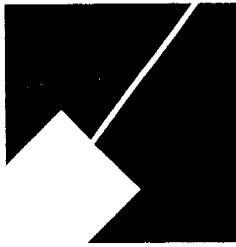


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

July 14, 2006

MEMORANDUM

TO: Montgomery County Planning Board

FROM: John Carter, Chief (301.495.4575) *JAC*
Community-Based Planning Division

Judy Daniel, Bethesda-Chevy Chase/North Bethesda Team Leader
Community-Based Planning Division *JDS*

SUBJECT: Application to File a Corrective Map Amendment: Edgmoor Lot 3 Block 12A (5,085 square feet), Change from the TS-R Zone to the R-60 Zone, Intersection of Arlington Road and Moorland Lane, Bethesda CBD

RECOMMENDATION

The staff recommends approval to file a Corrective Map Amendment with the County Council for Edgmoor Lot 3 Block 12A (5,085 square feet) to change from the TS-R Zone to the R-60 Zone. The Amendment will correct a technical error in Sectional Map Amendment G-711-94 for the Bethesda Central Business District (CBD).

INTRODUCTION

The owner of Lot 3, Block 12A has requested that a Corrective Map Amendment be filed to correct a technical error in the approved Sectional Map Amendment G-711-94 for the Bethesda CBD. The property includes 5,085 square feet of land with an existing residential structure. The property owner would like to retain the existing structure as a residential use or file a Special Exception as permitted in the R-60 Zone. Without a Corrective Map Amendment, the owner cannot receive an Occupancy Permit from the Department of Permitting Services.

The County Council approved Sectional Map Amendment G-711-94 for the Bethesda Central Business District in 1994. The Sectional Map Amendment was intended to implement the recommendations of the Sector Plan for the Bethesda CBD, dated July 1994. The Sectional Map Amendment did not discuss the zoning for this property, but the maps changed the zoning on this property from the R-60 Zone to the TS-R Zone by mistake.

FINDINGS

The Corrective Map Amendment will correct an error in the Sectional Map Amendment that was intended to implement the recommendations in the Sector Plan for the Bethesda CBD.

Conformance with the Requirements of the TS-R Zone

The TS-R Zone is a floating zone that requires approval of a Local Map Amendment with a Development Plan. The approved Sectional Map Amendment changed the existing zone from the R-60 Zone to the TS-R Zone in error without approval of a Local Map Amendment and a Development Plan.

The zoning for the adjacent parcels (designated as Lots 4, 5, 7, 8, and parts of Lots 1, 2, 9, and 10, Block 12A) was changed from the R-60 Zone to the TS-R Zone as part of Local Map Amendment G-561 with an approved Development Plan. Lot 3, Block 12A was not included in Local Map Amendment G-561.

Conformance with the Sector Plan

The property was not specifically discussed in the text of the approved Sector Plan for the Bethesda CBD. Although the property was shown as recommended for the TS-R Zone on the illustrations in the Sector Plan, the property should have retained the R-60 Zone.

COMMUNITY OUTREACH

The adjacent community and the Montgomery County Civic Federation are aware of the error in the zoning of this property, and they have requested that a Corrective Map Amendment be filed. The property owner is also aware of the error and also requests that a Corrective Map Amendment be filed. The Hearing Examiner has requested the approval of Corrective Map Amendment to correct the technical error.

CONCLUSION

The staff recommends that a Corrective Map Amendment be filed with the County Council for the following reasons:

1. The Corrective Map Amendment will correct the technical errors in the approved Sectional Map Amendment.
2. In accordance with the requirements of the TS-R Zone, the proposed technical adjustments to change the property from the TS-R Zone to the R-60 Zone are appropriate to correct technical errors.
3. The proposed R-60 Zone conforms to the recommendations in the Sector Plan for the Bethesda CBD.

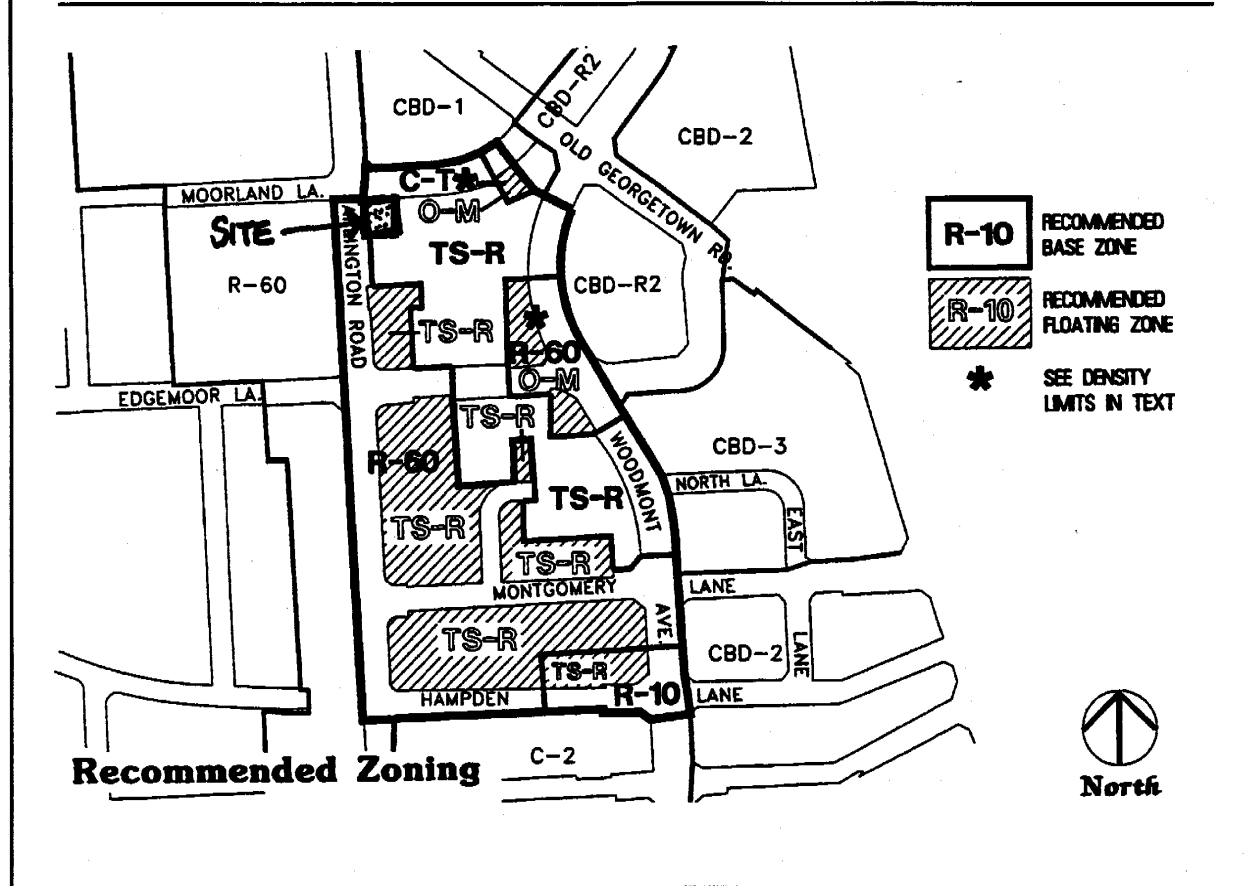
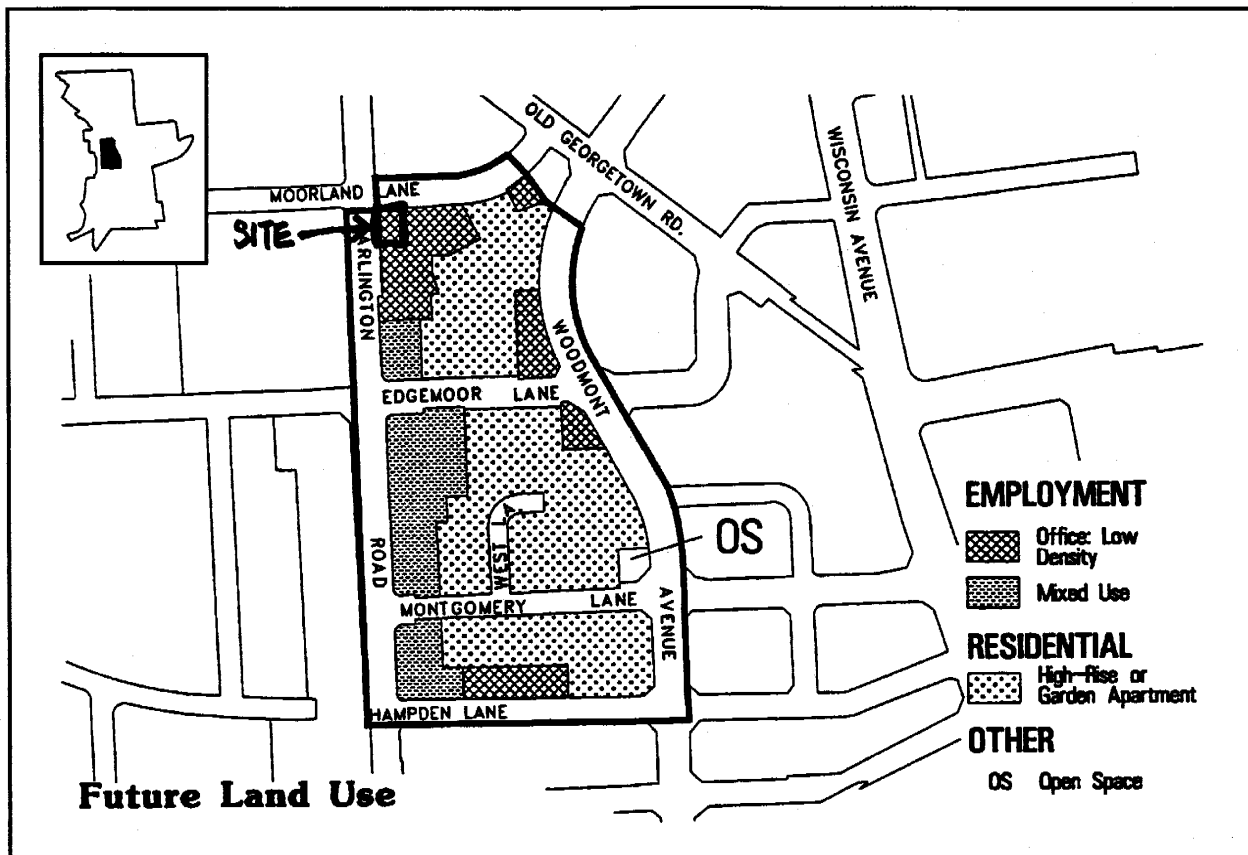
JAC:ha: j:\2006 staff reports\team 2\Edgmoor Lot 3

Attachments

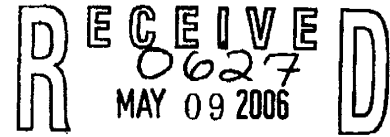
1. Location Map
2. Letter from the Montgomery County Civic Federation, dated May 8, 2006, with email from Martin Grossman, Hearing Examiner, dated February 3, 2006

TRANSIT STATION RESIDENTIAL DISTRICT

FIGURE 4.13



ATTACHMENT 2



OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

May 8, 2006

TO: Montgomery County Planning Board
c/o Chairman Derick Berlage
8787 Georgia Avenue
Silver Spring, MD 20910

FROM: Jim Humphrey
Chair, MCCF Planning and Land Use Committee
5104 Elm Street
Bethesda, MD 20814-2344

SUBJECT: Request for Corrective Map Amendment--Lot 3, Block 12A in Edgemoor
(property located at 7511 Arlington Road, Bethesda, MD 20814)

Dear Chairman Berlage,

I am requesting the Planning Board initiate a Corrective Map Amendment to remove the TS-R zoning that was incorrectly applied to Lot 3, Block 12A in Edgemoor--which property is located at 7511 Arlington Road in Bethesda--and to restore the R-60 zoning that it should have retained.

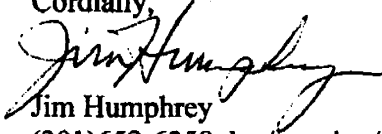
It has come to my attention that the subject property had TS-R zoning incorrectly applied to it on the county zoning map during a 1988 resubdivision process for a project known as The Christopher, initially called The Nicholas. (That TS-R project did include a property identified as Lot 3, Block 12B in Edgemoor, which perhaps was the cause of the confusion.) Dr. Edmonds, the owner and resident of the subject property at that time, did not allow her property to be included in the development plan for The Christopher (G-561 and G-583), nor was it included in the Local Map Amendment applied for in G-561 and G-583 and granted by Council Resolution 11-899.

The Montgomery County Zoning Ordinance, in Sec.59-C-8.45 and Sec.59-D-1.1, requires that in order for a property to be rezoned into the TS-R Zone category it must be included in a development plan (see Attachment No. 1--an email from Martin Grossman, Hearing Examiner, OZAH to John Carter, M-NCPPC Community Based Planning Director), and since this was not the case then the rezoning of the subject property was not lawful. MaryBeth O'Quinn, with Subdivision Review at Park and

Planning, has opined that the current owner will not lose the value of the lot, or of any upgrades or additions made to the structure since assuming ownership, as a result of this requested zoning correction since the property is available for legal occupancy as a resident (see Attachment No. 2--Staff Recommendation for TS-R Site Plan application, drafted by MaryBeth O'Quinn of your staff). In addition, the current owner may also apply for a Special Exception to allow the property to be leased for commercial use as professional office space.

I ask that the Board act expeditiously to correct this longstanding error that resulted in the application of inaccurate TS-R zoning to this property, a designation to which it is not lawfully entitled, and restore the proper R-60 zoning. Please feel free to communicate with me if you want to discuss this further.

Cordially,



Jim Humphrey
(301)652-6359 day/evening/weekends
email - theelms518@earthlink.net

attachments (2)

cc: MaryBeth O'Quinn, M-NCPPC Subdivision Review
John Carter, M-NCPPC Community Based Planning
Martin Grossman, Hearing Examiner,
Office of Zoning and Administrative Hearings
Dan Wilhelm, MCCF President

Attachment No. 1**Carter, John**

From: Grossman, Martin [Martin.Grossman@montgomerycountymd.gov]
Sent: Friday, February 03, 2006 4:43 PM
To: Carter, John
Cc: Carrier, Francoise
Subject: Apparent Zoning Map Error in Edgemoor Lot 3, Block 12A

Dear John,

I am writing with regard to the apparent zoning map error about which you referred Mr. Jim Humphrey to our office and which we discussed a couple of times on the phone this week. I tried unsuccessfully to reach you by telephone today, and since I know you are on a tight time-frame regarding the Planning Board's impending review of Site Plan #8-05030, I wanted to get back to you promptly.

I have now read the Council's Resolution 11-899, dated June 14, 1988, and it is clear from that document and from the re-zoning application and the maps and reports in the underlying LMA files (G-561 and G-583), that Lot 3 of Block 12A in Edgemoor, was not included in the Local Map Amendments applied for in G-561 and G-583, and granted by Resolution 11-899. As you know, Zoning Ordinance §59-H-6.3 prohibits Council approval of a rezoning area greater than that applied for. Thus, Lot 3 of Block 12A should have retained its R-60 Zoning following the referenced LMA's.

You mentioned to me that the Council also applied the TS-R Zone to Lot 3, as well as the neighboring lots that were properly in the TS-R Zone, as part of Sectional Map Amendment G-711-94. Although I have not yet seen the documentation relating to that SMA, the only authority of which I am aware that permits the Council to approve a floating zone as part of an SMA is the language in Zoning Ordinance §59-H-7.2, which allows the floating zone to be approved ONLY "upon consent of the landowner," and ONLY with regard to "those floating zones which do not require the submission of and approval of a development plan" As you know, the TS-R Zone is one of the Floating Zones that do require a development plan. Zoning Ordinance §§59-D-1.1. and C-8.45. Thus, as far as I can tell from the information I have seen to date, the Sectional Map Amendment could not have lawfully rezoned Lot 3 to TS-R Zone. If Lot 3 of Block 12-A has been erroneously included within the TS-R Zone on the subsequent zoning maps, then I suggest the Planning Board initiate a Corrective Map Amendment, as provided for in Zoning Ordinance §§59-H-10.1 *et seq.*

Of course, I am expressing no opinion on what zone is most appropriate for this lot, since the map may come before this office in an LMA. My sole purpose is to get back to you regarding the issue raised by Mr. Humphrey. I will call him directly to inform him of what I said herein.

Please feel free to call if you want to discuss this further.

Martin L. Grossman
Hearing Examiner
Office of Zoning and Administrative Hearings

2/6/2006

Real Property Tax Bill for 7511 Arlington Road (Lot3, Block 12A) showing
occupancy as principal residency, September 2005.
STAFF RECOMMENDATION:

Staff recommends denial of Site Plan 8-05030, based on the insufficient evidence that the subject property is indeed developable under the TS-R Zone. The limits of the information at hand, namely, the absence of a certified Development Plan, dictate that the Council Resolution remains the prevailing document of record. Furthermore, the clearly stated action of the Resolution, with respect to reclassified lots, is supported by all evidence of records that remain from the zoning application: Lot 3, Block 12A is not included.

Only one piece of information demonstrates otherwise: the current zoning map, whose indication of TS-R zoning for Lot 3, Block 12A, must be attributed to error.

The applicant states that site plan application is fully dependent upon the TS-R zoning, as is his investment in site design, engineering and construction. Staff concurs with the applicant's statement that TS-R zoning is desirable for this property and is compatible with other adjacent existing and future development. However, staff cannot be persuaded to compensate the applicant via prima facie acceptance of TS-R zoning because of the applicant's clever pursuit of quick construction and/or lack of due diligence in his consideration of the development of Lot 3.

The Planning Board may consider recommending deferral, based on inconclusive evidence supporting the zoning of TS-R for the subject lot, and instruct the applicant pursue the correct means of applying a rezoning classification to this lot, such as a development plan or local map amendment. It must be noted that the applicant does not lose the value of the lot, the upgraded house or any investment in the house addition in the interim, because the said property is available for legal occupancy as a residence.

Staff has considerable concern about the process of review in this case: the consistent and strong influence of the applicant to proceed easily and quickly with TS-R zoning, the duplicitous building applications filed as residential, the submission of site plan application materials that were frankly erroneous, i.e., G-25 zoning resolution, which does not even pertain to the same block. Staff exhausted untold hours researching the history of Lot 3 Block 12A, including all surrounding development plans, personal trips to the Department of Permitting Services. Staff contacted the original applicants of G-561 and G-583 and their professional consultants in efforts to locate the certified Development Plan and to assist this applicant. The amount of staff time expended could have been invested, to much better result, on a Local Map Amendment--for the applicant, for staff, for the commission, and, ultimately the community.

In the event that the Planning Board does find that the evidence is sufficient to allow development for this lot under the TS-R Zone, staff recommends that the site plan be deferred for full review on the merits.