Berkshire Drive; this has the potential to create excessive noise directly across the street from our homes. Deliveries and trash removal apparently would be on the north side of the building and would cause loud noise that nearby WMCA and WEHA families would hear. While additional restrictions on trash removal and delivery hours would be helpful, our families say that noise is excessive from trash removal and deliveries relating to existing commercial structures just west of Berkshire Drive, and some of this noise is created outside the times permitted by the county.

As noted, the proposed large building would be six stories as viewed from Berkshire Drive, and it would be only 30 feet from Berkshire Drive. The proposed terraced step-backs on the east facade would not resolve these problems. The building would be too high, and too close to Berkshire Drive and our homes, which would be facing an incompatible oversized structure. Allowable building height should not exceed 50 feet. Binding elements from the negotiated agreement should be retained, including the 50 foot building height maximum, building set-back of at least 60 feet from the Berkshire Drive property line, building height step-back from Berkshire Drive, buffering green space at least 30 feet wide along Berkshire Drive, and no vehicular access from Berkshire Drive.

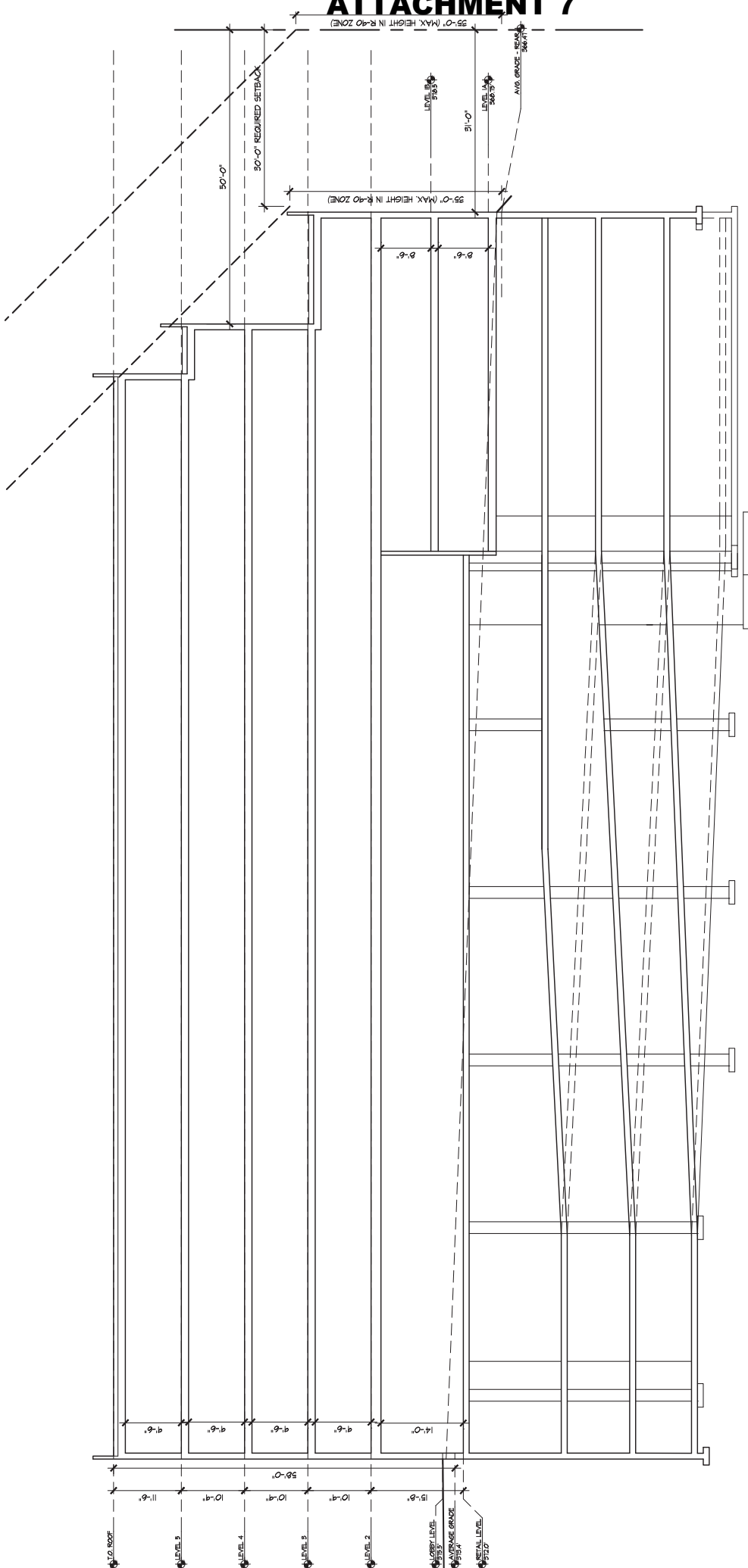
Thank you for your careful consideration of our concerns and recommendations.

Sincerely,

Linda Lizzio, President
Wildwood Manor Citizens Association

Michael Villa, President
Wildwood Estates Homeowners Association

ATTACHMENT 7



SCALE: 1/16" = 1'-0"

WILDWOOD MIXED USE EAST/WEST LONGITUDINAL SECTION

DATE: 01/05/2017

AUBINOE DEVELOPMENT

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