



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

MCPB
Item #2
7/15/04

DATE: July 9, 2004

TO: Montgomery County Planning Board

SUBJECT: Waiver Request for United Therapeutics
SRW 04004

Attached please find the request for waiver received for the referenced application.

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May 3, 2004

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Derick P. Berlage, Esquire
Chairman
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Request for Waiver from Requirements of Subdivision Regulations

Dear Chairman Berlage:

The purpose of this letter is to request a waiver, pursuant to Section 50-38 of the Subdivision Regulations, to permit the construction of United Therapeutics Corporation world headquarters campus. The campus will be known as United Therapeutics Silver Spring Campus and will be located at the intersection of Spring and Cameron Streets in the Silver Spring Central Business District ("CBD").

United Therapeutics ("UT" or the "Company"), a publicly held biotechnology company, currently has nine offices in five states and three countries. The Company's corporate headquarters has been located at 1110 Spring Street in Silver Spring, Maryland since the Company was founded in 1996. A preliminary plan of subdivision ("Preliminary Plan") and a project plan application for development of an optional method of development ("Project Plan") are being submitted simultaneously with this waiver request. Without the proposed waiver, the development as proposed under the Project Plan, could not meet United Therapeutics unique needs.

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The Site

Montgomery County (the "County") owns certain property located at the southeast corner of Cameron and Spring Streets in the CBD, currently improved with Montgomery County Parking Garage No. 21 (the "County Property"). The Company is under contract to purchase the County Property and is authorized by the County to act as its agent for the purpose of filing these applications. The Company owns the property on Spring Street across Cameron Street from the County Property (the "Company Property"). The Company's Property has been recorded as "Lot 11, Block "A", J.C. Wilson Estate, Silver Spring" ("Lot 11"). The Company's existing headquarters building is located on a portion of Lot 11. The County Property will be recorded as "Lot 1, United Therapeutics Addition to Silver Spring" ("Lot 1"), pursuant to the waiver granted by the Planning Board in SRW No. 04-02 and Resolution MCPB 03-26. ("Lot 1" and "Lot 11" will be referred to collectively as the "Property").

The Project

The project, as more fully described in the Project Plan Application, will consist of 191,636 FAR square feet in three structures: a laboratory facility, an eight-story office building to be located on Lot 1, and an eight-story office building to be located on Lot 11. (This is an expansion of the facilities that were planned for originally and for which the original SRW No. 04-02 was granted.) A laboratory facility consisting of laboratories, offices, and ancillary uses that support the Company's drug products, is adjacent and connected to the office building on Lot 1. The office building on Lot 11 is across Cameron Street from the office building on Lot 1 and adjacent to the Company's existing headquarters building at 1110 Spring Street. A connecting corridor across Cameron Street is proposed to connect the office buildings at the seventh floor. This connector enables the two office buildings and adjacent laboratory facility to function as an integrated whole, effectively transforming two small urban parcels divided by a street into a viable urban campus for a single user/owner. Each parcel individually would be too small for UT's project requirements; however, the seventh floor connector makes possible the efficient movement and access necessary to support the varying internal functions and requirements of the growing biotechnology campus, including stringent "clean room" laboratory environmental controls.

A waiver of subdivision is necessary to allow the building connector to be constructed at the seventh floor of the office buildings in the air space above Cameron Street and crossing the lot lines of Lot 1 and Lot 11. A sketch of the building connector across the lot lines is attached as Exhibit 1 and incorporated

herein by reference. (The right-of-way rights in these air rights above Cameron Street are proposed to be abandoned to facilitate the connector.)

The Waiver Request

This letter requests that the Planning Board grant a waiver of one element of the Subdivision Regulations, pursuant to its authority under Section 50-38(a)(1) of the Montgomery County Code. This waiver is needed in order to allow the approvals necessary for the construction of the Silver Spring Campus as described above.

United Therapeutics respectfully requests that the Planning Board grant a waiver from the requirement that prevents a building permit being approved for a proposed structure that will be located across lot lines. Specifically, the Company seeks a waiver from the following provision of the Subdivision Regulations:

“Sec.50-20. Limitations on issuance of building permits.

- (b) A building permit may not be approved for the construction of a dwelling or other structure...which crosses a lot line....”

As more fully set forth below, this waiver request is necessitated by the unusual circumstances of the Property and the practical difficulties associated with the Company's need to develop the Project on two separate lots bisected by a County road.

Standards for Waiver Under Section 50-38

Under the standards of Section 50-38, the Planning Board may grant waivers that meet the following criteria:

- “(a) Authority of Board

“The Board may grant a waiver from the requirements of this Chapter upon a determination that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved, and that the waiver is: 1) the minimum necessary to provide relief from the requirements; 2) not inconsistent with the purposes and objectives of the General Plan; and 3) not adverse to the public interest.”

In order for the United Therapeutics Silver Spring Campus project to be built as proposed in the Project Plan and as described above -- across lot lines--, a waiver must be obtained. Accordingly, United Therapeutics requests that the Planning Board waive the requirements of Section 50-20(b) of the Subdivision Regulations. As described below, this waiver is the minimum necessary to overcome the unusual circumstances of the Property and the practical difficulties involved in the Company's efforts to develop the project to meet the Company's unique needs.

A. Practical Difficulties or Unusual Circumstances.

As described above, the project will be built on two separately recorded lots with a building connector spanning Cameron Street to connect the 7th floors of the office buildings on Lot 11 and Lot 1.

This necessity of building on two lots separated by a public street presents a practical difficulty and a unique circumstance of hardship to United Therapeutics. The Company, from the outset, sought to develop the Silver Spring Campus in the Silver Spring CBD, consistent with the County's goals for revitalization, as well as retention of existing businesses in Silver Spring. When only the new laboratory was to be constructed on Lot 1 (the former Parking Lot 21), it could have existed as a separate, free-standing element. Once the Company sought to expand the scope of the project to include a second laboratory for relocation of its existing Remodulin ® drug and expansion of the headquarters offices that needed more space than either site could provide individually, the physical separation became an acute hardship. The Company was faced with a dilemma: while strongly desiring to remain in the Silver Spring CBD and allied with its existing headquarters, it was confronted with the only available area being two separate lots bisected by a county road as the location for its world headquarters campus and laboratory complex. The two lots made it difficult, if not impossible, for the Company to realize its goal of developing a unified Silver Spring Campus that could meet the unusual needs for a growing biotechnology company. The proposed location of the project on two separate lots divided by a county road clearly presents a practical difficulty and a very unusual circumstance.

The waiver will also ease public understanding of the project approval. Without the waiver, the Applicant would seek approval of a three dimensional record plat (to include the air space over Cameron Street). The physical drawings for such a plat would be complex and confusing to the public. The waiver allows a more conventional platting process, but acknowledges the planned physical configuration of the building.

B. Minimum Necessary to Provide Relief from the Requirements.

The proposed waiver is the minimum necessary to provide relief from the strict application of the subdivision regulations. The waiver is needed to allow the construction of the building connector in the public right of way above Cameron Street, across the lot lines of Lot 11 and Lot 1. There will be no adverse effect by allowing this waiver.

C. Not Inconsistent with the Purposes and Objectives of the General Plan.

The waiver requested will allow the Silver Spring Campus project to be developed in Silver Spring and will thereby advance the purposes and objectives of the General Plan as to economic development, business retention, and business expansion/revitalization in Silver Spring.

The 1993 General Plan Refinement ("1993 General Plan" or the "Plan") recognizes "economic activity" as a separate and independent goal of the General Plan for the first time. The Plan identifies Montgomery County as a "world class center" for business and technology (Plan, p. 55) and emphasizes that existing businesses should be "retained and enhanced" (Plan, p. 55). United Therapeutics is an existing County business seeking to enlarge its roots in the County and in Silver Spring. The 1993 General Plan identifies corporate headquarters and biotechnology research as businesses "the County should particularly encourage" (Plan, p. 55). United Therapeutics is the County's only known biotechnology company in Silver Spring, thus being a targeted business type that is also in a targeted business area.

In the strategies for implementation of the economic goals, the 1993 General Plan states that Montgomery County should be "promoted as a world class center" for "research, development and technology" (Plan, p. 57) and that land use decisions should "support the County's economic development objectives of retaining and attracting headquarters . . . [and] biotechnology research . . . (Plan, p. 57). The 1993 General Plan encourages "flexibility in land use . . . to accommodate . . . developing technologies." (Plan, p. 57). The Plan also proposes that the development review process be continually assessed "to determine ways to streamline the process and to encourage economic growth within the Urban Ring" (which includes Silver Spring). (Plan, p. 59.)

In looking at the commercial portion of the Silver Spring downtown, the Sector Plan recognizes that office uses "should build on the CBD's existing base of business activity. From large headquarters to independent proprietors, Silver

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Spring should offer opportunities for new construction and renovation of existing space, supported by business services and regional transportation links." (CBD Plan, p. 18.) The proposed UTC Project represents just such an opportunity.

The proposed Project will also satisfy recommendations contained in the CBD Plan. The CBD Plan recognizes that a "commercial downtown" should build on the CBD's existing base of business activity. United Therapeutics is an existing company seeking to expand within the CBD.

Summary

The proposed waiver will allow an existing biotechnology company to expand its capabilities in the Silver Spring CBD, will bring jobs to the CBD, and may be the catalyst for additional biotechnology successes in Silver Spring.

For the forgoing reasons, United Therapeutics requests that the waiver be granted.

Thank you for your consideration of this request.

Very truly yours,

HOLLAND & KNIGHT LLP



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