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B.**MEMORANDUM**

**DATE:** January 21, 2005  
**TO:** Montgomery County Planning Board  
**FROM:** Sandra Youla, AICP (301-495-4624)  
 for the Department of Park and Planning  
**VIA:** Carlton Gilbert, Zoning Supervisor, and *Walt*  
 Rose Krasnow, Chief, Development Review Division *PKK*

**REVIEW TYPE:** Local Map Amendment/Optional Method of Application  
**APPLYING FOR:** C-1 (Convenience Commercial) to O-M (Office Building, Moderate Intensity)  
**REVIEW BASIS:** Chapter 59, Zoning Ordinance

**CASE NUMBER:** G-826  
**APPLICANT:** Robert J. Duffie, Inc.  
**LOCATION:** 1) 10001 New Hampshire Ave. (Parcel 18, Avenel Gardens)  
 2) 1701 to 1729 Elton Rd. (Parcel 23, Avenel Gardens)  
 Silver Spring, MD 20903  
**MASTER PLAN:** White Oak Master Plan (1997)  
**FILING DATE:** July 22, 2004  
**PUBLIC HEARING:** February 11, 2005

**RECOMMENDATIONS:**

1. Staff recommends **APPROVAL** O-M zone and the Schematic Development Plan, for the following reasons:
  - a. The application is in full compliance with all other requirements of the O-M zone.
  - b. The application is compatible with the surrounding area.
  - c. The application is in the public interest, namely it complies with the master plan, is adequately served by public facilities, and addresses staff concerns.
2. The applicant has proposed a binding element of 1.4 FAR (floor area ratio) for Parcel 18, and therefore must correct all submissions to reflect the correct FAR and gross floor area. Currently, the written submissions and schematic development plan (including parking calculations) show gross floor area figures commensurate with a 1.5 FAR, not 1.4. The corrections

must be submitted to the Hearing Examiner prior to the close of the evidentiary record.

## **BACKGROUND**

### **Introduction**

Under the optional method of application, the applicant, Ralph J. Duffie, Inc., requests reclassification from the C-1 zone (convenience commercial) to the O-M zone (office building, moderate intensity) of two adjacent recorded parcels, as follows:

1. 10001 New Hampshire Avenue, known as Parcel 18, Avenel Gardens (recorded 10/27/65, Plat Book 79, Plat No. 8009, MNCPPC No. 194-22), and
2. 1700 to 1729 Elton Road, known as Parcel 23, Avenel Gardens (recorded 6/15/99, Plat Book 193, Plat No. 21097).

### **Property Location and Description**

The property is located in the southeast corner of the intersection of New Hampshire Avenue and Elton Road across from the Hillandale Shopping Center and just north of the northbound exit ramp for Exit 28 of Interstate 495. The eastern edge of Parcel 23 is just 600 feet from the Prince George's County boundary.

Parcel 18 comprises 60,218 square feet (1.3822 acres), is irregularly shaped and fairly flat, and has 341 feet of frontage along Elton Road. Parcel 23 comprises 62,603 square feet (1.44 acres), is irregularly shaped and fairly flat, and has 336.51 feet of frontage along Elton Road.

Parcel 18 is developed with a vacant, one-story restaurant, with outdoor parking. Parcel 23 is developed with an occupied two-story office building, with outdoor parking.

### **Surrounding Area**

**Definition:** In a floating zone application, the surrounding area is less rigidly defined than required with a Euclidean zone application. In general, the defined surrounding area takes into account those areas that are most directly affected by the proposed development and any special study areas that may have been defined by a master or sector plan.

In the case of the subject application, staff defines the boundaries of the surrounding area to be I-495 to the south, New Hampshire Avenue to the west, Powder Mill Road to the north, Green Forest Drive to northeast, and Wooded

Way to the east. A portion of the defined surrounding area is within Prince George's County. The surrounding area is also within the Hillandale community.

**Uses and Zones within the Surrounding Area:** The surrounding area contains the following uses and zones: single-family homes in the R-90 zone, residential townhouses in the RT-6 zone, offices in the C-T, C-O, and C-1 zone, an industrial use in the I-1 zone, and a commercial center in the C-1 zone.

Adjoining the two parcels to the south is the exit ramp of I-495. Adjoining Parcel 24 to the east is three-story office building, also owned by the applicant, and zoned C-T (Commercial, Transitional). Confronting the properties to the north are the Hillandale Shopping Center, zoned C-1; a bank, zoned C-1; a Coca Cola plant, zoned I-1 (light industrial) and R-90, and a complex of office buildings from one to three stories, zoned C-O (commercial, office building) and R-90. About 350 feet to the east of the site, Elton Road necks down and there are single-family homes and townhouses.

Just opposite the site, outside the defined surrounding area, on the west side of New Hampshire Avenue is the George Meany Center, a labor relations college on land zoned R-90, and the Holly Hall Apartments for senior citizens on land zoned R-20.

### **Approval Procedures**

**Re: Rezoning:** The O-M zone is a newer type of zoning device known as a floating zone, which "consists of a prescribed set of permissible land uses that are not attached, in advance, to any particular geographic district, but are, instead, permitted to "float" over the entire area until located upon a specific property at the petition of the property owner." (Wheaton Moose Lodge v. Montgomery County, 41 Md. App. 401, 397 A.2d 250 (1979).) Similarly to a special exception, a floating zone must not be approved for a specific property unless the application meets certain requirements, namely that it:

- furthers the purpose of the zone, per Section 59-H.2.51 of the Montgomery County Zoning Ordinance,
- meets all other requirements of the zone, per Section 59-H.2.51,
- is compatible with the surrounding area, per case law (see above cited case), and
- is within the public interest, per case law and per Article 28 (Regional District Act), Section 7-110, which states that zoning power must be exercised:

"...with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional

district,...and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.”

The District Council normally construes being within the public interest to mean that the application must comply with the master plan, have adequate public facilities, and address recommendations made by the technical staff and the Planning Board, e.g. that environmental issues be addressed.

The County Council, sitting as the District Council, approves or denies the requested zone. The applicant seeking a rezoning reclassification has the burden of proof to establish all the elements of his case and to establish that the application meets requirements, per case law (see *Chevy Chase Village v. Montgomery County Council*, 258 Md. 27, 264 A.2d 861 (1970)).

In certain zones, including the O-M zone, the applicant may utilize an alternative method of application for a local map amendment, known as “optional method of application.” The applicant has elected to do so in this case. According to 59-H-2.5 of the Montgomery County Zoning Ordinance, the optional method of application

permit(s) an applicant to restrict development standards, stage development or limit uses provided in the requested zone. An applicant may utilize the optional method of application to limit the use of the property, without imposing a restriction on any of the development standards of the requested zone...In addition to other requirements contained in this article, the application for the optional method must include a schematic development plan...An application for the optional method must include a covenant that...(is) suitable for filing in the land records of Montgomery County, Maryland, and must reflect in specific language any restricted development standards, development program, or limited uses contained in the schematic development plan and applicable to the property if the district council grants the application....Upon approval of the application by the District Council, the applicant must immediately file the executed covenant in the land records of Montgomery County, Maryland. Certification of such filing must be submitted to the Montgomery County Planning Board at the time of submission of the site plan.

In this case, the applicant has elected to file under the optional method of application.

**Other Approval Processes to which the Application is Subject:** Because the parcels are already recorded, the properties are not required to go through the subdivision process if developed in accordance with the submitted schematic development plan. Because the properties are within the O-M zone, site plan

review is required, and thus, if the District Council approves the application, the application would be subject to the requirements Section 59-D.3 of the Montgomery County Zoning Ordinance. An approved Natural Resource Inventory/Forest Stand Delineation will be a requirement for site plan approval submission. Formal adequate public facilities review will occur at the time of site plan review.

**Approved Parking Waiver:** It should also be noted that Parcel 18 was the subject of a parking waiver with respect to the required 10-foot landscaping strip of 59-E-2.71. The waiver was granted by the Department of Permitting Services (DPS), per the attached memo from DPS dated December 7, 2004. The letter notes that MNCPPC made no objection, but staff recalls no waiver request being sent to MNCPPC for review. Normally, staff would request that determination of parking waiver requests be deferred until site plan.

### **Details of Proposal, Schematic Development Plan, Binding Elements**

The applicant proposes to tear down a vacant, one-story restaurant on Parcel 18 and build a 5-story office building, and Parcel 18 on the SDP is labeled "proposed...5-story office building." On Parcel 23, the applicant proposes to keep the existing 2-story office building, and Parcel 23 on the SDP is labeled "existing 2-story office building." Such labeling is illustrative only, as the applicant has not bound himself to these uses.

Initial submissions were revised several times. The following comments are based on the schematic development plan submitted on January 12, 2005.

One schematic development plan (SDP) was submitted covering both properties. However, the SDP shows separate proposals for each of the two properties, and the parcels are depicted as remaining separate. Each parcel has its own binding elements. Binding elements for Parcel 18 include certain development standards. Binding elements for Parcel 23 include all development standards of the zone, gross floor area, and parking. Neither parcel has binding elements that cover use, staging, or any other matter, including continued separation of the lots.

Binding elements are as shown in the table on the next page:

**TABLE: BINDING ELEMENTS**

<u>Type of Element</u>	<u>Parcel 23</u>	<u>Parcel 18</u>
Lot Coverage	18%	40%
Building Height – stories	2 stories	5 stories
Building Height – feet	27.5 feet	60 feet
Floor Area Ratio	.33	1.4
Gross Floor Area	20,831 GFA	----
Green Area	15.9%	20%
Building Setback	15 feet from Elton Road	----
	17 feet from I-495 Ramp	----
	386 feet from adjacent cmml. property Parcel 24 – wall w/ windows or openings	----
Off-street Parking	100 spaces	----

In addition to binding elements, the SDP includes a note that states:

Adequate public transportation facilities will be provided at the New Hampshire Avenue/Elton Road intersection by converting the Elton Road approach to New Hampshire Avenue from two lanes to three lanes by re-striping those lanes.

### Zoning History

#### **Comprehensive Zoning:**

G746 -- White Oak SMA, granted 7/8/97: C-1 zone confirmed.

G-337 -- Eastern Montgomery County SMA, granted 3/16/82: C-1 zone confirmed.

1958 Countywide comprehensive zoning: R-90 zone confirmed.

1954 County wide comprehensive zoning: R-90 zone enacted.

#### **Local Map Amendments:**

F-904 – Parcel 16, Avenel Gardens, granted 10/9/73: R-90 to C-1.

F-884 –Withdrawn without prejudice 2/27/73: C-1 and R-90 to C-2.

E-41 – Parcel 10, Avenel Gardens, granted 2/23/65: R-90 to C-1.

E-40 – Part of Parcels 8 and 9, Avenel Gardens, granted 2/23/65: R-90 to C-1.

S-1187 – Part of Parcel 11, Avenel Gardens, granted 5/26/64: R-90 to C-1.

**Master Plan Recommendation:**

Land Use: Commercial/Office.

Zoning: C-1.

**Public Facilities:**

Water and Sewer Service:

Service Categories: The subject property is in Water Category W-1 and Sewer Category S-1.

Roadways:

1. New Hampshire Avenue, classified as a six-lane divided Major Highway (M-12) with a 120-foot right-of-way within the White Oak master plan boundary. A Class I or Class III bikeway (PB-24) is recommended for MD 650 between Lockwood Drive to the north and its southern master plan boundary (I-495). The roadway is recommended within the East Silver Spring master plan boundary (between I-495 to the north and Prince George's County line to the south) as a six-to eight-lane divided major highway with a right-of-way of 150 feet and a dual-bikeway. The May 2004 Planning Board Draft of the *Countywide Bikeways Functional Master Plan* recommends a dual bikeway (DB-7) for MD 650 south of Lockwood Drive to Prince George's County line.
2. Adelphi Road, classified as a four-lane Major Highway (M-80) with 120 feet of right-of-way between MD 650 and Prince George's County line. This section of Adelphi Road within the master plan area is less than 500 feet in length.
3. Oakview Drive, classified as a two-lane Primary Residential Street (P-6) with 60-feet of right-of-way and a proposed Class III bikeway (Route Number 11) between MD 650 and Northwest Branch Park.
4. Elton Road, classified as a four-lane Business Street (B-3) with an 80-foot right-of-way between MD 650 and Prince George's County line. Though the 1,600-foot section of the roadway within Montgomery County is currently built as a four-lane roadway, it operates as a two-lane roadway with parking on both sides. The

roadway transitions into a two-lane residential street with no sidewalks within Prince George's County.

5. Powder Mill Road, classified as a four-lane Arterial Road (A-94) with an 80-foot right-of-way between MD 650 and Prince George's County line, and a Class III bikeway (PB-31). However, it is built with five-lanes with a center two-way left-turn lane, and has over 90 feet of right-of-way.
6. Lockwood Drive, classified as a two-lane Arterial Road (A-286) between US 29 to the southwest and Stewart Lane to the northeast, with a minimum right-of-way width of 80 feet. The Master Plan also recommends on-street parking, sidewalks, tree panel and a Class I or Class II bikeway (PB-27) along Lockwood Drive. The May 2004 Planning Board Draft of the *Countywide Bikeways Functional Master Plan* recommends a dual bikeway (DB-10) for the section of Lockwood Drive between US 29 and MD 650.
7. Capital Beltway, classified as a 10-lane divided Freeway (F-8) within the master plan area with a right-of-way of 300 feet.

Schools:

Not applicable, since office use will not generate any demand on schools.

**ANALYSIS**

**Purpose of the Zone**

According to Section 59-C-4.310 of the Montgomery County Zoning Ordinance,

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.

Staff finds that application of the O-M zone on the requested properties would meet the purposes of the zone, since the use shown on the face of the SDP and discussed in the application, namely office, would occur in a non-central business



district area of mixed commercial zoning that already has many offices. Although there is a single-family residential area to the east, the surrounding area is not predominantly single-family in use. The site sits squarely within the most intense part of Hillandale opposite a commercial center and thus the application if approved will not create an adverse impact on the adjoining neighborhood.

### **Other Requirements of the Zone**

Staff also finds that the application and schematic development plan also meet the other requirements of the zone for each of the two parcels. The requirements are excerpted from the Zoning Ordinance as follows:

#### **59-C-4.311. Lot coverage and building height.**

- (a) Except as provided in paragraph (b) below, the following shall apply:
- (1) Not more than 60 percent of the lot area shall be covered by buildings and accessory structures.
  - (2) No building shall exceed 5 stories or 60 feet in height at any point.
  - (3) At least 10 percent of the lot area shall be devoted to green area.
- (b) Coverage may be permitted to increase to 75 percent and height to 7 stories, but not more than 72 feet if the following conditions are met:
- (1) The lot has an area of at least one-half acre.
  - (2) At least 80 percent of the additional floor area is used for off-street parking.
  - (3) At least 15 percent of the lot area is devoted to green area.

#### **59-C-4.312. Floor area.**

The gross floor area of buildings shall not exceed FAR 1.5.

#### **59-C-4.313. Setbacks.**

All buildings shall be set back from lot lines at least as follows:

- (a) From any street right-of-way as shown on a master plan-15 feet.
- (b) From any other lot line:
  - (1) If the building has windows or apertures providing light, access or ventilation to a space intended to be occupied for commercial or residential purposes that faces that lot line-One foot for each 3 feet of building height.
  - (2) If the adjoining lot is in a residential zone and is not recommended for commercial or industrial zoning on a master plan-One foot for each 3 feet of building height.
  - (3) In all other cases, no setback is required.

#### **59-C-4.314. Development procedure.**

The procedure for site plan approval shall be as set forth in division 59-D-3.

Staff refers the reader to the development standards tables in the Appendix. These tables show that the application complies with development standards. Staff has reviewed the SDP, and insofar as possible to tell from a schematic and illustrative plan, finds that the application complies with development standards.

### **Compatibility**

**Structure:** The application proposes to keep the proposed building (and parking) on Parcel 23, and, as it already exists, it is by definition compatible with the neighborhood, and would be so, even if newly constructed, given its two-story height, building envelope, and excess green area, which are in keeping with other 1-3 story office structures in the area.

The application proposes to build a 5-story building of 60 feet on Parcel 18 with outdoor and indoor parking. Staff finds that such building height, though taller than surrounding buildings, which are between one to three stories, is compatible, given that the site is within the most commercial area of Hillandale and abuts I-495. Given the site's status as a gateway to Hillandale, staff feels that a somewhat taller building than the surroundings is in fact appropriate, but staff would not find a building taller than 60 feet compatible with the neighborhood.

**Use:** Given that there are many office uses in the vicinity, the proposed office uses (shown on the SDP and discussed in the application, but not a binding element) on each of the two parcels are compatible as they are identical uses. Further, office use is compatible with the nearby commercial and industrial uses. Staff also finds any other potentially adverse effects that could be created by the proposed office use, such as increased noise, and pedestrian and vehicular activity, are mitigated by the binding elements that limit the scale of the buildings and by the commitment by the applicant to provide a road improvement. Staff finds that the buildings are sufficiently far from the residential properties in the surrounding area as to not have an immediate adverse impact.

There are many other uses that are permitted by right or by special exception in the O-M zone, subject to various limitation and stipulations in the footnotes to the use table. The Planning and Engineering Report, as revised 1/12/2005 and received by zoning staff on 1/24/05, states on page 4 that "this application does not however limit the uses of either parcel and therefore all permitted uses in the O-M zone would be allowed for the Subject Property."

### **Public Interest**

**Master Plan Conformance:** Community-Based Planning staff finds that the application with respect to each of the two parcels is consistent with the recommendations in the White Oak Master Plan (1997) and is compatible with the existing 1 to 3 story buildings and uses in the Hillandale commercial area.

Zoning staff agrees. Please refer to the attached memo dated 1/12/05 in the Appendix.

**Adequate Public Facilities:**

Transportation

Transportation staff, in a memo dated 1/20/05 and contained in the Appendix, recommends that the following transportation-related comments be part of the Planning Board's recommendation on the subject Local Map Amendment application:

1. Limit future development on Parcel 18 to a 90,327 square-foot general or professional commercial building with a 5,000 square-foot restaurant to its interior and 85,327 square-feet of general office space. The existing 20,831 square-foot office use on Parcel 23 should remain as is.  
*(Note: the submitted traffic study assumed that there would be a restaurant on the ground floor of the building on Parcel 18, but the applicant now notes that restaurants do not wish to locate there.)*
2. Limit access at the proposed site access driveway off Elton Road closest to MD 650 to a right-turn in/right-turn out only driveway.
3. Address APF issues related to the subject use, including implementation of an improvement identified in the traffic study at the MD 650/Elton Road intersection, at the time of subdivision through consultation with Maryland State Highway Administration.

Transportation staff also concludes that based on the review of the analysis presented in the traffic study, the proposed zoning reclassification request for the property satisfies requirements under the LATR Guidelines and therefore, the APF test.

In conversation with zoning staff, transportation staff noted that an office building with restaurant at this site, as subject to the binding elements of the SDP, would probably be the most intense generator of peak hour trips of all uses within the O-M zone. Transportation staff also felt that cut-through traffic from the site to Elton Road to Wooded Way to Green Forest Way or Riggs Road to Powder Mill Road, about which citizens had expressed concern, would be minimal.

Zoning staff concludes that there will be adequate transportation facilities and thus the application with respect to each of the two parcels is in the public interest.

### Other Public Facilities

Staff received no comments from WSSC regarding water and sewer issues. Schools are not an issue in this application, because the uses in the O-M zone would not generate demand for school demand.

### **Environmental Issues**

Environmental staff reviewed the application and finds that with respect to environmental concerns, the application should be approved. Please see the attached memo dated 1/20/05 in the Appendix. Zoning staff concludes that the application with regard to environmental issues is within the public interest.

### Community Concerns

Staff received one letter from a community member, which is attached in the Appendix. Based on telephone conversations with staff, some of the community is concerned that the application, if approved, would increase cut-through traffic along Elton Road, is disappointed that there would be no restaurant, and questions the data used in the traffic study.

### **CONCLUSION**

Staff concludes that the application would meet the purpose of the zone, meet all other requirements of the zone, be compatible with the surrounding area, and would be within the public interest, namely would comply with the master plan, be served by adequate public facilities, and addresses all other staff concerns. Thus, staff finds that the O-M zone should be approved.

## **APPENDIX**

Vicinity Map

Zoning Map

Plat for Parcel 18

Plat for Parcel 23

Schematic Development Plan submitted 1/12/2005

Parking Waiver Letter from DPS dated 12/7/2004

Development Standards Table for Parcel 18

Development Standards Table for Parcel 23

Memo from Community-Based Planning Staff dated  
1/12/2005

Memo from Transportation Staff dated 1/20/2005

Memo from Environmental Staff dated 1/20/2005

Letter dated January 20, 2005 from Community Member