



WHEATON URBAN DISTRICT

Douglas M. Duncan
County Executive

December 14, 2005

Natalie Cantor
Director

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

Re: Zoning Application/Development Plan Amendment
05-02 (Commerce Bank in Wheaton)

Dear Mr. Berlage:

As Chairman of the Wheaton Urban District Advisory Committee, I am pleased to forward to you the recommendations of the Committee to support, with the provisions identified below, the proposal to amend a previously approved schematic development plan to allow construction of a branch of the Commerce Bank at the intersection of University Boulevard and Valley View Avenue. This site is located at the western gateway into downtown Wheaton and we believe that the proposed bank would be a significant improvement over the three deteriorated, detached homes currently located on the three lots involved in this application. These buildings are a community eyesore and have been used in the past for purposes that have been detrimental to the welfare of the Wheaton Community.

The adjacent residential community has expressed concerns about the density and intensity of the proposed use, possible adverse traffic effects, and possible air pollution caused by vehicles waiting to use the drive-in facilities. After discussing these issues in light of the applicant's land use plan, and description of overall traffic and circulation, we conclude that the proposed bank is appropriate **provided that the applicant can address the community's concerns to the satisfaction of the Planning Board and the County Council.**

While we recognize that the subject site is located just outside the urban district boundary, we are concerned that its gateway location is important to the Wheaton Urban District and to the County's continuing efforts to revitalize the downtown area. Thank you for the opportunity to comment on this zoning application.

Sincerely,



Filippo Leo
Chairman

Mid-County Regional Services Center

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At Wheaton Metro Station

12 December 12, 2005

To: Elsabet Tefaye, MNCPPC
From: Virginia Sheard, Kensington View Civic Association, Land Use and Zoning Work Group
Re: DPA 05-2, Application of Commerce Bank

The following outlines the issues and concerns of the Kensington View community regarding the above DPA. The Work Group has met several times with Commerce Bank representatives, reviewed the submission documents, attended the Development Review meeting, and is conducting ongoing outreach to our residents to discuss this proposal. This is a draft that summarizes the primary areas of concern about the proposal in the context of the Wheaton Sector Plan, the Montgomery County Ordinance, and the impact on the character and integrity of our residential community. We hope you will be able to address our concerns in your staff report. This statement is a work-in-progress and I apologize for the ad hoc formatting and structure. We are still reviewing information from several sources in order to adequately prepare for the public hearing.

HISTORY

The subject properties are in the Kensington View Subdivision, which was subdivided in June 1925 as an "A" Residential Zone (R-60). Kensington View is currently home to McDonald's, Lindsay Ford, Chevy Chase Bank, Washington Federal Credit Union, and Acorn Storage. The properties are not in the Wheaton CBD or the Wheaton Urban District. The lots were originally subdivided as Lots # 3, 4, 5, 6, 7 Section One Kensington View. The property located at 2907 University Blvd. (Lots 3 & 4) was granted C-T zoning for "General Office" use in case # G-229 in 1980. The properties located at 2909 University Blvd. (Lots 5 & 6) and 11107 Valley View Avenue (Lot 7) were granted C-T zoning with conditions using the Optional Method of Development in case # G-540 in 1987. The binding conditions state "The applicants intend to limit the use of the land under the C-T zone to the existing structures, with improvements." "The Covenant provides that the binding development controls shall run with the land and be binding on all parties having any right, title, or interest and all successors and assigns as long as the subject property is zoned in the requested C-T zone."

In November 1989, the owners of these lots submitted a preliminary plan of subdivision of property in the CT zone (Preliminary Plan 1-89279) for 2907 University Blvd. (currently Lot 22, previously Lots 3 & 4) and 2909 University Blvd. (currently Lot 23, previously Lots 5 & 6). In May 1990, they were granted approval with conditions:

1. Agreement with Planning Board limiting the development to the existing 2,150 (Lot 23) and 2,550 (Lot 22) square foot office use.
2. Dedication of University Boulevard (Route 193) 60 feet off center line
3. Conditions of DEP storm water management waiver dated 6/30/89
4. Modifications for access to be approved by MDSHA
- 5 Necessary easements

Parts of the agreement signed by the Nguyen's and MNCPPC include:

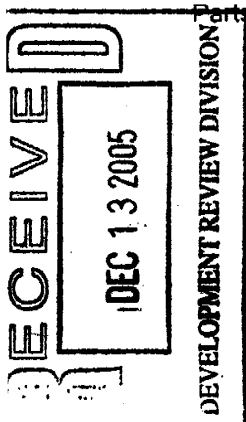
"Applicant intends to create restrictions on the Property necessary to meet the conditions of subdivision approval. The purpose of these restrictions are to limit the construction of structures on the Property and to limit the use of the Property so that persons and properties will not be harmed by overburdened public facilities."

"Development on the Property must be limited to the existing 2,150 sq. ft office use on lot 23 and the existing 2,550 sq. ft office use on lot 22. Development and use of the Property are restricted in the manner specified by the conditions of the Planning Board for Preliminary Plan No. 1-89279."

"Applicant must not build any additional floor area above the approved building area without a successful completion of an adequate public facilities review by the Planning Board pursuant to Section 50-35(k) of the Montgomery County Code."

"Applicant must notify the Planning Board of an application for a building permit or a use and occupancy permit for the Property."

Since the 1990 subdivision was granted with conditions, **wouldn't the Nguyen's need to request another re-subdivision in order to use Lot 23 for the Commerce Bank Proposal (DPA-05-2)? Was an Adequate Public Facilities Review completed? Was a DEP storm water management review done?**



Kensington View CA Statement on DPA 05-2 12 December 2005

Questions Relating to the Prehearing Submission by Applicant

- "The existing access point off of Valley View Drive would be upgraded and maintained". According to Chapter 50, a street is defined as 30' wide. At 28.5', Valley View Avenue is substandard by County standards. At the Planning Board meeting on November 21, 2005, Permitting Services stated that Valley View would probably need to be widened and they would require a by-pass lane around the drive through. We do not see these improvements on their drawings.
- The "BINDING ELEMENTS" listed in their letter are not binding elements at all. They are simply zoning elements. (p2, para.2)
- Under A. Zoning History of Site (p3, para 1) states that they are using the Optional Method of Development. Section 59-H-2.53, pertaining to the requirement that an SDP be filed, states in pertinent part that:
 - "In addition to the other requirements contained in this Article, the application for the optional method shall include a SDP...which shall adhere to the following requirement:
 - (a) The SDP...shall illustrate or specify how and to what extent the applicant will restrict the development standards or the use of the property to less than the maximum requested in the permitted zone..." What are they giving up?
- Under B. (p4, para 2) Compliance with Required Findings of Section 59-D-1.61 of the Zoning Ordinance, it is stated "***This requested development plan amendment complies with the five required findings listed in Section 59-3-1.61 of the Zoning Ordinance, relating to:***
 - (1) the zone's compliance with the use and density indicated by the master plan or sector plan."

We disagree, per the Comprehensive Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity, Approved and Adopted September, 1990:

- "The goals of this Sector Plan are: To preserve and protect the existing residential communities adjoining to the Wheaton business area. (page 2)
- "The General Plan recommends that: ***New development be channeled to preserve and protect existing communities from adverse impacts and undesirable non-residential intrusion resulting from commercial growth...*** (page 4)
- "The Plan indicates office use for the University Boulevard frontage between East Avenue and Valleyview Avenue. The residential sensitivity of these problems is indicated by the deterioration of a number of the homes. ***The conversion of these houses to offices would tend to stabilize this frontage and provide a buffer to the existing single-family community to the north. Future development should be similar in scale to the existing conversions that have taken place in the block between East Avenue and Valleyview (Valley View) Avenue.***" (page 33)
- "The single family areas to the north and west of the Central Business District are stable residential areas which have shown some signs of deterioration due, in part, to speculation about commercial rezoning. It is recommended that the ***existing single-family character of these areas be reaffirmed.***" (page 35)
- "Recommends C-T zoning (***low intensity office development***) for the northern frontages of University Boulevard between East Avenue and Valleyview (Valley View) Avenue,...***New development should be limited to existing lots and should be discouraged on assemblages of more than one lot. Conversion, where appropriate, and low-intensity new development are encouraged to buffer exiting single-family residences from adverse effects associated with major traffic arteries.***" (page 46)

The Commerce Bank proposal is not "similar in scale to existing conversions" and is not a "conversion of these houses to offices". The proposal does not reaffirm the "existing single-family character", is not "low intensity office development", and does not "preserve and protect existing communities from adverse impacts."

This proposal requests a development that will assemble 5 lots that were originally subdivided in 1925. With a frontage facing University Boulevard at 260 feet, it will have a greater frontage than Chevy Chase Bank (zoned C-O, 203.28 feet), Washington Federal Credit Union (zoned C-2, 237.92 feet), or McDonald's (zoned C-2, 145 feet), ***the proposed facility is not similar in scale to the existing conversions that have taken place.***

According to Mr. Kline, (p6, para2) "the proposed bank facility is clearly 'low intensity' by virtue of its small

Kensington View CA Statement on DPA 05-2 12 December 2005

size when compared with what, in terms of FAR (0.101 vs. 0.500) and square footage (4,100 SF proposed vs. a maximum of 19,564 SF), is permitted in the C-T zone."

- o First, "low-intensity" does not mean building coverage. "Low-intensity" speaks to impact from trips to and from the facility and the density of activity generated on the site. At 154 peak p.m. trips, 116 (75%) of which will use Valley View Avenue, this proposal can hardly be considered "low intensity office development".
- o According to their drawings, there is approximately 85 feet between their Valley View entrance and the stop line at the light on University Blvd. The length of a 1997 Chevy Blazer (a medium size car by today's standards) is 14'¾". If you allow 2 feet between cars, you can stack 5 cars at the light on Valley View. With three drive through lanes, by estimates in their Traffic Study, they will have 77 cars (50% of trips) sitting in lanes during pm peak hours just 13.6 feet from residential side yards.

When the Prehearing Statement speaks to FAR and square footage, Section 59-C-4.30 speaks to lots, not developments. A lot with 15,000 square feet would have a maximum building coverage of 5250 square feet (not 19,564 SF). FAR on a 15,000 square foot lot would be capped at 7,500 square feet. 19,564 SF is exactly why these lots should not be combined.

"With regard to the buffering function to be performed by the proposed bank, the bank will be strategically placed to serve as a noise attenuation device for the neighborhood." *When Westfield built an 18 foot tall wall across the street from these properties, Kensington View now has a bouncing board for the noise on University Blvd. This wall intensifies noise to our neighborhood. A six foot fence and some landscaping will not provide the buffer that the current 3 houses and trees do. As stated previously, bringing 154 cars just 13.6 feet from the neighboring houses brings not only traffic noise, but fumes from idling cars sitting in drive through lanes.*

(p6, para4) "Moreover, the recommendations in the 1990 Sector Plan should be read with an eye toward their derivation. The text on page 99 of the 1978 Wheaton Sector Plan is **virtually identical** to the text cited above. That means the 1990 Plan's recommendations are based on conditions and assumptions formulated more than 27 years ago. There have undoubtedly been changes in the surrounding neighborhood since the 1990 Plan was adopted, and most certainly changes have occurred since the 1978 was approved, that suggest flexibility in interpreting the Sector Plan would be appropriate".

Resolution No. 11-448 adopted September 15, 1987 described the property location:

"The District Council finds that the Surrounding Area of the subject property, for the purposes of analyzing whether the requested reclassification satisfies the purpose provisions and compatibility requirement of the C-T Zone, can be described as being bounded on the east by Wheaton Plaza Shopping Center in the C-2 Zone, on the north by Viers Mill Road, on the west by the Kensington View R-60 Subdivision, and on the south by Hillsdale Drive and Drumm Avenue. East of the subject property along University Boulevard lots are developed in the C-T and R-60 Zones and include a printing shop, a tailor shop, a real estate and title company, and an optometrist office. A C-O Zone office building located at the corner of East Avenue. Between East Avenue and Viers Mill Road there is a McDonald's Restaurant and Best Western Motel in the C-2 Zone. The land to the north and west of the subject property is zoned R-60 and developed with single-family detached houses." **If you substitute the names Westfield Shoppingtown for Wheaton Plaza, a lawyers office for real estate and title company, and The Ambassador for Best Western Motel, you describe the location as it stands today. There have been new homes constructed in Kensington View on lots that were previously unimproved, but that only reaffirms the "residential character" of the neighborhood. The changes that are now happening in the Wheaton area were anticipated in 1987, and when the Sector Plan is updated, it is unlikely that there will any justification for amending the recommendations for these lots, because of their importance as the gateway to our residential community.**

We disagree with the statement "Moreover, as the westernmost "gateway" to the Wheaton Downtown area (p8, para 1), the architectural style of the proposed building (as shown on the concept drawings included as part of the application) is compatible and appropriate (especially with adequate landscaping and screening as proposed), that will serve to attractively distinguish the bank from the residential neighborhood while not detracting from the character of that neighborhood."

First, while Commerce Bank may see this area as the "westernmost gateway" to Wheaton, **the area between East Avenue and Hillsdale Drive is the only remaining gateway to our community. The proposed building is not "similar in scale to the existing conversions" and is not a "conversion of**

Kensington View CA Statement on DPA 05-2 12 December 2005

these houses to offices". The proposal does not reaffirm the "existing single-family character" and is not "low intensity office development". DPA 05-2 does not satisfy the language and intent of the Sector Plan or of the CT zoning.

"The subject development plan amendment (p8, para 3), which proposes to consolidate the three existing lots into one lot consisting of 39, 129 square feet of total land area complies with the building coverage and height limits of Section 59-C-4.303."

- o The Sector Plan states specifically to these properties "New development should be limited to existing lots and should be discouraged on assemblages of more than one lot." We believe this statement speaks to the land use (whether through a re-subdivision or through easements) and clearly speaks to the dangers of bundling 3 C-T properties into a development that would be larger than the other C-T properties between East Avenue and Valley View Avenue. Since C-T zoning is a "floating zone", it does not change the base zone (in this case is R-60). The zoning code states:
- o Sec. 59-B-5 Special Provisions for Conditions predating 1958:
 - "Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a one-family dwelling only, even though the lot may have less than the minimum area for any residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded except that:
 - (a) a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance." This is further clarified by the Department of Permitting Services Code Interpretation/Policy which states "For purposes of clarification and consistency, the Department has determined that the language of the 1928 Zoning Ordinance as originally enacted will be the single reference point for determining development standards on lots recorded prior to March 16, 1928...Therefore, standards including minimum lot area and setbacks must comply with the provisions of the 1928 code."

Sec. 50-29 Lot Design

(b) Additional requirements for residential lots

(2) Resubdivision. Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat book shall be of the same character as to street frontage, alignment, size, shape, width, area and suitability for residential use as other lots within the existing block, neighborhood or subdivision.

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, except those strictly for agricultural use, which is located on more than one (1) lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot...

We believe that if Commerce Bank does not combine the lots through re-subdivision, they will not be allowed to receive building permits, since their building crosses the lot lines between Lots 22 and 23. If they do request a re-subdivision, Chapter 50-20 would not allow the combination of lots.

For these reasons, we believe the intent of the Sector Plan is clearly not being met.

The applicant would like us to believe they can build a building that has two fronts and two sides, but no rear. The Front setback (from University Blvd.) states that there is 38 feet to canopy from University Blvd. The Front setback (from Valley View Ave.) is 90.4 feet, the Side setback (from North, residential) is 18.9 feet and the Side setback (from East, commercial) is 93.5 feet.

There is a 40 foot building restriction line on University Blvd. Chapter 59 states under definitions:

"Building coverage: The area of a lot that is occupied by the main and accessory buildings, including covered decks, porches, and steps." The building coverage is 4,915 SF, not 4,105 SF.

"Building line: A line, parallel to a lot line, creating an area into which a structure must not project, except as provided in article 59-B of this chapter."

Kensington View CA Statement on DPA 05-2 12 December 2005

Sec. 59-C-4.305 Setbacks states "All buildings must be set back from lot lines at least as follows" **Setbacks are measured from lot lines, not development lines.** Since we are not aware of any re-subdivision request, the setbacks are as follows:

- o Front Setback is 38 feet to canopy. Since there is a 40 foot building restriction line, the front setback is not met.
- o Rear Setback 13.6' to drive through lane, 18.9' to building. This is not adequate. The existing structure has a rear yard setback of 70 feet.
- o Side Setback between Lot 23 and Lot 7 is 25 feet. The side setback is met.
- o Side Setback between Lot 22 and Hugo's is 6 feet over the lot line. The setback should be 15 feet inside of the lot line per Chapter 59-C-4.305. The side setback is not met.
- o Finally, it is stated that "The proposed internal vehicular circulation as indicated on the submitted development plan will be adequate and efficient to accommodate safe movement of traffic within the development."

With 25 parking spaces of which 6 employs will park, where will 77 cars (the peak hour trips not going through the drive through) park? Where is the extra lane requested/recommended at the Development Review meeting?

Further, we would like to point out:

"Retail trades, businesses, and services of a general commercial nature" are only permitted in the C-2 zone.

- Per the Commerce Bank booklet that was distributed to the neighborhood: "Commerce Bank is a \$25 billion financial services retailer with more than 300 stores in New Jersey, New York, Pennsylvania, and Delaware."
- Banks and financial institutions are permitted in C-T, O-M, C-O, C-P, C-2, C-4, C-5, C-6, and H-M zones.
- We maintain that if these lots are combined (or Commerce Bank is allowed to build one site plan across these lots), that this construction would be in violation of the zoning code. The zoning code states that to change the zoning, there must be a change in the neighborhood. There has been **no significant change in the neighborhood surrounding the subject site since the C-T zone was granted in 1987 (G-540). The Chevy Chase Bank on East Avenue is similar in size and scale as this proposal. The lot is zoned C-O and there are four (4) entrances/exits.**

Additionally, we would like to refer you to the Commercial Properties Through Environmental Design (CPTED) document which WUDAC and Wheaton Redevelopment Office have recommended as guidance for new development in the Wheaton area. Guidelines include:

4. Management

- Operating hours should coincide with those of other neighboring businesses
- Drivethroughs

"The drive through is potentially the perfect place for criminal activity. They are often used at odd hours, are hidden from view, and those using them will almost certainly be carrying cash. The rule of thumb in the design of a drive through can be reduced to one word: **visibility**" The proposed drivethrough's are in the rear of the building - not "visible" and immediately adjacent to a residential community.

Commerce Bank proposes late hours with their ATM's in the front lobby. In order to access an ATM (open 24 hours), a customer will have to park, walk to the lobby, open the lobby door with a card, and return to a parked car with cash in hand. During normal business hours, 25 parking spaces will be available, of which 6 will be used by employees - if 50% of their business is drive through, where will their other customers park? They predict 152 peak hour pm trips, 76 of these are drive through, 76 will need to park.

Bank hours will be seven days a week. Besides McDonalds (zoned C-2), no other business is open seven days a week between East Avenue and West Avenue. The two banks in Kensington View (zoned C-O and C-2) are not open on Sundays.

Traffic Impact Study - We found the following problems in the Traffic Impact Study for this project,

Kensington View CA Statement on DPA 05-2 12 December 2005

including:

1. Midvale Road

- Midvale Road is omitted from Study
- Midvale is 100' from the University Blvd. Entrance
- Midvale has a line of site problem when exiting onto University Blvd.
- Midvale is only access to/from Hugo's
- East bound University Blvd. has left turn north onto Midvale, but no u-turn (cars that miss Valley View will u-turn at Midvale).
- The recent Pedestrian Safety Study recommends that bus stops be located near signalized intersections, in this case Valley View and University. There is no dedicated bus lane at this site, buses stop in the curb lane, which is where bank clients will also be exiting.
- Where is traffic count from Midvale?

2. University is 8 lanes, not 6 lanes in vicinity of site.

3. Valley View doesn't "provide access to residential neighborhoods", it is two blocks long and dead-ends in Kensington View at Einstein field. It is designed to serve only the residents.

4. East Avenue is one block long and dead-ends at Kensington Boulevard

5. Hillsdale is two blocks long and dead-ends at Valley View.

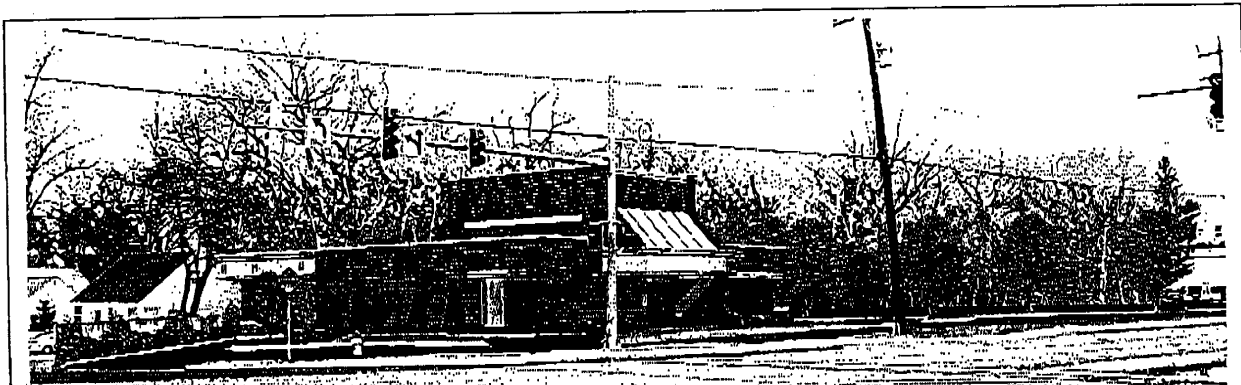
6. Site Trip Generation

- o 58 am peak hour trips; 154 pm peak hour trips
- o "Not all of these trips would be new trips added to the public street network. A portion of these trips will be 'pass-by' trips." All northeast trips will be new to Valley View (no pass-by trips.)
- o Northeast entrance (75%) is only accessible from Valley View (page 17)
- o Current Valley View (page 8): am 0 in 2 out; pm 6 in 8 out
- o Commerce development: am 44 cars in/out; pm 116 cars in/out
- o The drivethroughs will exit on Valley View
- o Where will these 116 pm peak hour cars stack on Valley View or on University Blvd. Eastbound?

We find the following design problems:

- **Drivethroughs** behind building, 13.6 feet from residential side yards
 - Brings car noise, fumes into residential yards (cars will be idling while waiting for teller)
 - All drive through traffic exits on Valley View (only controlled intersection for neighborhood residents).
 - Does not meet CPTED guidelines supported by the Wheaton Redevelopment Office

Building style is conspicuously branded— is visually similar in design to the Wacovia Bank across University Blvd. in the Westfield Shoppingtown mall, any Burger King, and many other commercial uses with prominent glass in front. It does not reaffirm the residential character of the neighborhood as recommended in the Sector and it does not comply with the five required findings of the zoning ordinance.

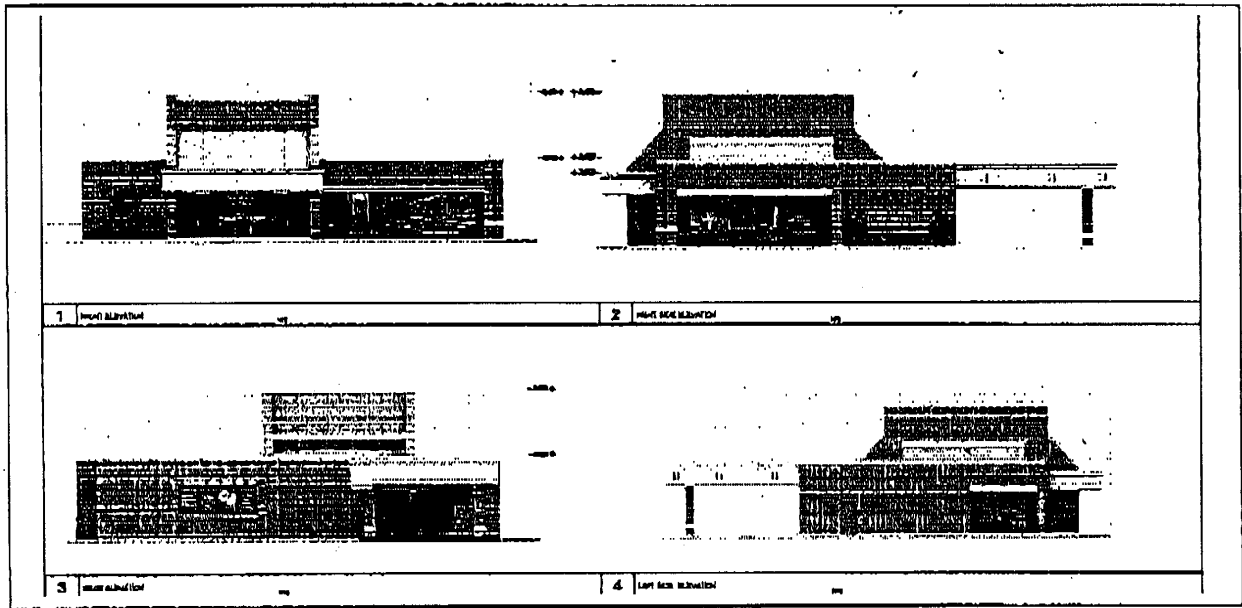


Note the visual dominance of the proposed structure over the adjacent residence and the proximity of the drivethroughs to the residence, and the extent of the paving around the site that is common to commercial uses.

Kensington View CA Statement on DPA 05-2 12 December 2005



Smaller, multiple structures separated by green space, with less paved area visible from the front provides a more appropriate transition to the adjacent residential community.



The visual design of the proposed structure centered on a expansive paved area gives the impression a dominating commercial facility rather than a transitional use between commercial and residential.