

ORDINANCE NO. O-9-08

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR 2.14 ACRES OF LAND KNOWN AS PARCELS 184 & 185, AND PART OF PATENT CERTIFICATE 476 APPARENT RESIDUE OF THE LAND PATENTED TO JOHN T. & SARAH ANN DESELLUM , TO BE REZONED FROM THE R-20 (MEDIUM DENSITY) ZONE TO THE CBD (CENTRAL BUSINESS DISTRICT) ZONE IN ACCORDANCE WITH § 24-196 (MAP AMENDMENTS) AND § 24-198 (OPTIONAL METHOD) OF THE CITY CODE

Z-308(o)

OPINION

BE IT ORDAINED by the Mayor and Council of the City of Gaithersburg in public meeting assembled, that they find the following facts from the evidence of record in Zoning Map Amendment Application Z-308(o):

A. The application Z-308(o), filed by Jody Kline, of Miller, Miller, and Canby, on behalf of Keystone Real Estate Investments, Inc, requests that 2.14 acres of land, currently known as Diamond House and Diamond Acres, located at 1 Water Street and 49 West Diamond Avenue, and being Parcels 184 & 185 and part of patent certificate 476 apparent residue of the land patented to John T. & Sarah Ann Desellum and being more particularly described as follows:

PROPERTY OF LEE J. WELLS & MARY ANN WELLS

Being all of the property described in the following two (2) conveyances to Lee J. Wells and Mary Ann Wells, the first (1st) being from George L. F. Seidl by deed dated November 6, 1998 and recorded among the Land Records of Montgomery County, Maryland in Liber 16463 at Folio 543, and the second (2nd) being from Robert E. Richards, Successor Trustee, by deed dated October 30, 2002 and recorded among the said Land Records in Liber 23725 at Folio 516; and being more particularly described in the meridian of the Maryland State Plane Grid System (NAD 83/91), as follows:

Beginning for the same at a stone found marking the end of the third (3rd) or South 63°East, 10 perch line of Parcel One as described in the aforementioned conveyance from George L. F. Seidl to Lee J. Wells and Mary Ann Wells, L.16463 F.543, said stone also marking the end of the North 79°41'10" East, 72.17 foot line as shown on a plat of subdivision entitled "OBSERVATORY HEIGHT, ADDITION TO GAITHERSBURG, SPRING HOLLOW TOWNHOUSES" and recorded among the aforesaid Land Records in Plat Book 125 as Plat 14667; thence running reversely

with and along said third (3rd) line of Parcel One and the third (3rd) line of Parcel Two of said conveyance from Seidl as now surveyed

- 1.) North 68°42'26" West, 164.00 feet to a rebar found, with an illegible cap, marking the beginning of the fifth (5th) or North 16°38'40" West, 82.26 foot line as described in a conveyance from Alvin L. Aubinoe, III, Trustee, to Shah Property Group I, LLC, by deed dated April 26, 2004 and recorded among the aforesaid Land Records in Liber 27282 at Folio 523; thence running with and along said fifth (5th) line and the sixth (6th) line of said conveyance to Shah Property Group I, LLC, the following two (2) courses
- 2.) North 16°07'48" West, 81.70 feet to an axle found, said axle also marking the beginning of the first (1st) or North 67°43'50" West, 204.19 foot line as described in the aforementioned conveyance from Richards to Wells, L.23725 F.516; thence running with and along said line
- 3.) North 67°57'38" West, 201.36 feet to a point on the westerly side of Water Street (formerly Mudd Branch Road), 35 foot right of way as described in a conveyance from Oscar F. Fulks, et ux. to the Washington Suburban Sanitary Commission by deed dated November 27, 1935 and recorded in Liber 612 at Folio 345; thence running with and along the westerly side of Water Street
- 4.) North 06°56'14" East, 150.65 feet to a point on the southerly right of way line of West Diamond Avenue, Maryland Route 924, right of way width varies, as shown on SHA Plat No. 48219 and described in a conveyance from Peggy Lane, et al. to the State of Maryland by deed dated October 30, 1984 and recorded among the aforesaid Land Records in Liber 6590 at Folio 561; thence running with and along said conveyance to the State of Maryland and the conveyance from George Seidl to the State of Maryland by deed dated December 5, 1983 and recorded among the aforesaid Land Records in Liber 6260 at Folio 618 the following three (3) courses
- 5.) North 42°06'56" East, 25.58 feet to a point; thence
- 6.) 208.25 feet along the arc of a non-tangent curve deflecting to the right, having a radius of 2261.83 feet, and a chord of North 67°07'37" East 208.17 feet, to a point on the westerly side of a Service Road as shown on said SHA Plat and described in said conveyance for Seidl; thence running with and along said Service Road
- 7.) South 16°15'12" East, 482.32 feet to the POINT OF BEGINNING; Containing 84,673 square feet or 1.9438 acres of land.

**PART OF PATENT CERTIFICATE 476 APPARENT RESIDUE OF THE LAND
PATENTED TO JOHN T. DESELLUM & SARAH ANN DESELLUM**

Being part of the property described in a patent granted unto John T. Desellum and Sarah Ann Desellum by patent dated May 1, 1857 and recorded among the Patent Records of Montgomery County, Maryland as Patent No. 476; and being more particularly described in the meridian of the Maryland State Plane Grid System (NAD 83/91), as follows:

Beginning for the same at a stone found marking the end of the North 79°41'10" East, 72.17 foot line as shown on a plat of subdivision entitled "OBSERVATORY HEIGHT, ADDITION TO GAITHERSBURG, SPRING HOLLOW TOWNHOUSES" and recorded among the Land Records of Montgomery County, Maryland in Plat Book 125 as Plat 14667, said line also being part of the North 79°41'10" East 200.61 foot line as shown on a plat of subdivision entitled "OBSERVATORY HEIGHT, ADDITION TO GAITHERSBURG" and recorded among the aforesaid Land Records in Plat Book 96 as Plat 10703; thence running reversely with and along said line as now surveyed

- 1.) South 79°43'56" West, 200.70 feet to a rebar found, with no cap, said rebar also marking the beginning of the fourth (4th) or North 25°12'00" East, 105.15 foot line as described in a conveyance from Alvin L. Aubinoe, III, Trustee, to Shah Property Group I, LLC, by deed dated April 26, 2004 and recorded among the aforesaid Land Records in Liber 27282 at Folio 523; thence running with and along said fourth (4th) line
- 2.) North 25°06'47" East, 105.28 feet to a rebar found, with an illegible cap, said rebar also marking the beginning of the third (3rd) or South 63°East, 10 perch line of Parcel One as described in a conveyance from George L. F. Seidl to Lee J. Wells and Mary Ann Wells by deed dated November 6, 1998 and recorded among the said Land Records in Liber 16463 at Folio 543; thence running with and along said third (3rd) line of Parcel One and with the third (3rd) line of Parcel Two as described in said conveyance to Wells
- 3.) South 68°42'26" East, 164.00 feet to the POINT OF BEGINNING; Containing 8,614 square feet or 0.1977 of an acre of land, as shown on a Description Plat labeled Exhibit "B", attached hereto and made a part hereof by this reference.

be rezoned from the R-20 (Medium Density Residential) Zone to the CBD (Central Business District) Zone.

B. The applicant is requesting the rezoning to the CBD Zone that can be accomplished under §§ 24-10A(2), (Floating Zones), 24-196 (Map Amendments), and 24-198 (Optional Method of application for local map amendments) of the City Code. The City Council's authority in this matter is pursuant to § 24-10A(2) of the City of Gaithersburg Zoning Ordinance.

C. A portion of the subject property was included in Map Designation #9 in the City's 2003 Land Use Element of the Master Plan that recommended the property be rezoned to the CBD Zone.

D. The applicant requests that rezoning to the CBD Zone be accomplished under the optional method of application for local map amendments. This approach requires the submission of a schematic development plan with elements required by §24-198(a) and a covenant detailing the restriction of uses and/or development standards per §24-198(b) as part of the rezoning application. The purpose of a schematic development plan is to limit the development standard or standards to less than the maximum permitted in the requested zone and/or limit the land use of the applicant's subject property to one or more of the permitted uses in the zone. The covenant detailing the restriction of use and/or development standards, after recordation in the County Land Records, will be in effect until such time as the property is rezoned.

E. The schematic development plan proposes 191 multiple-family units, with structured parking. The Declaration of Covenants proposes the following:

1. Density:

The number of dwelling units constructed on the Subject Property shall not exceed 191.

2. Building Height:

No building constructed on the Subject Property shall exceed a total of four stories (excluding garage levels), except for feature towers and turrets that shall not exceed five stories.

3. Setback of Buildings:

Buildings constructed on the Subject Property shall provide not less than the following setbacks.

West Diamond Avenue:	15 feet
Maryland 117A "Service Road:"	5 feet
Water Street:	15 feet

4. Minimum Green Space Requirement:

The amount of green area, including designated parks, public and private open space, active and passive recreational areas and courtyards provided on the Subject Property shall not be less than 40%.

5. Moderately Priced Dwelling Units¹:

The property shall be used only for a multi-family residential apartment residential use, and ancillary uses typically associated with apartment communities, in which not less than fifteen percent (15%) of the dwelling units will be offered to residents earning at least sixty percent (60%) of the area median income, but not more than eighty percent (80%) of the area median income, adjusted for household size in accordance with City Code Regulation No. 02-07 as written as of the date of approval of Zoning Application No. Z-308(o).

Use of the Subject Property shall be restricted to the following:

1. Multi-family residential dwellings.
2. Offices and rooms for marketing, sales, leasing, operation and management of the multi-family residential dwellings
3. Rooms for resident services and amenities including but not limited to rooms for community social events and parties; theater rooms; fitness centers; business centers with provisions for internet, computer, copying and facsimile facilities.
4. Parking garages for the residents of the multi-family residential dwellings and their guests and visitors.

F. The Mayor and City Council and the Planning Commission conducted a joint public hearing on this application on April 21, 2008. At the public hearing, in addition to the testimony of the applicant and the project team, testimony was received from interested and affected parties. The Planning Commission's record closed on May 21, 2008. The Commission made its recommendation on June 4, 2008, and forwarded their recommendation of approval to the Mayor and City Council for Z-308(o). The Mayor and City Council closed their record on June 6, 2008.

G. The Planning Commission recommended approval of the Map Amendment, finding that the Z-308(o) application meets the purpose and intent of the CBD (Central Business District) Zone with the conditions as listed:

1. The applicant shall record the revised Covenant (Exhibit #74) for Z-308(o) in the Land Records of Montgomery County prior to the submission of Final Record Plats;
2. The applicant shall be required to provide a letter of map amendment showing that FEMA has issued a change to

¹ Recorded by separate covenant

the flood maps to indicate the property is no longer in a floodplain prior to the Final Site Plan approval;

3. The applicant shall receive approval of a revised NRI and a preliminary forest conservation plan by the Environmental Services Division prior to Final Site Plan approval;
4. The applicant shall provide documentation of its ownership of the parcel of land known as the Bermuda Triangle or the current owner's acknowledgement and consent prior to Final Site Plan approval;
5. The applicant shall obtain approval from the SHA to disturb any land in the current SHA right-of-way, or provide verification the land has been transferred to the applicant;
6. The applicant shall comply with Gaithersburg Green Residential Criteria as adopted by Ordinance O-14-07 by the Mayor and City Council on October 15, 2007;
7. The applicant shall designate 15% of the total units as Work Force Housing Units, which shall be proportionately and evenly disturbed throughout the project, as nine studio apartments, ten one-bedroom apartments, and ten two-bedroom apartments, in accordance with the WFHU Program Regulations; and
8. The applicant shall continue to work with staff to implement Green strategies in pursuit of LEED Silver Certification.

H. On June 16, 2008, during their policy discussion meeting, the City Council carefully reviewed the evidence of record and considered all submitted testimony, documents and correspondence presented, along with the Planning Commission's recommendation for approval, and made the following findings in accordance with § 24-10A(2) of the City Code:

(1) The application complies with the purposes and intent of the zone as stated in the zoning ordinance:

Purpose:

- (a) The proposed development is in accordance with the Master Plan recommendation by consolidating properties and redeveloping the property as

multi-family residential units. It will create a premier gateway development into downtown Gaithersburg and follows the Master Plan recommendation by requesting rezoning to CBD;

- (b) The multi-family community provides a mix of unit types to meet the needs and requirements of a variety of age groups, lifestyles, and income ranges;
 - (c) The conceptual architecture will be designed in such a way to be in conformance with the Architectural Regulations of the Downtown Plan by utilizing quality materials and incorporating methods historically familiar to Olde Towne Gaithersburg;
 - (d) The density and use promotes the use of public transportation by placing appropriate residential density in an urban area where there are two Ride On Bus Stops and a major commuter rail station stop (MARC) within a five to ten minute walk from the site.
 - (e) The proposed development includes a public use park, a playground, and sidewalks, which will promote improved pedestrian facilities. The applicant is providing underground parking onsite, which improves vehicular circulation;
 - (f) The wide range of style, type, and size of the units, including a large number of studio units, provides housing that is more affordable for people within a wide range of incomes. Additionally, the applicant has agreed to provide Work Force Housing Units;
 - (g) The subject rezoning application includes a public pocket park at the corner of Water Street and West Diamond Avenue, which will be accessible to the general public, and a larger public use playground at the southern edge of the site both which can be classified as public amenities;
 - (h) The proposal is an assemblage of three parcels of land and redevelops two blighted apartment communities in a highly visible and well traveled area in the City of Gaithersburg.
- (2) The application as applied will be compatible and harmonious with existing and planned land uses in the surrounding area:

The application is proposing to rezone the property to CBD and develop a multi-family building in an area that can be considered the gateway to Olde Towne. Surrounding this site is a variety and mix of uses and density, which is highly encouraged in the CBD Zone. A higher residential density is appropriate at this location due to its proximity to public transportation, existing infrastructure, and the public amenities available in Olde Towne.

Further, this property is contiguous to the CBD Zone, and will provide a logical extension to the Central Business District of Gaithersburg.

In conclusion, the City Council finds that Z-308(o), as submitted in accordance with § 24-10A(2) of the City Code and hereafter conditioned, is in the public interest and should be approved due to the presence of sufficient evidence in the record to indicate that the subject map amendment request has accomplished the purposes of the CBD Zone. Additionally, the proposed plan reflects an internally and externally compatible form of development, as well as generally accepted city planning and land use policies, subject to the applicant complying with the conditions stated in this Ordinance.

Z-308(o)

ORDINANCE

NOW, THEREFORE, BE IT ORDAINED by the City Council of Gaithersburg, that Application Z-308(o), being an application filed by Keystone Real Estate Investments is hereby approved with the following conditions required of the applicant:

1. The applicant shall receive approval of Covenants that reflect the development standards and the provision for 15% Moderately Priced Dwelling Units for Z-308(o) by staff and record said Covenants in the Land Records of Montgomery County prior to the submission of Final Record Plats;
2. The applicant shall be required to provide a letter of map amendment showing that FEMA has issued a change to the flood maps to indicate the property is no longer in a floodplain prior to the Final Site Plan approval;
3. The applicant shall receive approval of a revised NRI and a preliminary forest conservation plan by the Environmental Services Division prior to Final Site Plan approval;
4. The applicant shall provide documentation of its ownership of the parcel of land known as the Bermuda Triangle or the current owner's acknowledgement and consent prior to Final Site Plan approval;
5. The applicant shall obtain approval from the SHA to disturb any land in the current SHA right-of-way, or

- provide verification the land has been transferred to the applicant;
6. The applicant shall comply with Gaithersburg Green Residential Criteria as adopted by Ordinance O-14-07 by the Mayor and City Council on October 15, 2007;
 7. The applicant shall designate 15% of the total units as Moderately Priced Dwelling Units, which shall be proportionately and evenly disturbed throughout the project, as nine studio apartments, ten one-bedroom apartments, and ten two-bedroom apartments, in accordance with the MPDU Program Regulations; and
 8. The applicant shall continue to work with staff to implement Green strategies in pursuit of LEED Silver Certification; and
 9. Applicant to submit signed Declaration of Covenants prior to close of record for Final Site Plan Review. Declaration to provide that Applicant will not re-occupy the apartments after all tenants have been relocated but before demolition has occurred. Declaration to be recorded at Applicant's expense promptly after Planning Commission approval of Final Site Plan without any conditions that materially affect the Applicant's ability to implement its redevelopment program.

ADOPTED by the Mayor and Council of the City Gaithersburg, Maryland, on the 21st day of July, 2008.

SIDNEY A. KATZ, MAYOR
and President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 21st day of July, 2008. APPROVED by the Mayor of the City of Gaithersburg this 21st day of July, 2008.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council in public meeting assembled on the 21st day of July, 2008. This Ordinance will become effective on the 11th day of August, 2008.

James D. Arnoult, Acting City Manager