



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 30, 2004

MEMORANDUM

TO: Montgomery County Planning Board

VIA: John A. Carter, Chief *JAC*
Community-Based Planning Division

FROM: Khalid Afzal, Georgia Avenue Team Leader (301/495-4650)
Community-Based Planning Division *KA*

SUBJECT: Olney Master Plan Public Hearing Draft Worksession No. 8:
Silo Inn Property on Georgia Avenue

INTRODUCTION

This is the eighth worksession for the proposed Olney Master Plan amendment. It focuses on the Silo Inn property on Georgia Avenue, which was removed from the discussion of Olney Town Center worksession on April 15, 2004 due to certain legal issues raised in correspondence submitted by the representatives of the property owners shortly before the worksession. The M-NCPPC legal staff ("Legal Staff") has advised staff that the issues raised by the property owner's representative do not constrain the Planning Board from recommending rezoning of the Silo Inn Property; and, as such, Legal Staff has concluded that the Planning Board may consider all relevant options when formulating its recommendation for the Silo Inn Property.¹

The next worksession on May 20 will seek the Planning Board's approval of the revised draft and transmittal of the Planning Board Draft to the County Executive and the County Council.

¹ Legal Staff has advised staff, among other things, that: (a) the Consent Agreement, which is referenced in the property owner's April 7, 2004 letter to the Planning Board, is limited in scope and does not require the Planning Board to either (i) recommend the continuation of the present C-1 zoning of Parcel B or (ii) recommend the use of Outlot A for parking associated with any commercial use on Parcel B; and (b) Planning Board approval of a preliminary plan in 1990, which included commercial uses on Parcel B, does not preclude the Board from presently recommending the rezoning of Parcel B.

Silo Inn Property

Recommendation:

Retain the Draft Plan's recommendation to rezone the property from C-1 to R-200.

This approximately 3.0-acre property, also known as Martin's Dairy or Higgin's Tavern, is a split-zoned parcel currently zoned C-1 and R-200. It is located on the west side of Georgia Avenue with only a right-in/right-out access since a median break for a left turn into or out of the property from Georgia Avenue is not permitted. It includes an historic structure, which is included on the Montgomery County Locational Atlas and Index of Historic Sites in Montgomery County.

The property was originally part of a larger tract of land that was subdivided in 1990, for a residential subdivision in the R-200 Zone, now known as Victoria Springs. The commercial use on the site stopped in the early 1990s and the main building was demolished soon afterwards. By 2002, the remaining commercial structures on the property were also demolished. The historic structure at the northeast corner of the property still stands.

The property was zoned C-1 in the 1980 Plan, an exception to the 1980 Plan's concept of locating all retail and commercial operations in the Town Center. There have been numerous attempts to develop this property for various uses including a commercial shopping strip, a post office, an Alzheimer's facility, and a neighborhood shopping center. None of the proposals were successful for a number of reasons, but partly because the Zoning Ordinance prohibits putting commercial parking on the residential portion of the property, something the property was allowed to do in the past as the continuation of a non-conforming use.

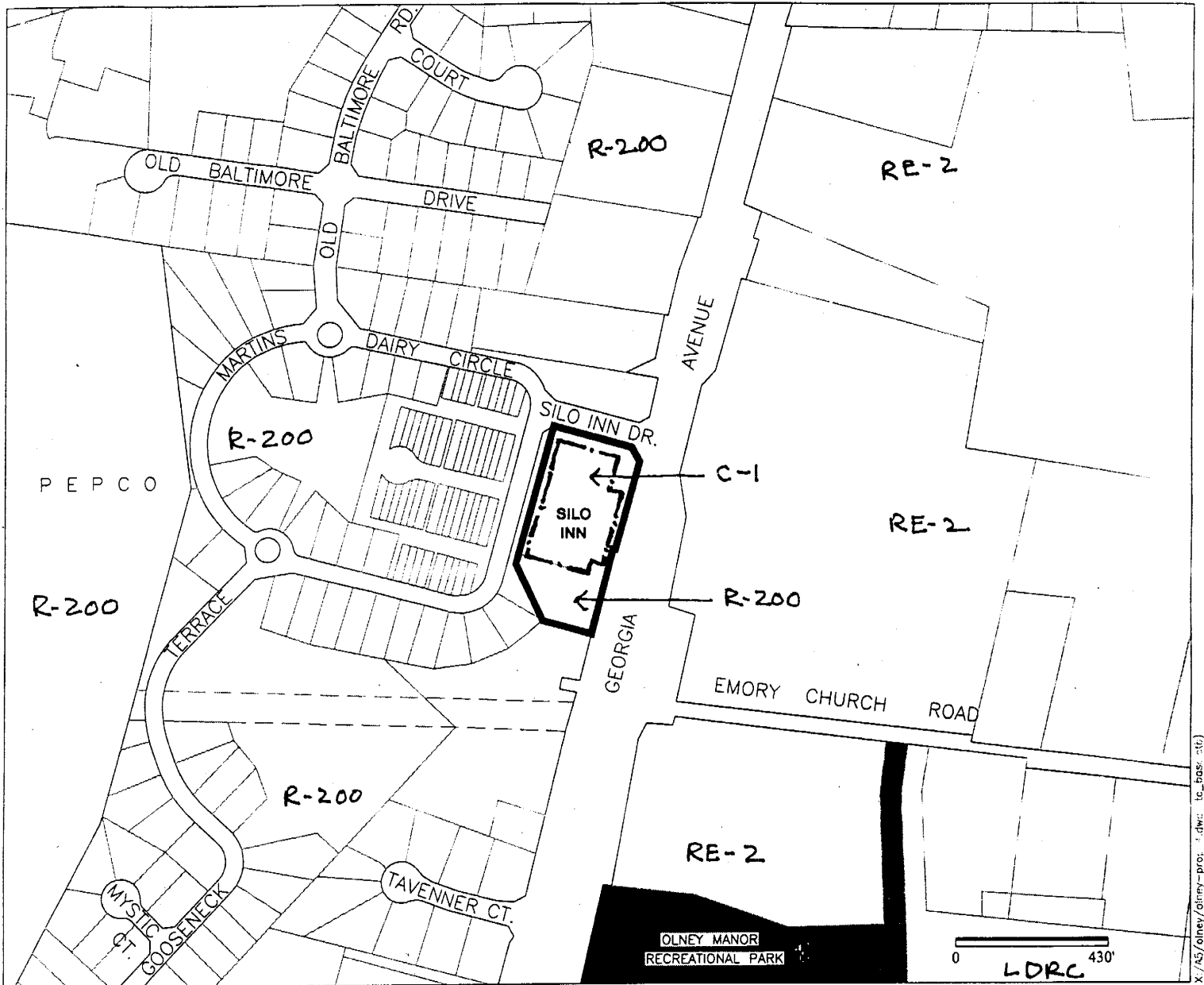
The new owners of the property have submitted a request (cover letter attached to this report, full package distributed to Planning Board members as part of the April 15 worksession) to retain the current C-1 zoning for the property and either rezone the R-200 portion to R-60, or recommend a text amendment for the R-200 Zone, to allow commercial parking from the C-1 portion to be located on the R-200 portion of the property.

The Draft Plan recommends rezoning this property as residential since C-1 in this location is not consistent with the surrounding neighborhood and the Plan's objective to direct all retail and commercial growth into the Town Center. A strip shopping center of any kind at this location would conflict with the Plan's intent to preserve a green, semi-rural, residential character of Georgia Avenue between Norbeck Road and the Town Center. A residential development under the R-200 Zone or a special exception use in that zone on a scale that is compatible with Georgia Avenue and the surrounding residential area's character would be appropriate. The Greater Olney Civic Association has supported the Draft Plan's recommendations.

Staff's recommendation for rezoning the C-1 portion to R-200 is based on the reasons noted in the paragraph above and not the issue of whether commercial parking from C-1 should be allowed on the R-200 portion. Staff does not agree with the applicant's proposal and recommends retaining the Draft Plan's recommendation to rezone the C-1 portion of the property from C-1 to R-200.

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Attachments

Silo Inn



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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

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OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

April 7, 2004

C. Robert Dalrymple
301.961.5208
bdalrymple@linowes-law.com
Anne C. Martin
301.961.5127
amartin@linowes-law.com

Hand Delivered

Derick P. Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Olney Master Plan Public Hearing Draft Worksession No. 7
Silo Inn Property

Dear Chairman Berlage and Members of the Planning Board:

We represent MFS Silo LLC, et al., the owners of the properties that are located on the west side of Georgia Avenue, south of Silo Inn Drive and east of Martin's Dairy Circle and referenced in the Staff Draft Olney Master Plan on page 35-36 as the "Silo Inn property" (the "Properties"). The Properties consist of a 99,140 square foot parcel in the C-1 zone (convenience commercial) known as Parcel B, Block 2 of the Brooke Manor Farms subdivision ("Parcel B") and the adjacent 37,462 square foot property in the R-200 zone known as Outlot A, Block 2 of the Brooke Manor Farms subdivision ("Outlot A"). We request that the Planning Board retain the current C-1 zoning classification on Parcel B and retain through appropriate zoning the historical use of Outlot A for off street parking for the commercial uses on Parcel B. As explained herein, the recommendation in the Staff Draft to rezone Parcel B to the R-200 zone is inconsistent with the long standing plan and vision for the Properties and surrounding area, is contrary to prior governmental approvals and agreements to retain the commercial uses that have historically been on the Properties, and is contrary to the desires of and interests of the adjacent residential homeowners.

For your reference, we have attached hereto as Exhibit A a copy of the Brooke Manor Farms subdivision plat, recorded September 8, 1992 in the Land Records for Montgomery County at Plat No. 165, Plat No. 18662 (depicting both Outlot A and Parcel B). Parcel B was previously used for the Silo Inn and Mr. T's Restaurants (approximately 32,500 square feet), and there is an existing 900± square foot building known as Higgin's Tavern which has been (and remains) located on the Locational Atlas of Historic Resources, but has never been designated on the Master Plan for Historic Preservation. Outlot A has historically served as a parking facility

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servicing the commercial uses on Parcel B (and the use of Outlot A for parking was established as a legally nonconforming use of residentially zoned land by action of the Department of Permitting Services ("DPS") on November 3, 1994 (Exhibit B), with DPS finding that use to have existed prior to 1958).

The continuance of the use of Parcel B for the 32,500 square feet of commercial uses and Outlot A for parking in conjunction with the commercial uses of Parcel B was confirmed by the Planning Board through the review and approval of Preliminary Plan No. 1-89086 for the Properties (being known in that process as part of the Burka/ Goldman Property)(the "Preliminary Plan"). As noted on the copy of the Preliminary Plan Concept Plan, attached hereto as Exhibit C, and the Preliminary Plan Opinion of approval dated July 6, 1990, attached hereto as Exhibit D, Outlot A was to be utilized for parking for the 32,500 square feet of commercial uses on Parcel B. The adequate public facilities approval for the continuance of the 32,500 square feet of commercial development was confirmed by your Staff on February 24, 2003, as noted in the correspondence attached hereto as Exhibit E.

The Properties were also the subject of a 1995 Consent Agreement between the previous owners of the Properties, the Planning Board and the Historic Preservation Commission ("HPC"), which Consent Agreement was negotiated in response to a demolition permit filed for the Higgin's Tavern as part of the implementation plans to develop the Properties as approved by the Preliminary Plan. The express intention of the Consent Agreement (a copy of which is attached as Exhibit F) was: 1) Parcel B would be redeveloped for commercial purposes; 2) Outlot A would be used for parking in conjunction with the redeveloped commercial uses of Parcel B; and 3) Higgin's Tavern would be restored and refurbished to preserve its historic character and to allow some productive use of the facility for future purposes. In accordance with the requirements imposed by the Consent Agreement, the then owners of the Properties withdrew their pending Higgin's Tavern demolition permit.

Consistent with the Consent Agreement, the Preliminary Plan and the Preliminary Plan Opinion, MFS Silo LLC seeks to implement the Consent Agreement and the approved Preliminary Plan through construction of commercial uses on Parcel B and the utilization of Outlot A for surface parking in conjunction therewith (there continuing to be insufficient land on Parcel B to provide the necessary parking to serve the commercial uses), and to restore Higgin's Tavern pursuant to the terms of the Consent Agreement. Shortly before the purchase of the Properties by MFS Silo LLC, the previous owners of the Properties received written confirmation from DPS (Exhibit G) concerning the continued availability of Outlot A for parking in conjunction with the commercial redevelopment of Parcel B, even though the

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commercial uses on Parcel B had already been demolished to make way for redevelopment. Nevertheless, subsequent to the purchase by MFS Silo LLC of the Properties, DPS has sent a letter reversing itself as to the viability of continuing the use of Outlot A for parking in conjunction with the redevelopment of Parcel B with commercial uses, thereby precluding implementation of the Preliminary Plan and the Consent Agreement (this determination is currently on appeal).

The pending Master Plan amendment should ensure that the longstanding intention for the redevelopment of Parcel B and Outlot A as a small commercial center can be implemented. Not only has there been substantial reliance upon this by the owners of the Properties, but also by the surrounding immediate neighbors. MFS Silo LLC has coordinated with the adjacent residential community to the west known as the Victoria Springs Home Owners Association (the "Association"), which was also part of the Burka/Goldman property that was the subject of the Preliminary Plan. At an Association meeting on November 4, 2003, the majority of the Association representatives voted to support the proposed commercial uses on Parcel B and parking on Outlot A instead of residential uses, which is referenced in the February 2004 Association newsletter attached hereto as Exhibit H. This position of the Association is consistent with the language in the current approved Olney Master Plan that was in effect and relied upon when the Association was created (after the approval of the Preliminary Plan) supporting the commercial uses on Parcel B because of the convenience the commercial area provides to the surrounding residential neighborhood.

Strictly from a planning perspective, honoring the longstanding commitment to redevelop the Properties with neighborhood commercial uses and sufficient surface parking to serve the commercial uses is still sensible. While the larger commercial uses intended to serve the broader community and region should be centered in the Town Center of Olney, there remains a critical need and desire to locate smaller scale commercial uses on properties historically providing commercial goods and/or services to the immediate neighborhood. Furthermore, it is well established that Olney is desperately underserved from a retail perspective, as demonstrated in studies conducted by Staff. Without a commitment to the uses that have long been contemplated for the Properties, it is possible that, under existing zoning classifications, development on the Properties will deviate significantly from the immediate neighborhood's interests, will not supply the critical need for retail development outside of the Town Center, and preservation of the historic Higgin's Tavern will come into question.

To summarize, maintaining the ability to redevelop Parcel B with commercial uses and to continue to utilize Outlot A for available parking is justified in order to: 1) carry out the long

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established plan and vision for the Properties; 2) honor the Consent Agreement between the owners, the Planning Board and the HPC to implement the Preliminary Plan and preserve a historic resource; 3) bring equitable relief to a pending conflict between government and private interests caused by reversal of previous governmental actions which were the basis of good faith reliance (and now detrimental reliance) by the owners of the Properties, and 4) support the interest of the immediate adjacent residential community.

We respectfully submit that the Planning Board should recommend maintaining the C-1 zoning on Parcel B to continue the historical use of the Properties for convenient commercial uses of the adjacent residential communities. Furthermore, to eliminate any uncertainty regarding the ability to continue to use Outlot A as parking for the commercial uses on Parcel B, the Planning Board should either: 1) rezoning Outlot A to the R-60 zone wherein parking is permitted for commercial uses pursuant to a special exception (with a recommendation in the Master Plan of suitability therefore); or 2) recommend a zoning text amendment to permit parking in the R-200 zone for a property with unique circumstances (as outlined herein) such as those applicable to Outlot A; or 3) rezone Outlot A to a zone permitting parking for commercial land uses.

Thank you for your consideration of this matter.

Sincerely,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple, ACS

C. Robert Dalrymple

Anne C. Martin

Anne C. Martin

Enclosures

cc: Mr. Khalid Afzal
Mr. John Carter
Mr. Marc F. Solomon

April 27, 2004

Marc Solomon
Finmarc Management
4733 Bethesda Avenue, Suite 500
Bethesda, MD 20814

Dear Mr. Solomon:

I am writing on behalf of the Victoria Springs Homeowners Association ("VSHOA"). In fall 2003 we polled the 120 dwellings in our neighborhood concerning anticipated development of the Silo Inn property on Georgia Avenue. Participation in this survey was relatively high and we received a significant amount of feedback regarding the desires of the residents. The majority of the respondents favored commercial (retail) over residential development of the site. Many of the residents purchased their homes when the Silo Inn and Mr. T's were still operating. We as a community know both the advantages and pitfalls that come with having a commercial development adjacent to our property. New comers to the community were informed by other residents that the property was for sale for further commercial development. The possibility of having in close proximity, a high quality grocery store and other neighborhood friendly retail outlets is very appealing, with certain conditions being met.

Under the proposed Commission plan, the Georgia Avenue corridor is to "remain" rural in character. This greenway concept, while pleasant, ignores the reality of continued development along the right of way. Currently there are two golf-driving ranges. A medical center is planned for the corner of Georgia Avenue and Old Baltimore Road. A synagogue is to be built adjacent to the Olney Antique mart and there is currently a proposal for a 200-student school just south of Cherry Hill. A committee is exploring the possibility of an additional building at Oakdale Emory United Methodist church and the Washington Christian Academy is planning a large campus just off Georgia Avenue on Batchelors Forrest road. This hardly could be called rural in character.

We are in favor of the development as we understand it. We have a number of requests that you have agreed to implement in exchange for our support. They are identified as follows:

- (1) Add additional landscaping (i.e. evergreens, shrubs and trees) and attractive security/barrier fencing to the rear of the shopping center on the Martin's Dairy Circle berm to further separate the shopping center from the Victoria Springs community. Existing gaps in the current evergreen screening should be filled and the landscaping in general be supplemented to assist in the minimization of light, sight and noise pollution; we would like to review and comment on any existing or proposed landscape plan.
- (2) Install an adequate and attractive lighting system that does not directly impact adjacent residential units in a negative manner; All lighting should be limited to a reasonable intensity or wattage levels (i.e. no harsh mercury vapor lights or conditions similar to those in place across the street at the driving range or the Olney Swim Center's athletic facilities), and limited in hours of operation, except as necessary to provide for the security interests we share with management and ownership; all lighting should be of the "down light" variety or otherwise installed in such a manner so as to avoid harsh reflection or glare upon the residences in Victoria Springs and/or shining into windows of any homes; any lighting of tenant's or entrance signage should be low profile and respectful of the proximity to our development;

- (3) Develop the rear elevation of the center in such a way that if the roofline of the shopping center is visible from the Victoria Springs community it is tastefully and attractively designed with quality materials and in modest scale to the adjacent neighborhood. (A drawing of the side and rear elevations will assist us in evaluating this.);
- (4) Relocate and develop a new lighted Georgia Avenue/Silo Inn Drive entry Sign to the Victoria Springs Development using quality materials, fixtures and landscaping (VSHOA to approve signage);
- (5) Provide a written list of tenants for all units on the Property that have signed on or are interested in signing leases;
- (6) Prepare a covenant burdening the Property that states that there will never be an access drive off of Silo Inn Drive into the proposed shopping center. This must be an agreement or covenant that runs with the land and recorded in the Montgomery County land records;
- (7) Provide a fence surrounding all trash dumpsters (as per County code) located on the property;
- (8) Do not permit any coin operated machines on the outside of the property (including but not limited to pay telephones, newspaper or other types of vending machines, etc.);
- (9) Provide attractive tenant signage in scale and keeping with the development that will reflect the local neighborhood environment and not directly impact the adjacent residential units in a negative manner. Low profile monument signage is strongly preferred which does not contain a laundry list of tenants on entrance sign or neon lights. Individual retail stores should have signage in scale with shopping center and not rising above roof line.
- (10) Provide sidewalk access only from Silo Inn drive to the shopping center
- (11) Soften the front of the Organic market by color patterning of brick, adding a seating area and reevaluating the façade
- (12) On the southwest side of the building add bricks and columns to make the scale more human.

After extensive discussions with you we understand that these requests are acceptable. We see the placement of the building on the property and the screening landscaping as minimizing the visual impact to drivers on Georgia Avenue. We look forward to working with you as this project moves forward to completion.

Regards,

John Crawford

President

Victoria Springs HOA

