

ORDINANCE NO. O-14-09

AN ORDINANCE TO REZONE 1.2167 ACRES OF LAND,  
CURRENTLY KNOWN AS PARCELS P 387; P 388; & P 424, THE WILSON  
PROPERTIES, IN THE CITY OF GAITHERSBURG, FROM THE EXISTING R-90  
(MEDIUM DENSITY RESIDENTIAL) ZONE TO THE CD (CORRIDOR  
DEVELOPMENT) ZONE, IN ACCORDANCE WITH §24-196 (MAP AMENDMENTS)  
AND §24-160G.6 (PROCEDURE FOR APPLICATION AND APPROVAL)  
OF THE CITY CODE

Z-311

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-311:

A. The application Z-311, filed by Mr. Jody Kline, of Miller, Miller, and Canby, for Dr. Robert Wilson, requests that 1.2167 acres of land, being the following three (3) tracts of land:

The land conveyed by Douglas Fox, trustee et al to Robert J. Wilson et al by deed dated February 18, 2004, recorded among the Land Record of Montgomery County, Maryland in Liber 26909 at Folio 749; and

The land conveyed by Robert J. Wilson to Robert J. Wilson and Anne J. Wilson, Trustees of the Robert J. Wilson Living Trust by deed dated April 24, 2007, recorded among the Land Records of Montgomery County, Maryland in Liber 34519 at Folio 311; and

The land conveyed by Robert J. Wilson to Robert J. Wilson and Anne J. Wilson, Trustees of the Robert J. Wilson Living Trust by deed dated April 24, 2007, recorded among the Land Records of Montgomery County, Maryland in Liber 34519 at Folio 331, more particularly described by bearings and distances in meridian of the Maryland State System of Grid Coordinates as follows:

1. Beginning at an iron pipe found set in the ground on the southeasterly line of DeSellum Avenue southwest, said pipe lying at the southerly end of the N 49° 37' E, 70 feet line of the land described in said Liber 34519, Folio 311; thence running along DeSellum Avenue in a single course with the northwest lines of said Liber 34519, Folio 311 and said Liber 26909, Folio 749
2. North 43° 10' 50" East, 130.18 feet to a point; thence departing DeSellum Avenue and running with the northeasterly line of the property described in said Liber 26909, Folio 749
3. South 45° 23' 48" East, 217.88 feet to a point; thence running in a single course with a portion of southeasterly lines of the two (2) previously mentioned deeds
4. South 33° 54' 55" West, 69.91 feet to the northerly corner of the land described in said Liber 34519, Folio 331; thence running with the outline of said land by the following five (5) bearings and distances
5. South 29° 05' 36" East, 54.68 feet to a point; thence

6. South 33° 01' 47" East, 71.67 feet to a point; thence
7. South 26° 39' 30" West, 179.10 feet to an iron pipe found set in the ground at the southerly corner of said Liber 34519, Folio 331; thence
8. North 45°33'00" West 139.06 feet to an iron pipe found set in the ground; thence
9. North 33°41'06" East, 144.56 feet to an iron pipe found set in the ground at the southerly corner of the land described in said Liber 34519, Folio 311; thence running with southwesterly line of said deed
10. North 45° 51' 28" West, 238.86 feet to the point of beginning, containing an area of 52,999 square feet or 1.2167 acres of land

Be rezoned from the R-90 (Medium Density Residential) Zone to the CD (Corridor Development) Zone.

B. The applicant requests the rezoning to the CD Zone be accomplished under §§24-196 (Map amendments), 24-197 (Requirements as to text and map amendments), 24-160G.6 (Procedure for application and approval) and 24-160G.7(a) (Findings required) of the City code. Section 24-160G.6 requires the concurrent submission of either a concept plan or a schematic development plan.

C. The concept site plan, including the site plan, landscape plan, and conceptual architectural elevations, proposes to redevelop five consolidated properties including the construction of a two-story office building and the reuse of two buildings for office uses.

D. The Mayor and City Council and the Planning Commission conducted a joint public hearing on this application on April 6, 2009. 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 April 27, 2009. The Commission made its recommendation on May 6, 2009, and forwarded their recommendation of approval to the Mayor and City Council for Z-311. The Mayor and City Council closed their record on September 15, 2009.

E. On October 5, 2009, 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, with respect to Application Z-311, the following findings in accord with §24-160G.7(a) of the City Code.

1. The application meets or accomplishes the purposes, objectives, and minimum standards and requirements of the zone;

Purpose & Objective:

- a. Application Z-311 will provide economic vitality by expanding the leasable commercial space within the Fairgrounds Commercial District of the CD Zone.
- b. Application Z-311 will create an important sense of place by placing a unique two story structure on the corner of the focal South Frederick Avenue, DeSillum Avenue intersection.

- c. Application Z-311 provides for the redevelopment and renovation of aging and declining structures found on the various properties.
- d. Application Z-311 provides for the enhancement of pedestrian facilities along DeSellum Avenue and South Frederick Avenue by the addition of landscaped planting strips and improved sidewalks/paths.
- e. Application Z-311 and the associated CSP-09-001 provide a clear vision from which the Mayor and City Council and Planning Commission may make a decision on approval.
- f. Application Z-311 provides the ability to create a development in keeping with the recommendations proposed in various approved City Master Plans while keeping the scale appropriate to the current site setting with adjoining properties.

Standards & Requirements:

- a. Application Z-311 provides that the proposed office building will not exceed thirty-five (35') feet in height; will front onto South Frederick Avenue; and will have appropriate setbacks from both DeSellum Avenue and South Frederick Avenue to provide sidewalks and landscaped planting strips.
- b. Application Z-311 will provide for a development that is in compliance with the intent of the Frederick Avenue Corridor Master Plan Design Guidelines in the design of the pedestrian streetscapes; in developing green strip buffers between curblines and paths; will provide a six foot (6') path along South Frederick Avenue and DeSellum Avenue; provides that public streets are fronted by buildings; and provides that all off-street parking is visually buffered from adjacent residential properties.
- c. Application Z-311 provides that all off-street parking is set back twenty (20') feet from any front building line; will maintain a ten (10') foot landscaped buffer between parking and adjacent properties; and will provide dedicated pedestrian ways among streets, parking, and the building entrance.

(2) The application is in accord with recommendations in the applicable master plan for the area and is consistent with any special conditions or requirements contained in said master plan;

The 1986 Neighborhood Two Land Use Plan, adopted in February 1986, Map designation "25" provided two options for Parcels 387 and 388, 13 and 11 DeSellum Avenue. Both options retained the R-90 zoning. Option "B" retained the "low density residential" use; however Option "A" recommended a change from "low density residential to residential-office", based upon the impact of the adjacent professional office uses. These recommendations have carried forth through each successive Master Plan; however, an office use would be precluded by the current R-90 zoning.

Application Z-311 is additionally justified by the Frederick Avenue Corridor Special Study Area Master Plan which states both:

"A maximum of 5,000 square feet is recommended of the Wilson property on the corner of DeSellum Avenue and Frederick Avenue. Preservation and reuse of the Fulks house (P420) and former Salvation Army house, with potential redevelopment of the existed brick house, is also

recommended. Parcel assemblage and redevelopment of the later lots should be considered. The corresponding zoning category would be the CD zone.”

“Owners of properties not comprehensively rezoned are encouraged to apply for rezoning to the CD zone to meet the goals and objectives of the Frederick Avenue Corridor Master Plan.”

In order to accomplish the intent defined in the Frederick Avenue Corridor Special Study Area Master Plan, the rezoning for future assemblage is needed. Finally, the rezoning of 13 DeSellum Avenue would achieve a goal of the Historic Preservation Element which states under Objective 1:

“The City of Gaithersburg recognizes that its historic, architectural, and cultural heritage should be reflected in future development and growth. The City shall continue to create a balance in growth and development that assures the protection of its outstanding historic, architectural and cultural resources.

Encourage adaptive reuse and integration of historic properties into new projects wherever possible and appropriate.”

(3) The application and schematic development plan will be internally and externally compatible and harmonious with existing and planned land uses in the CD zoned areas and adjacent areas; and

Application Z-311 facilitates commercial-office uses that demonstrate compliance with all required adequate public facility ordinance (APFO) standards required by the City of Gaithersburg and will not have an adverse affect on adjacent properties or on the character of the corridor. The surrounding land uses include religious, office, public, and residential. Adaptive reuse and compliance with the Frederick Avenue Corridor Design Guidelines will ensure minimal impacts to the adjoining properties. The future assemblage proposed under CSP-09-001 involves properties currently zoned CD and this rezoning would bring all properties into zoning conformance.

(4) Compliance with standards for rezoning by local map amendment in Article 66B of the Maryland Code.

Section 4.05.(a)(2)(ii)2 of Article 66B of the Maryland Annotated Code states:

“The local legislative body may grant the amendment to change the zoning classification based on a finding that there was:

A mistake in the existing zoning classification.”

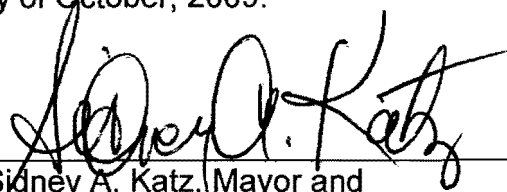
Application Z-311's intent to rezone is a reflection of such a mistake. The current R-90 zoning, of the subject properties, was established in the 1950s and has not been reconsidered since; however, the 1986 Neighborhood Two, Study Area Four Land Use Plan specifically recommends an office use for both 11 and 13 DeSillum Avenue as an option to relate to the office use established at 206 South Frederick Avenue This recommendation has carried forward with each successive adopted Master Plan.

It is to be noted that office uses, per §§ 24-28 and 24-29 of the City Code, are not allowed by right or as a special exception in the R-90 zone. Many properties were comprehensively rezoned to the CD zone in conjunction with 2001 Frederick Avenue Corridor Special Study Area Master Plan, including 206 and 208 South Frederick Avenue. These two properties front the Z-311 subject parcels and have the same owner. In making the recommendations for more intense development on 206 South Frederick Avenue, the 1986 recommendation for 11 and 13 DeSillum Avenue should have been recognized and these properties included in the Fairgrounds Commercial District study area if not comprehensively rezoned to CD with 206 and 208 South Frederick Avenue.

The 2001 Frederick Avenue Corridor Special Study Area Master Plan, in recommending assemblage of lots for greater development should have recognized that the three subject parcels for Z-311 were also owned by Drs. Wilson and recommended their inclusion in said assemblage and rezoned to CD. In summation, the current zoning of R-90 for Parcels 387, 388, and 442 conflicts with the adopted land use recommendation for these lots and should have been rezoned under the 2001 Frederick Avenue Corridor Special Study Area Master Plan.

For the reasons stated above, rezoning application Z-311 is granted with no conditions.


ADOPTED by the City Council this 5th day of October, 2009.

  
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Sidney A. Katz, Mayor and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 5th day of October, 2009. APPROVED by the Mayor of the City of Gaithersburg, this 5th day of October, 2009.

  
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SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, on the 5th day of October, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the 5th day of October, 2009. This Ordinance will become effective on the 25th day of October, 2009.

  
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Angel L. Jones, City Manager