

**MEMORANDUM**

DATE: January 13, 2006
TO: Montgomery County Board of Appeals
FROM: Sandra Youla, AICP, HKIP (301-495-4624) *SY*
for the Department of Park and Planning
VIA: Carlton Gilbert, Zoning Supervisor, and *CG*
REVIEW TYPE: Special Exception for Hotel, per 59-G-2.33
APPLICANT: Baywood Hotels, Inc.
CASE NUMBER: S-2656
REVIEW BASIS: Chapter 59, Zoning Ordinance; Advisory to Board of Appeals
ZONE: I-1/Cherry Hill Employment Overlay Zone of the Fairland Master Plan
LOCATION: 2200 Broadbirch Drive
Silver Spring, MD 20904
MASTER PLAN: Fairland Master Plan (May 1997)
FILING DATE: July 27, 2005
PUBLIC HEARING: January 30, 2006, 9:30 a.m. at the Hearing Examiner

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** subject to the following conditions:

1. The applicant is bound by all submitted exhibits and verbal representations to staff, to the extent such exhibits and verbal representations are identified in this staff report recommending the grant of the special exception.
2. The applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. The applicant must at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
3. The applicant must comply with the conditions of the Montgomery County Department of Permitting Service's letter of May 27, 2005 approving the site's Stormwater Management Concept Request.

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4. There must be no encroachment into the wetland buffer areas except for necessary stormwater management outfalls, as approved by DPS.
5. The applicant must not disturb or in any way interrupt the groundwater monitoring wells at the site and must allow access for monitoring.
6. The hotel on the site must not exceed 104 rooms, which is equivalent to 34,118 square feet of general office use.
7. At the time of site plan review, the applicant must coordinate with the Montgomery County Department of Public Works and Transportation/Division of Transit Services to install a bus shelter on Broadbirch Drive in the vicinity of the hotel, and must affirm in the record before the Hearing Examiner that it agrees to do so.
8. At the time of site plan review, the applicant must provide adequate sidewalks, handicapped ramps, and crosswalks, both on and off the property. Sidewalk ramps must meet Americans with Disabilities Acts requirements.
9. Prior to the close of the evidentiary record, the applicant must submit a revised lighting plan and photometric analysis and the Hearing Examiner must make a finding as to whether the lighting plan is adequate and sufficient to safeguard the general community interest and welfare. The Hearing Examiner may wish to request comment from urban design staff.
10. Prior to the close of the evidentiary record before the Hearing Examiner, the applicant must submit revised elevations and floor plans that accord with the final special exception site plan in the record.
11. Prior to the close of the evidentiary record before the Hearing Examiner, the applicant must submit evidence into the record of the existence of an ingress/access easement from Broadbirch Drive along the west side of the subject property and along the drive aisle on the north side of the subject property where it connects to the drive aisle on the adjoining property.

PROPOSAL AND BACKGROUND

Introduction

Baywood Hotels, Inc. requests a special exception for a hotel (a Hilton Garden Inn) at 2200 Broadbirch Drive, Silver Spring on land zoned I-1 (Light Industrial) and within the U.S. 29/Cherry Hill Road Employment Area Overlay Zone of the Fairland Master Plan.

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The property, whose legal description is Lot 39, Montgomery Industrial Park, is located on the north side of Broadbirch Drive, approximately 450 feet to the west of the intersection of Broadbirch Drive and Tech Road. Nearby intersections include Tech Road and Columbia Pike (U.S. 29) to the northwest of the site, and Columbia Pike and Cherry Hill Road to the northeast of the site.

The subdivision plat for Lot 39 was recorded on 6/3/2005 in Plat No. 23171, MNCPPC No. 625-46. The lot was formerly part of Parcel "CCC" of the Westfarm Technology Park. Lot 39 is irregularly shaped and slopes downward from rear to front, with its lowest points in the southwestern corner. The lot has a right-of-way frontage of approximately 288 feet along Broadbirch Drive.

Review Procedures, Site Plan Amendments, Easements

The subject property is already a recorded lot and will not need to go through subdivision.

However, If the subject special exception is approved, the property also would have to go through site plan review pursuant to the requirements of Division 59-D-3 of the Montgomery County Zoning Ordinance. Site plan review is necessary because the proposed hotel, at a maximum of 55 feet and four stories, is over three stories and 42 feet, and thus, according to 59-C-5.31(b) must comply with the special regulations for the I-1 zone found at 59-C-5.41, including site plan review. In order to ensure that at the time of site plan approval there would be as few changes as possible from the special exception site plan and landscaping and lighting plan approved by the Board of Appeals for the special exception, staff brought the special exception plans on January 9, 2006 to the Development Review Committee, which normally reviews site plans but not special exceptions, and also staff consulted with the site planner who reviewed the WesTech Village Center site plan (to be discussed later in this report) for the property immediately to the west of the subject site.

Staff notes that it is unusual for a special exception to also go through site plan review. Most zones in the Zoning Ordinance exclude special exceptions from site and project plan review, most likely because such multiple reviews are considered redundant. Consequently, staff suggests recommends the Hearing Examiner may wish to consult legal counsel for the Planning Board and legal counsel for the Board of Appeals to ensure there is an agreed upon protocol for a) how changes and amendments to the approved special exception plans and site plans should be coordinated so that the prerogatives of each board are respected and each board receives adequate notice of such changes and amendments, and b) which enforcement staff -- DPS or MNCPPC -- has jurisdiction. The Board of Appeals and the Planning Board may wish to consider making each other parties of record in the respective special exception and site plan

cases for the subject site. The Hearing Examiner may wish to submit the agreed upon protocol into the record.

Staff also notes that the Fire Marshal requires that the drive aisle at the northern edge of the subject property be 20 feet wide and align and connect to the drive aisle on the adjoining property. The applicant has shown that the drive aisles connect in the plan received by staff on 1/10/06. However, that plan indicates that in order to achieve connectivity, the approved alignment of the drive aisle on the adjoining property must shift, which would require the adjoining property owner to seek and receive a site plan amendment for the site plan governing its property.

It should also be noted that there must be evidence submitted into the record before the Hearing Examiner of recorded ingress/egress easements for the shared drive aisle on the west of the subject property and for the aforementioned drive aisle connection on the north of the subject property. Staff recommends this as a condition of approval.

Neighborhood Description

For the purposes of this staff report, the neighborhood has been defined as that portion of the Cherry Hill Employment Overlay Zone bounded by U.S. 29 (Columbia Pike) on the northwest, Cherry Hill Road on the north and northeast, Broadbirch Drive on the south, and Tech Road on the southwest, as well as all the properties fronting Broadbirch on its south side. (The reader should note that this definition of neighborhood is adopted for the purposes of determining compatibility and cumulative impact of the addition of another special exception, and not for the purposes of determining the market area, demand, supply, and ultimately need, as is required per Section 59-G-1.25 of the Montgomery County Zoning Ordinance. Hence the Supplementary Needs Analysis submitted by the applicant on January 22, 2006 defines the market area as within a three-mile radius of the subject property.)

The neighborhood as defined here is zoned I-1 (Light Industrial), I-3 (Technology and Business Park), C-6 (Low Density, Regional Commercial), and a narrow strip zoned RE-2 for Prosperity Drive. Immediately to the west of the site on Lot 38 of Montgomery Industrial park is a property under construction for the "WestTech Village Corner," a development of seven freestanding buildings containing restaurants, retail space, and a bank with a drive-in window. This property was the subject of Site Plan No. 8-05022, which was approved with conditions by the Planning Board via its Opinion dated August 9, 2005. A 24,899 square foot structure housing the International Fabricare Institute was previously located in the northwestern portion of Lot 38. To the west of Tech Road, just outside the defined neighborhood are office condominiums. To the north of the subject site is a self-storage facility on Parcel N701 and an office building on Parcel N600, both fronting on Prosperity Drive, which parallels Columbia Pike. Immediately to the east of the subject site is a Gannett facility with satellite dishes on Parcel EEEE

within the WestFarm Tech Park. Other notable uses within the WestFarm Tech Park include a Home Depot on Part of Parcel E. Near the Home Depot, on Lot 33 of Montgomery Industrial Park, on the southeast corner of Prosperity Drive and Whitehorn Court is a Courtyard by Marriott (hotel). Opposite the subject site to the south across Broadbirch Drive is a wooded strip on Outlot E and the new WSSC Consolidated Laboratory Facility on Parcel 970, which fronts on Tech Road. On the southwest quadrant of the intersection of Cherry Hill Road and Broadbirch Drive is a shopping center that includes a supermarket and Target.

Staff notes that outside the defined neighborhood but not far is a Residence Inn by Marriott at the southwestern quadrant of the intersection of Cherry Hill Road and Plum Orchard Road, operating as a special exception (S-2552).

Property Description and Sign Posting

The property is composed of 1.69 acres (73,779 square feet). The property currently is fenced and vacant, and contains some trees and, in the southeast corner, a storm water management pond. Staff visited the property on a weekday afternoon, and the sign was properly posted.

Broadbirch Drive and Links to the Transportation Network

Broadbirch Drive is a two-way street with two lanes of traffic in either direction, and there are four-foot wide sidewalks and approximately 8-foot wide tree panels with street trees approximately 35 feet on center on both sides of the road.

Filing, Planning Board and Public Hearing Dates, Submissions

The application was filed 7/27/05 and is incorporated into the staff report by reference. The originally scheduled Planning Board date was 12/8/05 and Public Hearing date was 12/16/05. In order to allow the application to be brought to the pre-Development Review Committee meeting on 1/4/06 and the Development Review Committee meeting on 1/9/06, the Planning Board date was postponed to 1/19/06 and the public hearing date to 1/30/06.

During the course of review of this application, staff received a variety of additional submissions, including but not limited to the following:

Received by staff 12/14/05: revised special exception site plan for Lot 39 showing reoriented building and no parking in wetland buffer, overall site plan showing Lot 38 and Lot 39, special exception site plan details, and revised landscape plans (3 pages). These plans were submitted to the Development Review Committee for review.

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Received by staff 12/20/05: revised needs analysis, further revised special exception site plan for Lot 39 showing corrected development standards table (not submitted to DRC).

Received by staff 1/10/06: sight distance evaluation, additionally revised site plan incorporating many DRC comments, additionally revised landscape plans (3 pages) incorporating DRC comments.

Received by staff 1/11/06: supplementary needs analysis with attachments.

Details of Proposal

According to the initially submitted application:

Baywood proposes the development of a 104-room Hilton Garden Inn. The hotel is targeted to the individual business traveler as well as families traveling on the weekend. More specifically, Baywood anticipates that approximately 60% of its business will be the corporate/business guest, 30% tourists or guests visiting the area as a result of an event in downtown Washington, D.C. and 10% groups, weddings and social gatherings. Group tours are expected during the peak tour month of April. The average anticipated length of stay per guest is two nights. The anticipated average weekday occupancy is 80 percent, with an expected drop to approximately 60 per during the weekends.

The hotel anticipates a total work force of approximately 25 employees, with a maximum of 12 employees expected to be on site at any one time. The primary employee shifts are 7:00 a.m. to 3:00 p.m., with approximately 12 employees on duty during this time and 3:00 p.m. to 11:00 p.m., with approximately 4 employees on duty on a given day. There are only two employees on site between 11:00 p.m. and 7:00 a.m. A security guard will be retained to provide security at night. At all hours there will be at least one manager on duty.

The Hilton Garden Inn will provide a cooked-to-order menu breakfast during the morning hours. Thus, the hotel will include a limited sized kitchen facility. No other meals will be served at the hotel. Subject to obtaining the required state and County alcoholic beverage licenses, the hotel is expected to have a small bar (5 to 6 seats) or alternatively, will host nightly or evening receptions for its guests.

It is anticipated that deliveries to the hotel will be relatively minor given the limited foodservice. All deliveries will be made by a stepvan. Given the limited nature of the deliveries, a loading dock is not necessary; instead, loading will occur through a side door of the hotel. Laundry generated by the hotel will be washed on site, thus eliminating an additional outside service which would generate more deliveries to the Property. The hotel laundry room will consist of two washers and three dryers. The

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dumpster to serve the Property is located in the southeast corner of the Property setback approximately 60 feet from the street, thus minimizing any interference with the use of the Property and visibility to the public. In addition, the dumpster will be screened with a six foot high board-on-board fence. Trash will be picked up three times a week.

Upon arrival, guests will check in at the front desk, located in the lobby of the hotel, facing Broadbirch Drive. Subsequently, guests may access their room either by entering through the main lobby or more typically, through one of the 24-hour card key controlled exterior doors into the residential corridors.

Staff spoke with the applicant, who noted that there would be no meeting rooms and no suites.

Special Exception Applications in the Defined Neighborhood

Staff found that aside from the current application, the following applications were filed for properties in the defined neighborhood:

- S-1274 Hotel, Marriott Corporation applicant, at Cherry Hill Road and Prosperity Drive, approved with conditions in BOA Opinion dated 6/26/86. (Staff assumes this was never built.)
- S-1258/59 Hotel, Barrett Penan applicant, Broad Birch Drive and Whitehorn Court, approved with conditions in BOA Opinion dated 6/2/86, resolution to extend time 8/17/87. (Staff assumes this may be the Courtyard Marriott.)
- S-1589 Hotel, Park Hotel Associates Limited, by Rojac Group, Inc., US 29/Cherry Hill Road/Broadbirch Drive, SS, 11.61 acres, approved with conditions in Board of Appeal Opinion dated 12/20/88. (This was never built and a Home Depot was built there instead.) **CHECK THIS**

Staff thus finds that there would be no adverse effects from the addition of the proposed special exception on the subject site.

Plans and Maps

Please refer to the Appendix for a Vicinity Map, Updated Zoning Map, Record Plat, Tax Map, Aerial Photo, Additionally Revised Site Plan received by staff 1/10/06 incorporating many DRC comments, and Revised Landscape Plan (page 1 of 3) incorporating DRC comments. (Staff has not received a revised lighting plan and photometric analysis with light fixtures required by DRC, and does not include the original lighting plan and photometric analysis, which was for different fixtures.)

ANALYSIS AND CONCLUSION

Main Issues/Questions

The application, including the initial special exception plans and their subsequent iterations, raised a variety of questions and issues. These issues included:

- removing parking and any other disturbance from the wetlands buffer,
- providing documentation that the site had been adequately remediated,
- providing proof of storm water management concept approval,
- providing a sufficient needs analysis study,
- providing documentation that the hotel would be no more than 104 rooms in order to meet LATR requirements and density restrictions,
- providing assurances that site distances were adequate,
- providing a variety of site and landscape and lighting plan improvements. These improvements included:
 - providing a revised development standards table utilizing the correct development standards and showing a north arrow on the plan,
 - reorienting the building to allow use of the shared access driveway and compatibility with the recently approved adjacent “WesTech Village Corner” to the west,
 - providing additional landscaping along the southern edge of the parking facility to ensure compatibility with the landscaping of “WesTech Village Corner” to the west,
 - changing lighting fixtures to be compatible with the fixtures used at WesTech Village Corner,
 - providing a bus shelter to serve passengers on Broadbirch Drive,
 - changing the pedestrian circulation system (including showing all necessary handicapped ramps, allowing more space between sidewalks and curbs and buildings, and showing connections to the street and adjacent site), and
 - changing the vehicular circulation system to ensure that the passenger loading area provided less awkward circulation, the interior drive aisle to the north was 20 feet wide and aligned with the adjacent site to the north for adequate fire and safety access and two-way circulation, and as previously mentioned, the shared driveway with WesTech was utilized.

Most of these issues were largely resolved during the review process. Remaining unresolved matters were deemed for the most part to be sufficiently minor to allow redress through conditions of approval.

Master Plan Conformance

A memo dated January 4, 2006 from Community-Based Planning staff concludes that “the proposed use and location are consistent with the intent of the master plan, is easily reached via the major road network, and is a complementary use with the adjoining restaurants project.” (See Appendix.)

Transportation Issues

A memo dated January 9, 2006 from Transportation Planning staff notes that the application satisfies LATR requirements and notes that a traffic study was not required. (See Appendix.) The memo was written on the basis of the revised special exception site plan received by staff on 12/14/06 and reviewed at DRC on 1/9/06. The memo recommends four conditions of approval, three of which make recommendations for actions to occur at time of site plan approval. Since staff has received an additionally revised site plan from the applicant on 1/10/06, some of these conditions have been addressed, at least in part, and others have been recommended by zoning staff as conditions of approval for the special exception. Staff also received on 1/10/06 a site distance evaluation form signed and sealed by the applicant's engineer indicating that site distances are adequate, but the form has not yet been approved by Department of Public Works and Transportation.

Environmental Issues

A memo dated January 9, 2006 from Environmental Planning staff (see Appendix) describes certain significant environmental issues with this application, and recommends three conditions of approval, which zoning staff has recommended as special exception conditions of approval.

Needs Analysis

Section 59-G-1.25 of the Montgomery County Zoning Ordinance requires that special exceptions for hotels may be granted only if the applicant proves there is a County need for the use, as described in the Zoning Ordinance text. The initial application addressed need in a few paragraphs, and Research and Technology staff deemed this to be insufficient. The applicant then submitted a revised needs analysis, which staff received on 12/20/06. Research and Technology staff reviewed this submission and still deemed it insufficient. The applicant then submitted a supplemental needs analysis, which staff received on 1/11/2006. Research and Technology staff reviewed this and found that the applicant shows a need for the proposed hotel at 2200 Broadbirch Drive, as discussed in Research staff's memo dated January 12, 2006 (see Appendix).

Landscape Plan

Revised landscape plans received by staff on 12/14/06 were submitted to DRC members for review. Few landscape comments were made at DRC. The main comment was that additional landscaping was required along the southern edge of the parking lot to continue the landscaping on Lot 38 to the west. The additionally revised landscape plans received by staff on 1/10/06 incorporate these trees. Therefore zoning staff finds that the proposed landscaping (and screening, including for the dumpster) is adequate and sufficient to safeguard the general community interest and welfare, although the Hearing Examiner may wish to require confirmation from urban design staff.

Lighting Plan

A lighting plan was submitted with the application. However, the site plan has been revised several times but no new lighting plan was submitted. At DRC, it was noted that the lighting fixtures should be the same as used at the WesTech Village Corner. Therefore the applicant must submit a new lighting plan and photometric analysis before the close of the evidentiary record to the Hearing Examiner, who may wish to require confirmation from urban design staff that the lighting is adequate and sufficient to safeguard the general community interest and welfare. Note therefore that zoning staff is recommending approval of this special exception even though zoning staff cannot make findings on lighting, because the issue can probably be satisfactorily resolved before the Hearing Examiner and the applicant is anxious for the case to move along.

Development Standards/Parking/Plans

The additionally revised site plan received by staff on 1/10/06 includes a development standards and parking table, with columns indicating what is required/allowed and what is proposed. The table was reviewed by staff to ensure that the applicable development standards from the I-1 and Cherry Hill Overlay zones were listed in the table, and staff finds that they are.

The table shows that the proposed development and parking standards comply with the indicated requirements. Staff notes, however, that the plan is not sealed with an architect's or engineer's seal. Staff confirms that the setbacks listed in the table are as shown on the plan and measured correctly. Staff has not measured green areas in order to confirm that the amount provided is as stated. Staff also notes that building height as shown on the additionally revised plans submitted 1/10/06 may not conform to the heights shown on the elevations initially submitted with the application, since staff was told that some additional height was proposed in the final plans. Staff also notes that the floor plans submitted with the initial application may be inaccurate because the

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building has been reoriented. Staff therefore recommends as a condition of approval that before the close of the evidentiary record in front of the Hearing Examiner, the applicant submit floor plans and elevations that accord with the final special exception site plan in the record.

Four handicapped parking spaces are shown, although the southernmost one appears to be slightly too narrow to count as either a regular or handicapped space and thus must be widened. At least one of these four spaces is van accessible. Additional handicapped ramps must be shown on the site plan. The Hearing Examiner may wish to ask the architect or engineer to confirm that the proposed plan meets all applicable local, state, and federal accessibility requirements.

The Hearing Examiner may also wish to request the applicant to explain where loading and unloading for deliveries and pickups will take place, for the record.

At DRC, urban design staff suggested that the passenger loading and unloading zone was awkwardly designed and tabled a proposed revision to the design. The subsequent additionally revised site plan received 1/10/06 incorporated some but not all elements of that revision, and the Hearing Examiner may wish to request confirmation from urban design staff that the 1/10/06 passenger loading and unloading zone is sufficient.

As already noted, Staff also notes that the interior driveway connection on the north to the adjacent WesTech Farm, as shown on the /10/06 plan, appears to show changes to the approved WesTech site plan, and thus may require an amendment to the WesTech site plan. Also as noted, ingress/egress easements are also required on the north and west of the property and must be entered into the record.

See Appendix for excerpt from additionally revised site plan of the development and parking standards table.

Community Comment

Staff received no comment from the community.

General and Specific Conditions of Approval and Conclusion

Staff finds that with the conditions of approval recommended above, the application would likely meet all general conditions and all specific requirements, and all other applicable standards of the Zoning Ordinance as well. See Appendix. Therefore, staff recommends approval of the special exception