

Resolution No. 15-464  
Introduced: January 13, 2004  
Adopted: January 13, 2004

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

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By: County Council

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**SUBJECT:** APPLICATION NO. G-811 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Joav Steinberg, Applicant, OPINION AND RESOLUTION ON APPLICATION  
Tax Account No. 02-23307

**OPINION**

Application No. G-811, filed on June 20, 2003 by Applicant Joav Steinbach, requests reclassification from the R-200 Zone to the R-T 6 Zone of 1.84 acres of land known as Parcel N109, Tax Map EU341, fronting on Liberty Mill Road in Germantown, backing onto MD 118 (Germantown Road), in the 2nd Election District. The application was considered under the Optional Method authorized by Code §59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging.

The Hearing Examiner recommended approval of the application on the basis that the R-T 6 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 these conclusions.

The subject property contains approximately 1.84 acres and is located on Liberty Mill Road, approximately 300 feet south of the point where Liberty Mill Road (old MD 118) ends at a pedestrian-only bridge that crosses the CSX rail line (also used for MARC commuter trains); on the other side of the pedestrian bridge is another segment of old MD 118 called Walter Johnson Road. The subject property is almost entirely wooded, with an area of steep slopes in the northern part of the site.

Three specimen trees were identified on the property, two of which would be removed by the development proposed here.<sup>1</sup> The subject property is irregular in shape, with approximately 127 feet of frontage along Liberty Mill Road on its eastern boundary and 140 feet of frontage along the right-of-way for MD 118 (Germantown Road) on its western boundary. To the south, the subject property shares a boundary line approximately 517 feet long with Liberty Heights, a 41-unit townhouse development in the R-T 6 Zone. To the north, roughly the western half of the subject property abuts property classified under the C-T Zone that is used for landscape contracting, while the eastern half abuts a parcel classified under the R-200 Zone that is used for a dental office operating out of a residential-type dwelling.

The surrounding area for this application extends roughly to Dawson Farm Road on the south, MD 118 on the west and the railroad tracks to the north, and includes Parcels 167, 212 and 213 to the east. The surrounding area is predominantly residential in nature. The portion of the surrounding area immediately south of the subject property is developed with the Liberty Heights townhouse development in the R-T 6 Zone. Immediately south of that tract and extending to Dawson Farm Road is property developed with single family detached homes in the R-200 Zone. The portion of the surrounding area north of the subject property is entirely in commercial use, although the dental office is located on property classified under the R-200 Zone. Two of the confronting parcels that are included in the designated surrounding area (Parcels 212 and 213) are residential in zoning and use, while the third, Parcel 167, owned by Montgomery County, contains a historic bank, parking for the MARC station and roadways on property classified under the R-200 Zone.

The subject property was classified under the R-R (now R-200) Zone in the 1958 Countywide Comprehensive Zoning, and the current R-200 zoning was confirmed in 1974 (SMA G-404), 1986 (SMA G-539) and 1990 (SMA G-652). Local map amendment application G-227, requesting reclassification to the O-M or C-T Zone, was withdrawn without prejudice on May 20, 1980.

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<sup>1</sup> One of the two is an invasive species that should be removed, per the Preliminary Forest Conservation Plan, Ex. 6.

The Applicant proposes to build a maximum of 11 townhouses on the subject property. The units would be arranged in two clusters, with five units in one and six in the other. Each unit would have a two-car garage integrated into the rear of the unit, as well as a driveway with space for two more cars. The development would have vehicular access from Liberty Mill Drive via a two-way drive running along the rear of the townhouses, providing access to the driveway and garage for each unit. The entrance drive would terminate at a visitor parking area at the far end of the townhouses. A sidewalk would be provided along the drive, connecting to the planned sidewalk along Liberty Mill Road. On the south side of the entrance drive, along the property line, the Applicant proposes to plant evergreen trees to screen the development from the adjacent townhouse community.

The Applicant would retain approximately 0.52 acres (25,100 square feet) of forest on the site, and would dedicate a strip 15 feet wide along the Liberty Mill Road frontage to accommodate a future sidewalk and landscaping. Approximately 82% of the site (66,100 square feet) would be considered green space. Storm water management is to be provided via an infiltration trench to collect run-off from the proposed development and discharge it into the storm drain system. In addition, the Applicant proposes to install a pipe at the outfall of the storm water management system for the Liberty Heights development, which currently discharges above ground onto the subject property, to catch that discharge and route it into the storm drain system. The Applicant acknowledged at the hearing that this plan is at a conceptual stage, as he has not yet sought the approval and cooperation of the homeowner's association for Liberty Heights that would be required. He stated that capturing the run-off from Liberty Heights would solve a periodic flooding problem experienced on the adjacent property to the north (occupied by a dental office).

The schematic development plan ("SDP") submitted in the present case proposes seven binding elements. These elements limit development to 11 single-family attached dwelling units with a maximum of 12.6% building coverage, a minimum of 82% green space and 31.3% forest conservation, a building setback of 20 feet from the side lot line and maximum building height of 35 feet. Illustrative elements include the specific building layout and design and the number of additional parking spaces

above the required 22 spaces; the Applicant is committed to providing extra parking for visitors, but the exact number of spaces would be determined in conjunction with Technical Staff and the Planning Board at site plan review. The proposed development would be consistent with the applicable development standards for the R-T 6 Zone, and would preserve more forest than required under applicable forest conservation regulations.

On the submitted SDP, both the roadway to the west of the subject property and the roadway to the east are labeled "Germantown Road." The evidence clearly indicates that this is a mistake, as the road running along the eastern boundary of the property, from which access would be provided to the proposed development, is Liberty Mill Road. This error should be corrected upon submission of the SDP for certification.

The District Council concludes that the proposed rezoning would comply with the purpose clause of the R-T 6 Zone. The purpose of the R-T Zone is to provide suitable sites for townhouses in "sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones" or in "locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses." Code §59-C-1.721. In the present case, the proposed development readily satisfies the purpose clause because the *Germantown Master Plan* designates the subject property as appropriate for residential development at densities allowed in the R-T 6 Zone. Moreover, the substantial forested area that would remain in the western portion of the property, as well as the Applicant's stated intention to provide two-car garages and parking for visitors, would be consistent with the intent of the R-T Zone to provide amenities normally associated with less dense zoning categories. The evidence also demonstrates that the proposed rezoning and development would be consistent with the intent of the R-T Zone to prevent detrimental effects to adjacent properties and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the County.

The District Council finds that the proposed development would be compatible with existing and planned land uses in the surrounding area. The surrounding area contains two commercial

properties adjacent to the subject property to the north, a townhouse development adjacent to the south, parking lots and roadways leading to the MARC station confronting the property, and single-family detached homes further south. The density of approximately six dwelling units per acre proposed for the subject property would be an extension of the density in the adjacent Liberty Heights development, and the record contains no evidence to suggest that the existing townhouse development has proven to be incompatible with the surrounding single-family residences. Townhouses would be an appropriate use for the subject property, which is located between two commercial uses and an existing townhouse community, and would be compatible with the mixed townhouse/single-family residential character of the area. The record contains no information concerning architectural compatibility, but this can be addressed at site plan review.

The half-acre portion of the subject property to be preserved in its natural state contributes to compatibility. The preservation of this open space, together with an evergreen buffer along the southern boundary, would provide a visual and noise buffer between the proposed development and the abutting townhouse community. The open space would serve as an amenity for the neighborhood as well as for residents of the new development, providing visual relief and a pocket of natural habitat in an area with relatively little open space.

A local resident raised a concern that the proposed development would add to the increasing density of development in the area, changing the character of the nearby Germantown Historic District. Neither the Planning Board nor Technical Staff addressed any potential impact on the Germantown Historic District, as this issue was not raised during their review of the application. A mere allegation by a lay witness, without any relevant evidence such as whether the proposed development would be visible from the historic district, or how it might have an impact on that area, is not sufficient to outweigh the preponderance of the evidence, which points to a favorable conclusion concerning compatibility.

For all of the above reasons, the District Council concludes that for purposes of zoning stage review, the proposed development would be compatible with existing and planned land uses in the surrounding area.

The District Council further determines that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The proposed development would comply with the specific recommendation of the Master Plan to develop the subject property under the R-T 6 Zone provided that such development is compatible with existing land uses in the surrounding area. The development proposed on the submitted SDP would fully address each of the first three compatibility issues raised in the Master Plan: a comparison of the SDP (Ex. 28(a)) and the vicinity map (Exhibit 25) indicates that the proposed development would have building setbacks similar to existing residences, and parking either in garages or in a parking area set back a considerable distance from the street; relocated MD 118 and the proposed development would be very effectively buffered from one another by the half-acre forest stand to be preserved between MD 118 and the townhouses; and the parking areas would be screened from view by staggered rows of evergreens. The fourth compatibility concern raised in the Master Plan is the retention of existing trees. Technical Staff did not specifically comment on this element of the Master Plan, although both Staff and the Planning Board found that the proposed development would comply with the goals and recommendations of the Master Plan. The District Council finds that by clustering development in the flatter, eastern portion of the site, the Applicant would preserve as many of the existing trees as can reasonably be expected with any development at the density recommended in the Master Plan. Moreover, the submitted SDP retains a block of forest and provides for additional evergreens along the southern boundary, both of which contribute to compatibility. For all of the above reasons, the District Council concludes that the proposed reclassification and development would be in substantial compliance with the Master Plan.

The evidence demonstrates that the proposed rezoning and development would have no adverse effect on public facilities, including roads, pedestrian walkways and schools, that warrants denial of the application. The opposition argued that the proposed development would have a negative impact

on traffic safety on Liberty Mill Road because the steep slope of the road creates limited sight distances, and because no acceleration/deceleration lane is planned for the entrance to the development. The opinion of Technical Staff represents substantial, probative evidence that the proposed development would not have an adverse effect on traffic safety. Moreover, the final site plan would be subject to further review by Transportation Planning Staff for the M-NCPPC and, in all likelihood, the State Highway Administration. To allow this evidence to be outweighed by contentions that amount to little more than generalized concerns and unsupported allegations would be counter to the dictates of Maryland law. See *Rockville Fuel & Feed Co. v. Board of Appeals*, 257 Md. 183, 192-93 (1970); *Moseman v. County Council of Prince George's County*, 99 Md. App. 258, 265 (Ct. Spec. App. 1994).

The opposition also raised concerns about parking, which appears to be in short supply for residents of the adjacent Liberty Heights development. The development proposed in this case would have more parking than required under the Zoning Ordinance, with two garage spaces for each townhouse, a driveway for each unit with room to park two cars, and additional visitor parking at the far end of the entrance drive. Thus, the evidence demonstrates that the proposed development would not worsen parking conditions in the surrounding area.

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.

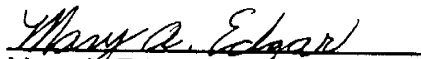
#### **ACTION**

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-811, requesting reclassification from the R-200 Zone to the R-T 6 Zone of 1.84 acres of land known as Parcel N109, Tax Map EU341, fronting on Liberty Mill Road, and backing onto MD 118 (Germantown Road) northeast of Dawson Road, in the 2nd Election District, is hereby approved in the amount requested subject to the specifications and requirements of the final

schematic development plan, Exhibit 28(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, with Liberty Mill Road correctly labeled, in accordance with §59-D-1.64; and provided, further, that upon receipt of the District Council's approval resolution the Applicant must immediately file the completed Declaration of Covenants, in the form shown in Exhibit 8, in the land records of Montgomery County in accordance with §59-H-2.54, and must submit to the Hearing Examiner as soon as feasible a copy of the completed covenants indicating that said covenants have been filed.

This is a correct copy of Council action.

  
Mary A. Edgar, CMC  
Clerk of the Council