

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

October 19, 2009

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Greg Ossont, Director
Planning & Code Administration

Trudy Schwarz, Community Planning
Director

Lauren Pruss, Planning Director

AGENDA ITEM:

(please check one)

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

PUBLIC HEARING HISTORY:

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

Introduced	8/17/2009
Advertised	8/19/2009
	8/26/2009
Hearing Date	9/8/2009
Record Held Open	10/08/2009
Policy Discussion	10/19/2009

TITLE: Text Amendment T-392

Ordinance to amend Chapter 24 of the City Code, entitled, "Zoning," Article XV, entitled "Adequate Public Facilities," §24-246, entitled, "Adequacy of School Capacity," to create new Subsections §24-246(d), 24-246(d)(i) through 24-246(d)(iii) so as to increase capacity limitations upon meeting specific standards for development.

SUPPORTING BACKGROUND:

The joint public hearing on T-392 was held on September 9, 2009. The Mayor and City Council held open its record until 5 PM on October 8, 2009. There are 15 exhibits in the public record.

Currently § 24-246(d) states § 24-246, states "With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds 110% of Montgomery County Public Schools Program Capacity two (2) years in the future..."

On August 17, 2009, City staff discussed a memorandum with the Mayor and City Council concerning the effect of the current ordinance on the redevelopment of the Summit Center shopping center next to Hidden Creek Land Bay III. Four options were presented and the Mayor and City Council directed staff to schedule a public hearing on the third option. The option proposes to allow a caveat to the 110 % rule to allow 120% capacity if the project meets the three requirements listed in the ordinance: the master plan and strategic directions of the City; compatible use and does not exceed the students forecasted for the site. The proposed 120 % school capacity is consistent with what Montgomery County Planning Board allows with their Adequate Public Facility requirements. Modifications to the language were suggested at the public hearing and are shown in Exhibit # 12.

At the regular meeting of the Planning Commission on October 7, 2009, the Commission made a recommendation to the Mayor and City Council to approve Text Amendment T-392 with the deletion of §24-246(d)(iii). **See Exhibit #15 and #16**

*Attachments: Revised Draft Ordinance, Index of Memoranda and Exhibits (In **Bold**)*

DESIRED OUTCOME:

**Conduct Policy Discussion and final action.
The Ordinance is ready for adoption.**

INDEX OF MEMORANDA
T-392

1. Application for T-392
2. Draft Ordinance – T-392
3. Memo to the Mayor and City Council dated August 6, 2009, concerning the Adequate Public Facilities Ordinance draft text amendment
4. Letter to Gaithersburg Gazette dated August 18, 2009, requesting a Legal Ad in the August 19 and 26, 2009, issues. Report of facsimile communication included
5. Notice of the September 8, 2009, Joint Public Hearing to interested parties mailed on August 20, 2009. Address labels for parties notified
6. E-mail, received July 6, 2009, from Bruce Crispell concerning the enrollment forecasting for Strawberry Knoll Elementary School
7. Map of current Development Moratorium Areas dated August 18, 2009
8. Projected Gaithersburg Cluster Enrollment and Space Availability for FY 2009-2014
9. E-mail, received August 26, 2009, from Kirk Eby, GIS Planner re:Actual Student Counts in Hidden Creek and Park Station
10. Mayor and Council Cover Sheet for September 8, 2009, Joint Public Hearing
-----September 8, 2009 JPH -----
11. **E-mail, received August 27, 2009, from Bruce Crispell, MCPS Long Range Planning**
12. **Draft Ordinance with Amendments 9-30-09**
13. **Transcript of the September 8, 2009, Joint Public Hearing**
14. **Staff Recommendation to Planning Commission 10-07-09**
15. **CPC – Planning Commission Recommendation to the Mayor and City Council dated 10-07-09**
16. **Draft Ordinance with Planning Commission Recommendation 10-07-09**

TRANSCRIPT OF

JOINT PUBLIC HEARING

ON

T-392

Summit Center Redevelopment Project,
An Ordinance to Amend Chapter 24 of the City Code,
entitled "Zoning", Article XV, Entitled "Adequate Public
Facilities," §24-246, Entitled, "Adequacy of School
Capacity," to Create New Subsections §24-246(d),
§24-246(d)(i) through §24-246(d)(iii) so as to Increase
Capacity Limitations Upon Meeting Specific
Standards for Development

BEFORE THE

CITY OF GAITHERSBURG

MAYOR AND CITY COUNCIL

and

PLANNING COMMISSION

on

September 8, 2009

Transcribed by
Doris R. Stokes

Joint Hearing - MCC & PC
T-392
Exhibit #13

PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Sesma
Council Member Ashman
Council Member Drzyzgula
Council Member Marraffa
Council Member Spiegel

PLANNING COMMISSION

Chair Bauer
Commissioner Hopkins
Commissioner Lanier (Alt.)
Commissioner Levy

STAFF

Community Planning Director Schwarz
Planning and Code Administration Director Ossont

SPEAKERS FROM THE PUBLIC

Scott Wallace, Linowes and Blocher LLP
Todd Jacobus, Woodfield Investments

Katz Next we are going to invite the Planning Commission to please join us. We have one joint public hearing. If you can please begin Trudy.

Schwarz Good evening. This is a joint public hearing on text amendment T-392, a request to amend § 24-246(d) of the Zoning Ordinance, Chapter 24 of the City Code related to adequate public facilities and specifically related to school capacity. The hearing was duly advertised on August 19th and 26th, 2009 in the *Gaithersburg Gazette* and posted on the City's web site. At the present time there are 10 exhibits in the record file. They are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning and Code Administration Office during regular business hours at City Hall and on the City's web site. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise, they will be deemed received in evidence.

Currently § 24-246(d) states that "with the exception of age restricted development, a schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public Schools that is forecasted to have a student population that exceeds 110 percent of Montgomery County Public Schools program capacity two (2) years in the future. On August 17, City staff discussed a memorandum (exhibit #3) with the Mayor and City Council concerning the effect of the current ordinance on the redevelopment of the Summit Center next to Hidden Creek Land Bay III. Four options were presented and the Mayor and City Council directed staff to schedule a public hearing on Option #3 which proposes the following and allows a caveat to the 110 percent rule. It states that:

- (d) notwithstanding the foregoing, the city council may approve, by resolution, a schematic development or preliminary plan that does not exceed one hundred twenty (120) percent of programming capacity two (2) years in the future upon finding that:
- i. the project is necessary to implement the master plan or strategic directions and attract an appropriate and compatible type or caliber of user; and
 - ii. the project is compatible with existing and proposed adjacent land uses.
 - iii. the number of students generated by the development project, as determined by montgomery county public schools, does not exceed the number of students included in the school population forecasts two years in the future.

The proposed 120 percent school capacity is consistent with what Montgomery County Planning Board allows for their adequate public facility ordinance. Staff has included in your package as part of the exhibits, a map of current development moratorium areas because of the 110 percent rule and also the student counts from Hidden Creek Land Bay I, II, and III and also Park Station which would be a development that is very similar to what is being proposed for the redevelopment of the Summit Shopping Center. As you will note, there is quite a difference between the actual number of students that have come out of those development and the predicted students. Less students are coming from these types of developments.

Staff has recommended that Planning Commission hold their record open for 22 days and that the Mayor and Council hold their record open for 30 days.

Katz Thank you Trudy. First of all to be clear, this text amendment would be not just for the one site. This would be throughout Gaithersburg.

Schwarz Yes.

Sesma It would have to be applied individually to each?

Schwarz Yes. The Mayor and Council would look at each one or the Planning Commission, if it was preliminary site plan.

Katz Because of the way it is written, it looks like it just for one site and that is not correct.

Sesma I just wanted to clarify again and make sure that everybody understands what is going on here. Basically, the students from the Summit Center project have already been counted once in the 2010 forecast and so the amendment is basically counting students from that even though the project has not been built.

Schwarz Actually they projected them a few years out because they knew it would take a while for the project. They are not in the FY '10 or FY '11 or '12, but they are in FY '13.

Sesma But the count from the original plan, SDP have been counted....

Schwarz You mean the sketch plan?

- Sesma The Sketch Plan, has already been counted into the numbers right?
- Schwarz Yes they have been counted into the numbers.
- Sesma Does the amendment mean that they are going to count them again and add them to what was already projected.
- Schwarz The would still keep the same numbers in with any modification in their projections, but they would be moving the numbers further.
- Katz I guess what we are asking is, if.....
- Schwarz They wouldn't be counted twice.
- Katz Well, isn't that part of the concern here?
- Drzyzgula This just allows approval of the plan despite the conflict on the (inaudible).
- Sesma What I am trying to figure out who we got up to !20 (inaudible)?
- Speigel What happens in the future when there is a plan already up to 120?
- Katz Does the County subtract out? If a plan is in existed, hasn't been built and then another plan comes in for discussion for a public hearing or public discussion, does the County subtract out the first plan because you are only talking about a second plan for (inaudible)?
- Schwarz For each year, they are constantly adjusting the numbers. They will go back before they make their predictions that are in the Capital Improvement Budget. They go back and say, what is the status of this project. Has it been built this year? For instance, they would talk to Mr.

Eby of our office. He will say, no, they have not gone forward (inaudible) with the final site plan, the project is at least two to three years before occupancy and they will readjust the numbers because they do a six year forecast.

Spiegel But that readjustment only occurs once a year?

Schwarz Yes.

Spiegel I think what Mike is saying, I think I understand his concern. I have the same concern is, right after that once a year moment, you got a project now that goes up to the 119 or 120 percent mark and the development wants to come in and modify the existing plan and do it before the next year.

Drzyzgula As long as the number of students doesn't go up, it is ok. That's what this says. As long as the students from a new plan are not more than the students already counted from the project.....

Katz We are mixing apples and oranges again.

Sesma Ryan and I are on the same page. It sounds like we are double counting.

Schwarz They are not being counted twice.

Katz What this is saying is, once that happens if someone has a project that's approved and they come in for an amendment to that project then we can allow that on an individual basis.

Schwarz Correct.

Spiegel Even if the project is already at 119 or at 120 percent?

Katz Yes. We are only counting once, but the county is still counting them twice.

Schwarz No. They will be counting the additional students.

Katz Trudy, if someone came in for a project on January 1 and got approval for 20 students and then on January 2nd they come back and say we want to change this, we want 19 students, the county is not fast enough to subtract off those 20 students from what I understand. They would say, oh no, for that project, we have 39 students going and they don't.

Marraffa Until the following year.

Katz Correct, until the following year.

Schwarz The one year count is what our Code says. The City's Code established that one year, we would do it once a year.

Spiegel But our Code relies on the county's numbering crunching process.

Schwarz That is correct and it is done once a year. I am not sure that we have the staff to do the number crunching that the county already does that we can make up numbers.

Katz Cathy, what are you saying?

Drzyzgula The way this was intended and what I think it says, is that whether you have an existing project that already has students or you have an approved project that hasn't been built but has a projected student

population. If either one of those are in MCPS calculation as of whatever the cutoff date is and somebody comes in with a new plan which would either revise the existing plan or tear down what is there, or pardon it or whatever and build something new, as long as the number of students coming from that property does not go up, then the project can be approved. It says if the number of students does not exceed the number of students included in the school population forecasts two years in the future. If the number is not higher than what the school system has already projected.

Ashman I am understanding it the same way as Cathy.

Katz I believe that is what this is saying.

Drzyzgula Now I still think there is a slight flaw there, it just says the number of students it doesn't say the number of students associated with the property. I think we need to clarify that. You wouldn't want it to think that it was like all the students (inaudible).

Katz Right.

Schwarz The paragraph, the beginning of (d) would relate it to the schematic plan that you are reviewing.

Drzyzgula But in number iii, it says does not exceed the number of students. It doesn't say the number of students for this project.

Katz I think we should add that. That would clarify it. If anything, it going to make it clearer.

Drzyzgula It really should be associated with the property not the project because it's possible that there could one then more project on a given property.

Sesma Well it is really about the plan.

Drzyzgula Not necessarily. If you have a property and they are going to tear down part of it.

Schwarz It should say associated with the plan.

Drzyzgula It says it for the number of students at the beginning of the sentence, but then it repeats the number of students the second time it doesn't say associated with that property. I would add that language.

Bauer Can I ask a question to be sure I understand it. Currently the APFO caps the threshold at 110 percent?

Schwarz That is correct.

Bauer So what it essentially says is it is giving you a ten percent margin to play with if the project is really that important. Ordinarily it would shut down at 110 and now you can take it up to 120 because there are three criteria, (1) is that the master plan, (2) fulfills that kind of development and whatever the third one is. That is really the issue. If you get a project in that really warrants going above what our own APFO says.

Drzyzgula But it doesn't let you go over 110 unless it was already over 110, right?

Ashman That is the way I understand it, is that true?

Drzyzgula That is how I thought it was.

Sesma It is only dealing with us once we exceed 110 and we are not going to approved something that exceeds 110 in the first place, right? Then they change the numbers because it changed the enroll at Strawberry Knoll because of the kindergarten expansion. So that number that we had approved already, over 110 percent which means that the project would now no longer be in compliance with APFO and we would move forward with that until they went back under. Either they adjust the plan so that it goes back under 110 or we adjust the rule. So this is about adjusting the rule to allow a specific project to either adjust their numbers or we provide the flexibility for them to move forward.

Ossont That change was in between sketch plan and schematic development plan which is not an important characteristic. Which is unique in this case, but as someone pointed out earlier, this is not just the only project that it would apply to. It would apply across the City and we expect to use this again at some point.

Sesma I don't (inaudible) use it as little as possible, but I think having the opportunity to be able to exercise that kind of flexibility is important.

Marraffa In this particular case, I'll just use this one is that somebody got approved, the school changed and now we came in with the last section (inaudible).

Katz One person at a time, please.

Ossont In this particular situation that is the case; however, what we have tried to do here is craft something that would be beneficial for redevelopments in the future provided that when you get in between 110 and 120 percent, as long as the number in the book that comes out on July 1st doesn't change as a result of that proposed development. It should be able to move

forward, but only those projects that don't add to that number, that are caught very earlier.

Sesma So my concern is, I don't want people bringing us plans that are at 111 percent before we ever look at them (inaudible).

(inaudible – too many individuals talking)

Ossont If they are under 110 and the school is at 109 and they bring us something that creates 111, it will never come to you. It won't be eligible for what this does.

Katz If someone has an existing place that has 100 students coming out of it and they want to tear that down and put 90 students in that in a better building and it would be less students going to school, but it would over the 110 percent. This would allow for us to talk about it. That is my point on this. Ok. Everybody is saying the same thing, but it took us 1-1/2 hours to say it.

Spiegel That's the exact intend but I wanted to make sure that the language actually matches up with that intend.

Sesma And I was still confused about the language because it changes from paragraph (d) down to the iii section, I think we need to have the same language. (inaudible) about what we are talking about.

Katz So the iii.....

Sesma So instead of talking about schematic development plan, we are talking about a development project and I think that is the problem. So can we fix that.

Katz Anybody else please? Moving right along. Thank you very much Trudy for clearing that up. This is the time that the Mayor and Council and Planning Commission hear from anyone that would like to speak on this joint public hearing topic, we ask that you please keep your remarks to know more than three minutes. Please note that timer will beep and blink yellow when you have 30 seconds left of your three minutes so that you can begin to finish your statement. The timer will beep and turn red when your three minutes is up. Please note that any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. Who would like to be the first speaker?

Wallace Good evening. For the record, my name is Scott Wallace with the law firm of Linowes and Blocher LLP. I am here tonight on behalf of Woodfield Investments, the owner of the Summit Shopping Center property. I am here tonight to speak in favor of Text Amendment T-392. Given the robust discussion that proceed me, I will give the short version of my comments. It certainly was a discussion that reflects some understanding of the unique circumstances that the Summit Center project and Woodfield proposed redevelopment of it have and the text amendment does address those unique problems. We do appreciate the work that staff has done to bring the text amendment along to this point. We believe the text amendment is a practical and reasonable response to the need for more flexibility in the APFO ordinance to further the City's goal of quality development. In this regard, the text amendment would allow the Council or the Planning Commission as the case may be to allow the higher capacity in limited circumstances when a project is determined to advance City policies and objectives. We obviously believe that the redevelopment of the Summit Center project is such a project and the this text amendment would allow that to proceed and go forward if the sketch plan,

SDP that will be before you again shortly are approved. Todd Jacobus of Woodfield would like to make a few comments on the issue and the need for the amendment. In the meantime, I would be happy to answer any questions if you have any.

Katz Thank you very much. Next speaker please?

Jacobus Thank you. Todd Jacobus, Woodfield Investments. I am speaking tonight on of the partnership that owns the property, Summit Shopping Center. I am speaking in favor of text amendment T-392. The situation that has necessitated this text amendment has thrown us for a bit of a loop as we have set out to redevelop this piece of property. I just wanted to state for the record that we remain committed to redeveloping this piece of property, the Summit Center site. We very much appreciate the Mayor and Council, Planning Commission and staff working with us as we react to a situation that I think everybody recognizes as very unique and certainly unintended. At zoning for our project, it was determined that there was adequate school capacity. Less than a year later, after we have performed all of our due diligent, purchased the property, filed our SDP, that capacity was essentially taken off the table and we thrown into this tale spin. Every developer's kind of nightmare situation. The zoning/text amendment that is being proposed this evening allows us to refer (inaudible) plans to redevelopment the Summit Center site. Something that we have heard over and over again from the community that is real support for. It also allows the City to simultaneously address issues of flexibility with our APFO. We see this as a real win, win situation. As I mentioned before, we are committed to moving this project forward. In addition to filing the SDP earlier this summer, this has been put on a parallel track and iced for the time being. We have done other things that have shown our commitment to the process. As I mentioned we closed this piece of property during one of the more severe economic downturns

in recent memory. We begun to HUD (inaudible) process that is HUD financing on this piece of property. We are about three days away from filing the (inaudible) commitment on that process and putting a smooth and timely completion to the balance of the zoning/text amendment and SDP process. We anticipate starting the construction of this project in mid-2010. Thank you for allowing me to make these comments this evening. Thank you.

Katz Thank you very much. Any other speakers, please? Ok. What is the pleasure of the Planning Commission?

Bauer Thanks. Staff has recommended that the Planning Commission hold their record open until 5 p.m. on September 30, 2009. Is there a motion please?

Hopkins So moved.

Levy Second.

Bauer It's been moved and seconded. All in favor please say aye?

Commission Ayes.

Bauer Opposed? That passes unanimously (4-0), Mr. Mayor.

Katz Thank you very much. What is the pleasure of the Council?

Ashman Move that we hold the record open for 30 days until 5 p.m. on October 8, 2009, with anticipated policy discussion on October 19, 2009.

Sesma Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? That carries unanimously (5-0) as well. Thank you very much.

End of Joint Public Hearing

T-392

Trudy Schwarz

From: Crispell, Bruce [Bruce_Crispell@mcpsmd.org]
Sent: Thursday, August 27, 2009 2:41 PM
To: Lauren Pruss
Cc: Trudy Schwarz; Greg Ossont; Kirk Eby
Subject: RE: students in Hidden Creek & Park Station apartments

Laureen,

The numbers you received from my staff for Hidden Creek are correct. I have checked your estimates of what was projected for the Hidden Creek development, compared to the actual numbers. They are very close to what I get. I understand the development has 16 single-family detached units, 325 townhouse units and 116 2 over 2 condo type units. Based on this, and using 2005 yield factors from the MNCPPC Census Update Survey, I get the following estimated number of students:

K- 5 = 97
6-8 = 47
9-12 = 45

On Park Station I understand the development to contain 383 multi-family units. Using the factors described above I get the same numbers of students as you did in the table you sent.

As I said on the phone, I think the amendment, section iii. needs to specifically say that this applies to redevelopment of residential properties -- where an older project is being replaced by a newer one, such that the same number, or fewer students, are generated by the new development than currently enroll from the existing development.

Hope this helps.
Bruce

From: Lauren Pruss [mailto:LPruss@gaitthersburgmd.gov]
Sent: Thursday, August 27, 2009 1:40 PM
To: Crispell, Bruce
Cc: Trudy Schwarz; Greg Ossont; Kirk Eby
Subject: FW: students in Hidden Creek & Park Station apartments

Bruce,

Thanks for checking the information we've received from your staff while you were out. I have attached our work. The actual student enrollment information was received from Montgomery County Public Schools Division of Long-Range Planning. The predicted number of students was calculated based on the number and type of housing units and the ratios used by MCPS for the County APFO schools test (also summarized in Table 11 of the Municipal Growth Element).

The new language being added to the ordinance is underlined. Section (d)iii is intended to accommodate the situation that we are currently dealing with where a project's numbers are already included in the enrollment projections for a particular school. The language is meant to be narrowly tailored to only permit approval of a project as long as it will not increase the enrollment projection. It will also permit redevelopment of residential sites so long as the students generated by the new project do not result in a net increase in the enrollment projections. It will not permit commercial sites to be redeveloped with residential units in moratorium areas.

Let me know of any comments or concerns you may have with the amendment.

Lauren Pruss
Planning Director
Planning and Code Administration
City of Gaithersburg
31 S. Summit Ave.
Gaithersburg, MD 20877-2098
301-258-6330
301-258-6336 (fax)

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The opinions expressed in this message are not necessarily those of the City of Gaithersburg Staff, Mayor or Council

From: Kirk Eby
Sent: Wednesday, August 26, 2009 11:29 AM
To: Lauren Pruss; Trudy Schwarz; Greg Ossont
Subject: students in Hidden Creek & Park Station apartments

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE XV, ENTITLED, "ADEQUATE PUBLIC FACILITIES," § 24-246, ENTITLED, "ADEQUACY OF SCHOOL CAPACITY," TO CREATE NEW SUBSECTIONS § 24-246(d), 24-246(d)(i) THROUGH 24-246(d)(iii) SO AS TO INCREASE CAPACITY LIMITATIONS UPON MEETING SPECIFIC STANDARDS FOR DEVELOPMENT

Text Amendment T-392

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article XV, § 24-246 is amended to create § 24-246(d) as follows:

ARTICLE XV. ADEQUATE PUBLIC FACILITIES

* * * * *

Sec. 24-246. Adequacy of school capacity.

With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds one hundred ten (110) percent of Montgomery County Public Schools Program Capacity two (2) years in the future subject to the following:

- (a) The program capacity for each school attended by Gaithersburg residents is determined annually by the Superintendent of Montgomery County Public Schools and reported to the board of education in the communities facilities master plan and capital improvements program.
- (b) Capacity shall be reviewed individually for each elementary school, middle school, and high school. Sharing of capacity between schools shall not be permitted.
- (c) Upon review of the current communities facilities master plan and capital improvements program, the city manager shall determine on

Boldface	<i>Heading or defined term.</i>	Joint Hearing - MCC & PC T-392 Exhibit #12
<u>Underlining</u>	<i>Added to existing law by original bill.</i>	
Single strikethrough	<i>Deleted from existing law by original bill.</i>	
<u>Double underlining</u>	<i>Added by Amendment.</i>	
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>	
***	<i>Existing law unaffected by bill.</i>	

the first business day of each fiscal year whether or not each public school attended by Gaithersburg residents is forecasted to exceed one hundred ten (110) percent of programming capacity two (2) years in the future.

(d) Notwithstanding the foregoing, the City Council may approve, by resolution, a schematic development or preliminary plan that does not exceed one hundred twenty (120) percent of programming capacity two (2) years in the future upon finding that:

- i. the project is necessary to implement the master plan or strategic directions and attract an appropriate and compatible type or caliber of user; ~~and~~
- ii. the project is compatible with existing and proposed adjacent land uses; ~~and~~
- iii. The number of students generated by the development project, as determined by Montgomery County Public Schools, does not exceed the number of students associated with the current site included in the school population forecasts two years in the future.

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg this ____ day of _____, 2009.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2009. This Ordinance will become effective on the ____ day of _____, 2009.

ANGEL L. JONES, City Manager

DRAFT

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: October 7, 2009

TEXT AMENDT.: **T-392**

TITLE: ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," XV, ENTITLED "ADEQUATE PUBLIC FACILITIES," §24-246, ENTITLED, "**ADEQUACY OF SCHOOL CAPACITY**," TO CREATE NEW SUBSECTIONS §24-246(d), 24-246(d)(i) THROUGH 24-246(d)(iii) SO AS TO INCREASE CAPACITY LIMITATIONS UPON MEETING SPECIFIC STANDARDS FOR DEVELOPMENT.

REQUEST: **RECOMMENDATION TO M&C**

ADDRESS: N/A

ZONE: N/A

STAFF LIAISON: Trudy Schwarz, Community Planning Director

Enclosures:

Staff Comments
Index of Memorandum and Exhibits (In **Bold**)

Joint Hearing - MCC & PC
T-392
Exhibit #14

STAFF COMMENTS

I. SCOPE OF REVIEW

This item is on the Commission's agenda for a transmittal of a recommendation to the Mayor and Council. Section 24-197(c) requires that the Planning Commission make a recommendation on any text amendment to the Zoning Ordinance, Chapter 24 of the City of Gaithersburg Code, within a timely period following the end of the public hearing and any subsequent record of the hearing.

II. BACKGROUND

The joint public hearing on T-392 was held on September 8, 2009. The Planning Commission held open its record until 5 PM on September 30, 2009. There are 13 exhibits in the public record.

Currently § 24-246(d) states § 24-246, states "With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds 110% of Montgomery County Public Schools Program Capacity two (2) years in the future..."

On August 17, 2009, City staff discussed a memorandum with the Mayor and City Council concerning the effect of the current ordinance on the redevelopment of the Summit Center shopping center next to Hidden Creek Land Bay III. Four text amendment options were presented and the Mayor and City Council directed staff to schedule a public hearing on the third option. The option proposes a caveat to the 110% rule and allows up to 120% capacity if the following items are met:

- i. the project is necessary to implement the master plan or strategic directions and attract an appropriate and compatible type or caliber of user;
- ii. the project is compatible with existing and proposed adjacent land uses; and
- iii. The number of students generated by the development project, as determined by Montgomery County Public Schools, does not exceed the number of students associated with the current site included in the school population forecasts two years in the future.

The proposed 120 % school capacity is consistent with what Montgomery County Planning Board allows with their Adequate Public Facility requirements. Modifications to the language were suggested at the public hearing and are shown in Exhibit # 12 (double underlined).

Conclusion: staff recommends to the Planning Commission **TO RECOMMEND ADOPTION OF TEXT AMENDMENT T-392 TO THE MAYOR AND CITY COUNCIL.**

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: October 7, 2009

SUBJECT: T-392 -- Ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article XV, entitled, "Adequate Public Facilities," § 24-246, entitled, "Adequacy of School Capacity," to create new Subsections § 24-246(d), 24-246(d)(i) through 24-246(d)(iii) so as to increase capacity limitations upon meeting specific standards for development

At its regular meeting on October 7, 2008, the Commission discussed the ordinance and raised concern that subsection 24-246(d)(iii) may preclude approval of projects currently in process. For example, the commissioners were of the opinion that the redevelopment of the Summit Center shopping center would not comply with the text amendment as it is currently written because, while Montgomery County Public Schools (MCPS) is projecting student population based on future development on the site, there are no students "associated with the current site" as required in subsection 24-246(d)(iii).

In addition, the Commission was of the opinion that the City should have the latitude to approve critical development projects requiring school capacity consistent with the Montgomery County Adequate Public Facilities Ordinance as that capacity could be utilized by development projects approved by the County outside city limits.

The Planning Commission made the following motion:

Vice-Chair Winborne moved, seconded by Commissioner Kaufman, to recommend to the Mayor and City Council ADOPTION of Text Amendment T-392 with the deletion of § 24-246(d)(iii).

Vote: 4-0-1 (Commissioner Levy abstaining)

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P&C Director Greg Ossont.....

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED, "ZONING," ARTICLE XV, ENTITLED, "ADEQUATE PUBLIC FACILITIES," § 24-246, ENTITLED, "ADEQUACY OF SCHOOL CAPACITY," TO CREATE NEW SUBSECTIONS § 24-246(d), 24-246(d)(i) THROUGH 24-246(d)(iii) SO AS TO INCREASE CAPACITY LIMITATIONS UPON MEETING SPECIFIC STANDARDS FOR DEVELOPMENT

Text Amendment T-392

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article XV, § 24-246 is amended to create § 24-246(d) as follows:

ARTICLE XV. ADEQUATE PUBLIC FACILITIES

* * * * *

Sec. 24-246. Adequacy of school capacity.

With the exception of age restricted development, schematic development plan or preliminary site plan for residential development shall not be approved if the subject property is within the attendance area of a Montgomery County Public School that is forecasted to have a student population that exceeds one hundred ten (110) percent of Montgomery County Public Schools Program Capacity two (2) years in the future subject to the following:

- (a) The program capacity for each school attended by Gaithersburg residents is determined annually by the Superintendent of Montgomery County Public Schools and reported to the board of education in the communities facilities master plan and capital improvements program.
- (b) Capacity shall be reviewed individually for each elementary school, middle school, and high school. Sharing of capacity between schools shall not be permitted.
- (c) Upon review of the current communities facilities master plan and capital improvements program, the city manager shall determine on

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Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by Amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

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the first business day of each fiscal year whether or not each public school attended by Gaithersburg residents is forecasted to exceed one hundred ten (110) percent of programming capacity two (2) years in the future.

(d) Notwithstanding the foregoing, the City Council may approve, by resolution, a schematic development or preliminary plan that does not exceed one hundred twenty (120) percent of programming capacity two (2) years in the future upon finding that:

- i. the project is necessary to implement the master plan or strategic directions and attract an appropriate and compatible type or caliber of user; and
- ii. the project is compatible with existing and proposed adjacent land uses; and
- iii. ~~The number of students generated by the development project, as determined by Montgomery County Public Schools, does not exceed the number of students associated with the current site included in the school population forecasts two years in the future.~~

ADOPTED, this ____ day of _____, 2009, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2009. Approved by the Mayor of the City of Gaithersburg this ____ day of _____, 2009.

SIDNEY A. KATZ, Mayor

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<u>Double underlining</u>	<i>Added by Amendment.</i>
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***	<i>Existing law unaffected by bill.</i>

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2009. This Ordinance will become effective on the ____ day of _____, 2009.

ANGEL L. JONES, City Manager

DRAFT - Planning Commission

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<u>Underlining</u>	<i>Added to existing law by original bill.</i>
Single strikethrough	<i>Deleted from existing law by original bill.</i>
<u><u>Double underlining</u></u>	<i>Added by Amendment.</i>
Double boldface strikethrough	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>