

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

June 2, 2008

**CALL TO PODIUM:**

**Fred Felton**  
**Assistant City Manager**

**RESPONSIBLE STAFF:**

**Fred Felton**  
**Assistant City Manager**

**AGENDA ITEM:**

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

**TITLE:**

Resolution of the Mayor and City Council Denying a Request Dated April 4, 2008 From Linowes and Blocher, LLP to Modify the City's Affordable Housing Requirements for the Summit Center Project (Z-307)

**SUPPORTING BACKGROUND:**

Pursuant to a letter dated April 4, 2008, Barbara Sears from Linowes and Blocher, LLP requested that the Mayor and City Council approve a modification of the City's Affordable Housing Requirements for the Summit Center project pursuant to Section 24-255(b)(2) of the City Code.

The applicant has requested to be allowed to provide 7.5% workforce housing units and 7.5% moderately priced dwelling units (MPDU) rather than 15% MPDU as required for rental projects.

The applicable law is as follows:

- Sec. 24-256. Waiver of affordable housing requirements.*
- (a) An applicant may make a formal written request that the requirements of this article be waived, reduced, or adjusted, partially or in their entirety.*
- (b) The city council may grant such a waiver or adjustment only upon a documented showing of:*
- (1) Undue economic hardship on the part of the applicant in fulfilling the requirements of the law; or*
  - (2) The absence of a reasonable relationship or nexus between a proposed project and the provisions of this article.*

**-Continued-**

**DESIRED OUTCOME:**

**Vote on Resolution**

# MAYOR & COUNCIL AGENDA COVER SHEET

## **SUPPORTING BACKGROUND CONTINUED:**

Please note the applicant has requested a waiver under (b)(2), and has specifically declined staff's suggestion that they consider submitting a request for a waiver as an economic hardship pursuant to (b)(1).

Staff has reviewed this matter with the City Attorney, and have determined that the applicant has not demonstrated "the absence of a reasonable relationship or nexus between a proposed project and the provisions of this article." Accordingly, we are recommending the City Council vote to formally deny the request.

## **Attachments:**

1. Draft Resolution of denial
2. Memorandum dated April 17, 2008
3. Letter dated April 4, 2008

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE MAYOR AND CITY COUNCIL DENYING A REQUEST  
DATED APRIL 4, 2008 FROM LINOWES AND BLOCHER, LLP TO  
MODIFY THE CITY'S AFFORDABLE HOUSING REQUIREMENTS  
FOR THE SUMMIT CENTER PROJECT (Z-307)

WHEREAS, Hearthstone Communities, LC and Opus East, LLC (the applicants) has submitted for approval to redevelop the Summit Shopping Center (Parcel N182) and construct 300 multi-family rental dwelling units and 20,000 square feet of commercial/retail space; and

WHEREAS, pursuant to a letter dated April 4, 2008 by Linowes and Blocher, LLP, the applicants have requested that the City Council modify the affordable housing requirements to provide 7.5% workforce housing units and 7.5% moderately priced dwelling units (MPDU) rather than 15% MPDU as required for rental projects.; and

WHEREAS, the City Council has determined that the applicant has not demonstrated the absence of a reasonable relationship or nexus between a proposed project and the provisions of the City's Affordable Housing Requirements as required by Section 24-256 of the City Code:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Gaithersburg that the request dated April 4, 2008 for a modification of the Affordable Housing Requirements for the Summit Center project is hereby denied.


ADOPTED by the Mayor and City Council this 2<sup>nd</sup> day of June, 2008.


\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

THIS IS TO CERTIFY that the foregoing  
Resolution was adopted by the City Council  
in public meeting assembled on the 2<sup>nd</sup>  
day of June, 2008

\_\_\_\_\_  
James D. Arnoult, Acting City Manager

MEMORANDUM TO: Mayor and City Council

VIA: James D. Arnoult, Acting City Manager 

FROM: Frederick J. Felton, Assistant City Manager 

DATE: April 17, 2008

SUBJECT: Summit Center (Z-307)

Attached please find a letter from Barbara Sears concerning the proposed Summit Center rezoning. As you can see, Ms. Sears is requesting another joint work session to discuss the project; however, staff does not believe the development team has yet adequately addressed all the issues raised by the Mayor and City Council and Planning Commission during the February 25, 2008 work session.

Additionally, the applicant is requesting a modification of the affordable housing requirements pursuant to Section 24-255(b)(2) of the City Code. Specifically, the applicant is requesting to be allowed to provide 7.5% workforce housing units and 7.5% moderately priced dwellings units. Staff does not believe that the argument concerning a lack of a reasonable relationship between the project and the purpose of City's affordable housing ordinance has any merit whatsoever. However, staff does recommend that the Mayor and City Council consider a modification of the affordable housing requirements if the applicant can submit a detailed analysis demonstrating a financial hardship pursuant to Section 24-255(b)(1).

Staff is meeting with the development team on April 18, 2008, and it is likely that I will provide the Mayor and City Council with an update during the April 21, 2008 meeting. In the mean time, please contact me if you have any questions or want to discuss.

Attachment  
FJF/ms

cc: Greg Ossont  
Lauren Pruss  
Trudy Schwarz

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

APR - 4 2008

April 4, 2008

**Barbara A. Sears**  
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**Yum Yu Cheng**  
301.961.5219  
ycheng@linowes-law.com

***VIA HAND DELIVERY***

Mayor Sidney A. Katz,  
Members of the City Council, and  
Members of the Planning Commission  
City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877

Re: Hearthstone Communities, LC and Opus East, LLC – Application for Amendment to the Zoning Map of the Summit Shopping Center from C-2 Zone to MXD Zone, Application No. Z-307 (the “Rezoning Application”)

Dear Mayor Katz, Members of the City Council, and Members of the Planning Commission:

On behalf of Hearthstone Communities, L.C. (“Hearthstone”) and Opus East, LLC (“Opus East”) (collectively, the “Applicant”), the purpose of this letter is to request a follow-up joint worksession to consider the Applicant’s proposed modifications to the plans in response to the comments received from the Planning Commission and Mayor and Council at the joint worksession on February 25<sup>th</sup>. The Applicant is also requesting for the Summit Center (the “Property”) an adjustment of the Affordable Housing requirements pursuant to Sections 24-255(a) and (b)(2) of the Zoning Ordinance to permit 7½% of the affordable units as MPDUs and the remaining 7½% to comply with workforce housing standards.

As mentioned at the February 25th worksession, Sandler at Summit, LLC (the “Owner”) has been pursuing MXD zoning for the Property since early 2004. The Owner has responded to several directions provided by the City, including a determination of whether senior housing was appropriate, the amount and type of retail that would be viable, and the design and quality of the development. The Owner was asked by the City to withdraw the original MXD application for senior housing in late 2005 and re-file a new application for multi-family housing with a local retail element. These efforts started long before the enactment of the Affordable Housing Ordinance on November 27, 2006 (the “Ordinance”). At this point in time, the Applicant is challenged with the new Affordable Housing requirement to provide 15%

**LINOWES**  
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Mayor Sidney A. Katz,  
Members of the City Council, and  
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April 4, 2008

Page 2

of the total units as MPDUs, in view of the competing constraints of providing 40% green space, on-site reforestation, integrated structured parking, necessary road improvements, and integration with the now existing Hidden Creek Community, an MXD development, constructed on the balance of the original tract of land.

Since the February 25<sup>th</sup> joint worksession, the Applicant has worked diligently to respond to the issues raised by the Planning Commission and Mayor and Council and has made several modifications to the plans as described below. On March 20<sup>th</sup>, the Applicant also met with community representatives to review these modifications and, as a result, made further modifications to the plans. In summary, these modifications include the following:

- **Reduction of Density.** The density has been reduced from 343 units to 319 units. These units have been removed from the northwest area of the site adjacent to Cedar Spring Street, reducing the building mass in this area and resulting in more usable green area. (See Revised Illustrative Site Plan attached as Exhibit "A".)
- **Increase in Usable Green Space.** The revised area in the northwest portion of the Property has resulted in a continuous usable green space of more than a half acre. This not only increases the usable green space, but unifies the major pedestrian plaza area. (See Revised Illustrative Site Plan.)
- **Garage Elevations.** The garage elevations have been detailed and greatly improved to utilize attractive materials, linear design elements and varying elevation heights. In addition, garage lighting will be designed to limit its impact to the existing Hidden Creek Community. (See Illustrative Garage Elevations and Garage Section attached as Exhibits "B" and "C", respectively.)
- **Increased Tree Sizing in Reforestation Area.** Hearthstone and Opus East have proposed that the City initially permit use of larger caliper trees planted on a berm to meet the reforestation requirements at the northern perimeter of the Property so that this buffer establishes itself sooner and provides enhanced screening of the northern garage elevation. (See Garage Section.)

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Mayor Sidney A. Katz,  
Members of the City Council, and  
Members of the Planning Commission  
April 4, 2008  
Page 3

- **Relocation of Southern Parking Garage Entrance.** The Southern Parking Garage Entrance has been relocated away from the existing Hidden Creek Community to a location closer to Girard Street to encourage future residents to enter and leave the community through the Girard Street main entrance instead of Cedar Spring Street. (See Revised Illustrative Site Plan.)

In order to implement the revised plans, the Applicant proposes to provide 15% or 48 of the total number of units (319 units) as affordable housing units, but seeks an adjustment of the composition of the affordable units from 15% MPDUs to 7½% MPDUs and 7½% workforce housing in order to create a reasonable relationship between the proposed project and the purpose and intent of the Affordable Housing Ordinance “to ensure that affordable housing opportunities are created for ... rental units within the City of Gaithersburg for households earning 60 to 120 percent of the Area Median Income.”<sup>1</sup> This partial adjustment provides a wider range of affordable units and addresses the location of the Property at the edge of Olde Towne Gaithersburg where affordable units are not required in comparable new developments, and several older rental communities at MPDU rents already exist in close proximity. Additionally, the mix would recognize the transitional position the Property occupies between these existing rental communities and the Hidden Creek Community where no MPDU component was required.

Despite the diligent efforts of the Owner to pursue the rezoning application with the continued encouragement and support of the City to find an appropriate multi-family design, the process has spanned nearly five years. The Affordable Housing Ordinance was enacted 16 months ago. Under the circumstances, the Applicant believes that the impact of providing all 15% or 48 of the total number of units as MPDUs does not bear a reasonable relationship or nexus between the requirements of the Ordinance and the project in view of its history, the unique impact of the MXD development standards on the Property, the two-phase development of the larger parent tract, and the specific circumstances of the location of the Property adjacent to existing developments offered at MPDU rental ranges. For these reasons, the allowance of an adjustment pursuant to Section 24-255(b)(2), which permits the requirements of the Ordinance

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<sup>1</sup> Although a formal workforce rental program does not presently exist under the Ordinance, this requirement has been included in annexation agreements with the City and the standards for the rental program are currently being developed. Therefore, Applicant’s request, if granted, would be conditioned on providing rental units that met those standards.

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Mayor Sidney A. Katz,  
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April 4, 2008

Page 4

to be partially adjusted upon the showing of the lack of a reasonable relationship to the Ordinance purposes, is warranted and respectfully requested.

Thank you for the opportunity to provide the enclosed supplemental materials to you for consideration. We look forward to bringing the plans back to you for review. Should you have any questions or need additional information, please do not hesitate to contact us.

Very truly yours,

**LINOWES AND BLOCHER LLP**

*Barbara A. Sears, yyc*

Barbara A. Sears

*yum yu cheng*

Yum Yu Cheng

Enclosures

cc: Fred Felton (w/encl.)  
Greg Ossont (w/encl.)  
Lauren Pruss (w/encl.)  
Trudy Schwarz (w/encl.)  
Alan Geller (w/encl.)  
Donald Geller  
Matt Holbrook  
Lynne Goldberg (w/encl.)  
Steve Sandler  
Larry Goldstein (w/encl.)  
Debra Williams (w/encl.)

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