

BEFORE THE DISTRICT COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
(OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS)

IN THE MATTER OF THE :  
APPLICATION OF COMMERCE : Development Plan  
BANCORP, INC. FOR DEVELOPMENT : Amendment No. DPA-05-2  
PLAN AMENDMENT :

**APPLICANT'S PREHEARING SUBMISSION**

In accordance with the Administrative Procedures for Processing Amendments of Development Plan and Schematic Development Plans issued by the Office of Zoning and Administrative Hearings, applicable in cases where a public hearing is required, Commerce Bancorp, Inc., the Applicant in Development Plan Amendment No. DPA-05-2, submits this Prehearing Statement. A copy of this Prehearing Statement is being simultaneously submitted to the Technical Staff of the Maryland-National Capital Park and Planning Commission.

**I. STATEMENT OF GROUNDS UPON WHICH CASE IS BASED AND JUSTIFICATION FOR THE DEVELOPMENT PLAN AMENDMENT**

The Applicant is requesting an amendment to an approved Schematic Development Plan in accordance with Section 59-H-2.5 of the Montgomery County Zoning Ordinance, to allow for a new commercial bank facility with three drive-thru windows (all teller operated) on 39,129 square feet of C-T (commercial-transition) zoned property located in the northeastern quadrant of the intersection of West University Boulevard (MD 193) and Valley View Avenue. The total land area of 39,129 square feet consists of three subdivided lots - Lot 7 (9,103 square feet), Lot 22 (15,026 square feet) and Lot 23 (15,000 square feet). Presently the lots are each improved with two-story former single-family detached dwelling units.

LAW OFFICES  
MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212

The subject development plan amendment seeks redevelopment of all three subdivided lots with a newly constructed branch bank, totaling 4,100 square feet of gross floor area. Under the subject amendment, the Applicant seeks to replace the existing binding elements with new, more stringent limitations, and obtain approval of a new Schematic Development Plan. The new SDP shows one building, 28 feet in height, consisting of 4,100 square feet of gross floor area, three (3) drive-thru lanes located on the northwest side of the building, 26 parking spaces, a six foot high screening fence surrounding the northern and eastern lot lines of the development and landscaping. The existing access point off of Valley View Drive would be upgraded and maintained, with an additional access point sited on Lot 22, for right-turn ingress and egress only.

The Applicant is proposing to amend the existing recorded covenants with new covenants for the subject development in accordance with the following binding elements chart, which is also shown on the submitted SDP. Furthermore, the Applicant proposes to extend these development limitations to Lot 22 which is presently not subject to a schematic development plan or a declaration of covenants.

<b>BINDING ELEMENTS</b>		
<b>Standard</b>	<b>Permitted / Required</b>	<b>Proposed</b>
1. Land Use	See Section 59-C-4.2	Bank and Financial Institution
2. Floor Area Ratio	0.5	0.105
3. Building Coverage	35%	10.48%
4. Green Area	10%	26.48%
5. Building Height	35'	28'

As indicated, the proposed new binding elements would not only restrict the height, FAR and coverage of the proposed building far below what would otherwise be permitted on the site under the C-T zone, but would also limit the structure's use to a bank/financial institution.

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**MILLER, MILLER & CANBY**  
 CHARTERED  
 200-B MONROE STREET  
 ROCKVILLE, MARYLAND  
 301 762-5212

**A. Zoning History of Site**

Two of the three subdivided lots, Lots 7 and 23, were re-zoned from R-60 to C-T zone pursuant to a local map amendment (G-540) approved by the District Council on August 3, 1987 under the optional method of application. In accordance with the optional method of application requirements provided in Section 59-H-2.5, the applicants in Application No. G-540 (the property owner - the Nguyen family) proposed a "bare bones" schematic development plan as part of the zoning application that limited the use of the land to the existing structures and included the following binding element:

*"The applicants intend to limit the use of the land under the CT Zone to the existing structures, with improvements. The development of the subject property in the CT Zone is limited to the re-use, remodeling, or reconstruction of the two buildings existing on the site at the time the CT Zoning is granted as provided in 59-C-4.302(B), (C) and (D) of the Montgomery County Zoning Ordinance."*

Accordingly, the Declaration of Covenants, Conditions and Restrictions that was recorded in conjunction with the zoning reclassification restricted the redevelopment of Lots 7 and 23 to the existing houses, as indicated by the then-approved Schematic Development Plan. Article III of the Declaration provided, however, that the covenants/restrictions "may be amended by the Declarant, its successors or assigns, to conform to any modification in the schematic development plan approved by Maryland National Capital Park & Planning Commission or other appropriate governmental agency." (Liber 7956 Folio 54)

The third lot, Lot 22, had been previously zoned C-T in 1980, but was not done so under the optional method of development and, therefore, is not subject to any binding elements at present.

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MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212

As noted previously, the subject development plan amendment proposes that Lot 22, along with Lots 7 and 23, be made subject to revised covenants/binding elements under the optional method of development.

**B. Compliance with Required Findings of Section 59-D-1.61 of the Zoning Ordinance**

This requested development plan amendment complies with the five required findings listed in Section 59-D-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, (2) the proposed development's consistency with the requirements of the zone and compatibility with surrounding development, (3) safe and efficient vehicular and pedestrian circulation and access, (4) preservation of natural features, and (5) perpetual maintenance of common areas. More specifically, the development plan amendment satisfies the required findings are as follows:

- (1) *That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

Under the subject application, the zoning for this property is not under review. The C-T zone was deemed in compliance with the use and density indicated by the 1978 Wheaton Sector Plan when the C-T zoning was granted in 1980 and 1987 on the subject property. The 1990 Wheaton Central Business District and Vicinity Sector Plan reconfirmed the C-T zoning and recommended "office" use for the property, which according to the Zoning Ordinance includes "banks and financial institutions". Therefore, under the submitted development plan amendment, the zone continues to be in compliance with the use and density indicated by the adopted Sector Plan and will not conflict with other applicable county plans and policies.

Moreover, Applicant's proposal meets the design recommendations contained in the Sector Plan. Relevant text in the 1990 Sector Plan is found on page 46 and reads as follows:

- “• *Recommends C-T zoning (low-intensity office development) for the northern frontages of University Boulevard between East Avenue and Valleyview Avenue, and the south frontage of University Boulevard adjacent to Wheaton Plaza on those parcels where this zoning does not currently exist. A number of single-family structures along University Boulevard have already been converted to nonresidential uses. While some of the existing houses are large enough to lend themselves to office conversion, a number of properties would be better developed as new low-intensity office development. 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 existing single-family residences from adverse effects associated with major traffic arteries.”*  
(Emphasis added.)

As indicated by the above text, the Sector Plan does not argue for retention of existing structures in this corridor (“...a number of properties would be better developed as new low intensity office development.”). (Emphasis added.) Therefore, Applicant's proposal to replace the three existing former residences is consistent with this component of the Plan's recommendations.

The next two sentences provide design cues about what form new office development should take on these lots. The restriction of keeping “new development...limited to existing lots....” should be read in the context of the previous sentence recommending that the lots be developed “as new low intensity office development.” That is, the Plan is merely suggesting that lots should be discouraged from assemblage because doing so would most likely result in a form of development that is larger than what may be considered “low intensity office development”. Of course, Applicant's proposal for a 4,100 square foot building is smaller than

probably any two of the existing three structures. Therefore, the underlying purpose of the lot assemblage provision, which is to reduce the scale of new development on the property, has therefore been achieved by the Applicant's proposal.

The question then becomes simply whether Applicant's proposal complies with the Sector Plan's recommendations for a low intensity office use that will buffer single-family residences "from adverse effects associated with major traffic arteries." The proposed bank facility is clearly "low intensity" by virtue of its small 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.

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. In addition, a wooden fence and substantial planting on site will create a distinct boundary between residential and non-residential uses, will reduce views into the neighborhood and will screen the Kensington View neighborhood from both University Boulevard and the bank's on-site activities.

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 Plan was approved, that suggest flexibility in interpreting the Sector Plan would be appropriate. Indeed, one could argue that the 1990 Sector Plan has already outlived its usefulness. Text on page 45 of the Plan suggests that Wheaton is a dynamic

planning area and that a "periodic review [i.e., in 10 years] should also evaluate the progress of new development in regard to the Sector Plan's development program and mix of uses."

- (2) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

The subject development plan amendment satisfies the purpose clause of the C-T zone as set forth in Section 59-C-4.301 of the Zoning Ordinance:

*"Section 59-C-4.301. Purpose. The purpose of the C-T zone is to provide sites for low-intensity commercial buildings which, singly or in groups, will provide an appropriate transition between one-family residential areas and high-intensity commercial development. The C-T zone is intended to constitute a margin of limited width at the border between a commercial area and a one-family residential area. For that reason, the C-T zone can only be applied:*

- (a) *In areas designated for the C-T zone on adopted and approved master or sector plans; or*
- (b) *On property so located that it is between and adjoining or separated only by a street, highway, or utility right-of-way from both of the following uses:*
  - (1) *Existing or proposed one-family residential uses; and*
  - (2) *Existing high intensity commercial uses. As used herein, the term "high-intensity commercial use" refers to any commercial or central business district development with an existing height that is greater than 40 feet. The term "high-intensity commercial use" does not include development in the C-1 zone."*

The Applicant's proposed use of the subject site for a bank/financial institution is a single modest structure, in conjunction with specific site features, that will serve as an appropriate transitional use that will buffer the existing one-family residential neighborhoods located to the north and west of the site from the core commercial/business district of downtown Wheaton and the Westfield Shopping Center. The placement of the proposed building (sited in the center of

the property) along with enhanced landscaping and screening measures (that will surround the northern and eastern boundaries of the property), will serve as a buffer between the adjacent single-family uses to the north and the intense C-2 zoned uses south of the subject site.

Moreover, as the westernmost "gateway" to the Wheaton downtown area, 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.

In addition, Sections 59-C-4.303 through 59-C-4.307 of the Zoning Ordinance set the development parameters of the C-T zone, including building coverage and height, floor area, setback, green area and parking. The subject development plan satisfies each parameter as follows:

**Section 59-C-4.303. Building coverage and building height.** *The maximum percentage of coverage by buildings and accessory structures, and the maximum building height at any point, shall be as follows:*

	<u>Coverage</u>	<u>Height</u>
<i>(b) On a lot with an area of 12,000 square feet or more</i>	<i>35 percent</i>	<i>35 feet</i>

The subject development plan amendment, 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. The total building coverage for a 4,100 square foot bank facility on the consolidated lots amounts to 10.48%. The proposed building height is 28 feet.

LAW OFFICES  
MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212



It should be noted that even if the building coverage analysis is done by applying only the lot area of Lot 23 (15,000 square feet), on which the proposed bank facility is sited, the building coverage amount is still less than the 35% maximum, at 27.33%.

**Section 59-C-4.304. Floor area.** *The gross floor area of all buildings on a lot must not exceed FAR 0.5, except as provided in the special regulations of section 59-C-4.308.*

As proposed on the submitted development plan, the gross floor area for the new bank building will be 4,100 square feet, thus, the proposed FAR is 0.105.

**Section 59-C-4.305. Setbacks.** *All buildings must be set back from lot lines at least as follows:*

- (a) *From any street right-of-way as shown on a master plan -- 10 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 -- 15 feet, except as provided in subparagraph (3) below.*
  - (2) *If the adjoining lot is in a residential zone and is not recommended for commercial or industrial zoning on a master plan -- 15 feet, except as provided in subparagraph (3) below.*
  - (3) *For a building existing at the time the C-T zone is granted, the board may approved a setback of less than 15 feet, provided the smaller setback is not less than the setback existing at the time of rezoning.*
  - (4) *In all other cases, no building setback is required.*

As proposed on the submitted development plan, the bank building setbacks are as follows:

<b>Building Setbacks</b>	<b>Required</b>	<b>Provided</b>
Front setback (from Univ. Blvd.)	10 ft.	43.3 ft. (38 ft. to canopy)
Front setback (from Valley View Ave.)	10 ft.	90.4 ft.
Side setback (from North, residential)	15 ft.	18.9 ft.
Side setback (from East, commercial)	15 ft.	93.5 ft.

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MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212

**Section 59-C-4.306. Green area.** *Green area shall constitute at least 10 percent of the area of the lot.*

According to the Zoning Ordinance, green area can include a portion of land encompassed by a development plan, which will provide light and air and/or scenic recreational or similar amenities. For this application, the green area consists of landscaped features/amenities throughout the site and screening around the perimeter. As shown on the submitted development plan amendment, the green area for this development will consist of 26.48% of the area.

**Section 59-C-4.307. Parking.** *(a) All parking in accord with the requirements of article 59-E must be provided on site or on a nearby property in the C-T zone with one exception.*

For 4,100 square feet of office use, the Zoning Ordinance requires a total of 11 spaces, at a rate of 2.7 spaces per 1,000 square feet of building area. The submitted development plan shows a total of 26 parking spaces provided. Thus, the parking requirement for the proposed office use is met on site.

**(3) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate and efficient.***

The submitted development plan proposes two vehicular access points: (1) an existing access point off of Valley View Avenue, which will be upgraded and maintained, and (2) a right-in/right-out only vehicular access point from University Boulevard near the eastern end of the subject property. 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.

LAW OFFICES  
MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212

In particular, adequate space has been provided on-site to accommodate the stacking vehicles using the drive-thru windows so that no queued vehicles will back out onto University Boulevard that would slow through traffic.

Additionally, a queuing analysis was performed confirming that vehicles exiting the Valleyview Drive entrance (a) can be adequately stacked from the stoplight at University Boulevard, (b) will not usurp stacking spaces for vehicles leaving the Kensington View neighborhood, and (c) will not block the flow of traffic into and out of the neighborhood.

Under this development plan amendment, the existing sidewalk along University Boulevard in front of the site will be reconstructed and a new sidewalk will be constructed along Valley View Avenue. The intersection of Valley View Avenue and University Boulevard has a new traffic signal that is equipped with pedestrian signal buttons and phasing, with clearly marked crosswalks.

**(4) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.***

This subject site has flat slopes, no forest, and no specimen trees beyond fair condition. Existing on the site are three former single-family houses used commercially with parking lots in the rear and on the east side. The site is mostly impervious today with the exception of small front yards along University Boulevard. This development plan amendment proposes to remove the existing houses and replace them with one commercial structure. Stormwater management will consist of both stormwater quantity and quality control measures in accordance with MDE

LAW OFFICES  
MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212

2000 and Montgomery County requirements. Applicant's stormwater management concept will include a subterranean detention facility and a structural filter facility.

- (5) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

There are no areas intended for recreational or other common or quasi-public purposes.

## **II. COPIES OF ALL REPORTS INTENDED TO BE INTRODUCED AT THE HEARING**

Reports to be referred to during the public hearing include:

- A. Traffic Study
- B. Queuing Study

## **III. EXPERT TESTIMONY**

Listed below are witnesses intended to testify at the hearing:

- A. Adam Volanth, Site Designer and Civil Engineer
- B. Nancy Randall, Transportation Planner and Traffic Engineer

## **IV. OTHER WITNESSES**

- A. James Villars, Interstate Development Services
- B. Other witnesses that may be identified in a supplemental prehearing submission.

## **V. ESTIMATED TIME REQUIRED FOR PRESENTATION**

It is estimated that a total of four hours will be required for the Applicant to present its case-in-chief.

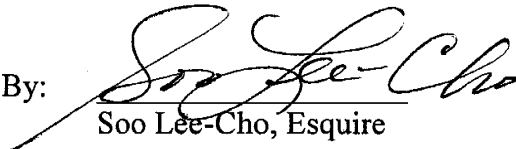
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This submission is intended to satisfy the requirements of the Administrative Procedures for Processing Amendments of Development Plan and Schematic Development Plans issued by the Office of Zoning and Administrative Hearings, applicable in cases where a public hearing is required. If it is subsequently determined that new or supplemental information is necessary, the Applicant will make the revisions in a timely fashion.

Respectfully Submitted,

Miller, Miller & Canby, Chartered  
Attorneys for Applicant, Commerce Bancorp, Inc.

By:   
Jody S. Kline, Esquire

By:   
Soo Lee-Cho, Esquire

Copies delivered to:

Technical Staff, M-NCPPC

LAW OFFICES  
MILLER, MILLER & CANBY  
CHARTERED  
200-B MONROE STREET  
ROCKVILLE, MARYLAND  
301 762-5212