

ORDINANCE NO. O-6-08

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR 6.58 ACRES OF LAND KNOWN AS PARCELS 1 AND 2, THE SUMMIT, PLAT 13724, FROM THE C-2 (GENERAL COMMERCIAL) ZONE TO THE MXD (MIXED USE DEVELOPMENT) ZONE AND APPROVING A SKETCH PLAN IDENTIFIED AS APPLICATION Z-307 FOR LAND KNOWN AS THE SUMMIT, 559 GIRARD STREET, IN ACCORDANCE WITH § 24-196 (MAP AMENDMENTS) AND § 24-160D.9 (APPLICATION AND PROCESSING PROCEDURES) OF THE CITY CODE

Z-307

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-307:

A. The application Z-307, filed by Barbara Sears and Yum Yu Cheng, of Linowes and Blocher, on behalf of Hearthstone Communities, LC, and Opus East, LLC, requests that 6.58 acres of land, currently known as the Summit Shopping Center and being Parcel 1, Plat 13724 among the Land Records of Montgomery County, Maryland and Parcel 2 and being more particularly described as follows:

PARCEL ONE:

ALL THAT certain property situated in Montgomery County, State of Maryland, described as Parcel 1, containing 284,943 square feet or 6.54139 acres in a subdivision known as "THE SUMMIT GAITHERSBURG" as per plat thereof recorded in Plat Book 116 at Plat No. 13724 among the Land Records of Montgomery County, Maryland.

PARCEL TWO:

ALL THAT certain part or parcel of land and improvements thereon, lying and being situated in Montgomery County, Maryland, being more particularly described as follows:

BEGINNING for the same at the westerly end of the North 67° 35' 10" West, 655.92 foot line of Parcel 1 as shown on a plat entitled "Parcel 1, The Summit" recorded among the Land Records of Montgomery County, Maryland, as Plat Number 13724; and running thence with all of said line reversed

1. South 67° 35' 10" East, 656.50 feet to a point; thence with a southerly extension of the South 06° 35' 10" East, 685.00 foot line of said plat recorded as Plat number 13724

2. South 06° 35' 10" East, 5.20 feet to a point on the northerly or North 67° 13' 05" West, 446.33 foot right of way line of Dalamar Street (now known as Girard Street) as shown on a plat entitled "Parcel B & Outlot C, Section Two, Woodwinds Park" recorded among the Land Records of Montgomery County, Maryland, as Plat Number 9589; and running thence with part of said line and all of the North 67° 13' 05" West, 321.59 foot line of said Outlot C as shown on said plat

3. North 67° 13' 05" West, 658.95 feet to a point; thence with a southerly extension of the North 07° 25' 56" East, 378.26 foot line of Parcel 1 as shown on said plat recorded as Plat Number 13724

4. North 07°30' 55" East, 0.32 feet to the Point of Beginning.

Containing 1,594 square feet or 0.03659 acres of land, more or less.

Parcel of Tax I.D. No. 09-02159366

be rezoned from the C-2 (General Commercial) Zone to the MXD (Mixed Use Development) Zone.

B. The applicants request the rezoning to the MXD Zone to be accomplished under §§ 24-10A(2), Floating Zones, 24-196 (Map Amendments), 24-197 (requirements as to Text and Map Amendments), 24-160D.9 (Application and processing procedures) and 24-160D.10(a) (Findings required) of the City Code. Section 24-160D.9 requires the concurrent submission of a sketch plan. The City Council's authority in this matter is pursuant to § 24-160D.10 of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

C. The subject site was annexed into the City of Gaithersburg in 1971 as part of the approval of Annexation Application X-096 (the Casey-Goshen property.) The subject site was assigned R-20 (Medium Density Residential) Zone by Resolution R-21-71. In 1981, the property was part of a Master Plan Special Study Area and was comprehensively rezoned to the C-2 (General Commercial) Zone. The property was then developed as a shopping center between 1981 and 1983. The subject property was designated as part of Study Area 1, Map Designation 5 in Neighborhood One of the 1997 Land Use Plan of the Master Plan. The Master Plan recommended that the parcels be reclassified to a commercial-office-residential land use to allow for mix of research and development, office building and a mix of residential units and suggested the property be rezoned to the MXD (Mixed Use Development) Zone in the future. The 2003 Gaithersburg Master Plan again recommended a land use designation of commercial-office-residential and

recommended that the property be rezoned to the MXD Zone. The plan suggested live-work units and office development.

D. The sketch plan which includes an illustrative plan and an engineered plan, containing two sheets, and conceptual architectural elevations, proposes 300 multiple-family units, 20,000 square feet of retail development, which includes 8,000 square feet of floor area to be used for the leasing office for the apartments and other amenities for the complex.

E. The Mayor and City Council and the Planning Commission conducted a joint public hearing on this application on November 19, 2007. At the public hearing, in addition to the testimony of the applicant and the project team, testimony was received from interested and affected parties. A joint work session was held on February 25, 2008, to further address those issues raised during the joint public hearing. The Planning Commission's record closed on May 14, 2008. The Commission made its recommendation on May 21, 2008, and forwarded their recommendation of approval to the Mayor and City Council for Z-307. The Mayor and City Council closed their record on May 22, 2008.

F. The Planning Commission recommended approval of the Map Amendment and approval of the sketch plan (submitted as Exhibits #130, #140 and #147 finding that the Z-307 application is in conformance with the MXD (Mixed Use Development) Zone of the City's Zoning Ordinance with the conditions as listed:

1. Future development of the site shall include 20,000 square feet of commercial-retail-office; a limit of 8,000 square feet of the 20,000 square feet shall be used for the apartment management office and tenant amenities;
2. Future development of the site shall include up to 300 residential units in structures three to five stories in height;
3. At the submission of Schematic Development Plan Application, the Applicants shall provide plans with heights of buildings in accordance with the letter from Barbara Sears and Yum Yu Cheng, Linowes and Blocher, dated April 29, 2008 (Exhibit #126);
4. The Applicants shall maintain the setbacks established on both the Illustrative and Sketch Plans (Exhibits #130, #140 and #141);
5. The Applicants shall provide parking in a combination of above and below grade structures, plus surface parking. A minimum of 90 percent of parking exclusively for retail and residential

- use must be in structures. Parking calculations and aisle widths are to be in accordance with the City of Gaithersburg Code;
6. The Applicants shall construct Cedar Spring Street to its full two-way width as shown on the Site Plan SP-03-0008 prior to the issuance of any building permit for the development;
 7. The Applicants shall meet storm water management quantity and quality requirements onsite and obtain approval of a Concept Storm Water Management plan, which would include stream mitigation at the area of outfall, prior to Schematic Development Plan Approval;
 8. The Applicants shall work with staff to comply with the Residential Green Code requirements and provide Energy Star appliances and other features, such as windows, etc.;
 9. The Applicants shall submit and have approved a Forest Conservation Plan showing required afforestation to be met onsite prior to the approval of the Schematic Development Plan;
 10. Prior to the submission of the Schematic Development Plan, the Applicants shall submit and receive approval of a noise study by the Environmental Services Division;
 11. Applicants are to provide a schedule of sound mitigation measures in accordance with an approved Noise Study prior to the submission of Final Site plan;
 12. Prior to the approval of the Schematic Development Plan, the Applicants shall receive conceptual approval of a utility plan by PEPCO, Verizon and Washington Gas and the Department of Public Works in writing;
 13. Prior to the recordation of any final subdivision (record) plats, the Applicants shall acquire Outlot A, Block G of Hidden Creek Land Bay III, Section 2 (Plat No. 22978), and combine the outlot with the main lot;
 14. Prior to the submission of Final Site Plan, the Applicants shall submit letters affirming the applicants' ability to grade and construct improvements and obtain necessary public right of way on Outlot C, Section Two, Woodwinds Park (Plat No. 9589);

15. The Applicants, at the time of submission of Schematic Development Plan, shall provide a Road Improvement Plan for Girard Street, including its intersection with Goshen (North Summit) Road, in accordance with the approved Traffic Impact Study, to both the City and Montgomery County Department of Public Works and Transportation for review and receive approval of the plan prior to final site plan approval
16. Applicants are to complete a Road Improvement Plan for Girard Street prior to the approval of the final use and occupancy inspection of the residential units;
17. Applicants shall work with City staff and Montgomery County Ride-On regarding the relocation of both the western bus stop and eastern bus shelter within Girard Street public right of way and install a new bus shelter or provide funding not to exceed \$10,000.00 for the western bus stop;
18. Applicants are to provide Design Guidelines for the project in accordance with Zoning Ordinance §§ 24-22.3 and 24-160D.13, at the time of application for Schematic Development Plan; and
19. Applicants are to participate in the Art in Public Places and designate a site for the art at the time of Schematic Development Plan approval.

G. On June 2, 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 accord with §§ 24-10A(2) and 24-160D.10(a) of the City Code.

(1) The application meets (complies) or accomplishes the purposes, objectives, (intent) and minimum standards and requirements of the zone:

Purposes, Objectives and Intent:

- a) Both the 1997 and 2003 City of Gaithersburg Land Use Master Plans recommend that the subject property be developed as a mixed use development that will provide additional housing opportunities within the City. The sketch plan for Z-307 ("The Plan") provides for a mixed use development with a new housing type within the Casey-Goshen/Hidden Creek neighborhood and provides commercial space, as recommended in

the Master Plan and as demonstrated by the exhibits submitted by the Applicants.

- b) Because this is only a 6.58-acre parcel that adjoins an existing mixed use development, the Applicants propose to develop the property in one phase, which will be the final stage of the Casey-Goshen/Hidden Creek neighborhood.
- c) The Plan shows 3- to 5-story structures which utilize different heights, materials and architectural styles which complement those in the adjoining neighborhood. In addition, the architectural styles of the building enhance the surrounding area by adding a different design type to the neighborhood. The schematic drawings promote visible signage for the commercial use that integrates the signage to the location of the project and the architecture. The condition to provide Design Guidelines at the time of Schematic Development Plan application will establish guidelines to promote design flexibility for the project and refine the architectural styles of the different buildings within the project.
- d) The Plan for the property, which is contiguous to an MXD property with mixed residential uses, will add two more use categories to the neighborhood; multiple-family units, including affordable housing, and commercial/retail uses. In order to integrate the proposed development with the adjoining MXD neighborhood, as required for a parcel less than 10 acres, the Applicants, has proposed connecting the developments by vehicular access via Raven Avenue, as was envisioned during the development of Hidden Creek Land Bay III. Additionally, the sketch plan provides continuous pedestrian access to the adjoining neighborhood and also to the Girard Street and Goshen Road corridors. Further, the project provides access to different venues of public transportation. The proposed sketch plan provides employment, residential, and open spaces. With the proposed conditions and continuing refinement of the integration of this project into the community at the time of Schematic Development Plan, the project will become an integrated part of Gaithersburg.
- e) The project proposes a mix of residential and commercial/retail uses that would not be allowed with Euclidian zoning categories. The Plan provides a higher standard of development than could be done under a conventional zoning category by using enhanced site design, a mix of uses, diverse and high quality architectural elements (to be further defined at Schematic Development Plan review), structured parking and well landscaped amenity spaces.
- f) The project efficiently uses the land by retaining continuous circulation through the site by connecting to existing vehicular and pedestrian connections. As shown on the illustrative sketches, the retail area is

convenient to existing and proposed residential areas to promote pedestrian access. In addition, the property is served by a Montgomery County Ride-On route and within walking distance of METRO bus station (Lakeforest Transfer Center), the State of Maryland MARC train station. These options plus the proximity of the property to the Shady Grove METRO rail station provide opportunities to reduce reliance upon automobile use. Review of a Schematic Development Plan will allow further study of comprehensive connectivity and linkages to open space and recreational areas.

- g) The Applicants have submitted and received approval of a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) with one condition. Because the property was developed as a shopping center, there was no natural preservation area. The proposed plan will enhance the environment by adding afforestation (tree planting) areas on the property. Additionally, compliance with current stormwater management regulations will reduce the impact of water run off, improve the water quality coming from the property, and minimize erosion of existing water courses.
- h) Due to its small size, the property will be developed in one phase. In accordance with the approved Traffic Impact Study (TIS), the Applicants will be required to improve the intersection of Girard Street and Goshen Road to improve the vehicular circulation of that intersection.

Minimum Standards

1. As stated above, the application and exhibits comply with the 2003 Master Plan Land Use Element, which proposes mixed use development for this site. The application complies with the minimum area for an MXD zoning district because the property is contiguous to an existing MXD zoned area (Hidden Creek Land Bay III) and will be integrated into that development by vehicular and pedestrian access.
2. The subject property is located adjacent to existing roadways, Raven Avenue, Girard Street and Goshen Road, which, according to the Traffic Impact Study, are adequate to service the development. The traffic operations of the area will be enhanced with the with intersection improvements to Girard Street at its intersection with Goshen Road as a condition for approval. The buildings will be accessed via a private street that connects to public roadways.
3. The property is currently serviced by all utilities, including water and sewer. As conditioned, the Applicants need to submit Design Guidelines that will incorporate sign design as part of the submission package for Schematic

Development Plan review. This will assure that the signage will be coordinated and thematic for the project and surrounding area.

4. The sketch plan proposes 41.7 percent of green area. The phasing for the recreational amenities will be evaluated during the Schematic Development Plan review and finalized at Final Site Plan review.
5. As noted above, the required parking shown on the sketch plan needs to be adjusted in order to comply with the currently adopted Parking Ordinance. The final evaluation of the provided parking will be done at the time of Schematic Development Plan review

(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:

As stated above, both the 1997 and 2003 City of Gaithersburg Land Use Master Plans recommend that the subject property be developed as a mixed use development that will provide additional housing opportunities within the City. This plan provides for a mixed use development with a different housing type within the Casey-Goshen/Hidden Creek neighborhood and in addition will provide commercial space as proposed in the Master Plan and demonstrated by the exhibits submitted by the applicant. Therefore, the plan is in accord with the 2003 City of Gaithersburg Master Plan. There were no special conditions or requirements contained in the master plan.

(3) The application and sketch plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned areas and adjacent areas (surrounding areas):

The Plan, schematic architecture and other exhibits of this application creates a development that is compatible and harmonious with the surrounding MXD zoned areas by creating vehicular and pedestrian connections. The new architectural design is complementary to character of the adjoining Hidden Creek community and other buildings in the surrounding areas.

In conclusion, the City Council finds that Z-307, as submitted in accordance with §§ 24-10A(2) and 24-160D.10(a) 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 Amendment to Sketch Plan has accomplished the purposes of the MXD Zone, reflects an internally and externally compatible form of development, and is consistent with the purpose of the 1997 and 2003 Land Use Plans of the City's Master Plan, as well as generally accepted city planning and land use policies, subject to the applicant complying with the conditions stated in this Ordinance.

SKETCH PLAN Z-307

ORDINANCE

NOW, THEREFORE, BE IT ORDAINED by the City Council of Gaithersburg, that Application Z-307, being an application filed by the Hearthstone Communities, LC, and Opus East, LLC, is hereby approved with the following conditions required of the applicant:

1. Future development of the site shall include 20,000 square feet of commercial-retail-office; a limit of 8,000 square feet of the 20,000 square feet may be used for the apartment management office and tenant amenities;
2. Future development of the site shall include up to 300 residential units in structures three to five stories in height;
3. At the submission of Schematic Development Plan Application, the Applicants shall provide plans with heights of buildings in accordance with the letter from Barbara Sears and Yum Yu Cheng, Linowes and Blocher, dated April 29, 2008 (Exhibit #126), incorporated herein by reference;
4. The Applicants shall maintain the setbacks established on both the Illustrative and Sketch Plans (Exhibits #130, #140 and #141);
5. The Applicants shall provide parking in a combination of above and below grade structures, plus surface parking. A minimum of 90 percent of parking exclusively for retail and residential use must be in structures. Parking calculations and aisle widths shall to be in accordance with the City of Gaithersburg Code;
6. The Applicants shall construct Cedar Spring Street to its full two-way width as shown on the Site Plan SP-03-0008 prior to the issuance of any building permit for the development;
7. The Applicants shall meet storm water management quantity and quality requirements onsite and obtain approval of a Concept Storm Water Management plan, which would include stream mitigation at the area of outfall, prior to Schematic Development Plan Approval;

8. The Applicants shall work with staff to comply with the Residential Green Code requirements and provide Energy Star appliances and other features, such as windows, etc.;
9. The Applicants shall submit and have approved a Forest Conservation Plan showing required afforestation to be met onsite prior to the approval of the Schematic Development Plan;
10. At time of the submission of the Schematic Development Plan, the Applicants shall submit a noise study to the Environmental Services Division for review and approval prior to the Schematic Development Plan approval;
11. Applicants are to provide a schedule of sound mitigation measures in accordance with an approved Noise Study prior to the submission of Final Site plan;
12. Prior to the approval of the Schematic Development Plan, the Applicants shall receive conceptual approval of a utility plan by PEPCO, Verizon and Washington Gas and the Department of Public Works in writing;
13. Prior to the recordation of any final subdivision (record) plats, the Applicants shall acquire Outlot A, Block G of Hidden Creek Land Bay III, Section 2 (Plat No. 22978), and combine the outlot with the main lot;
14. Prior to the submission of Final Site Plan, the Applicants shall submit letters affirming the applicants' ability to grade and construct improvements and obtain necessary public right of way on Outlot C, Section Two, Woodwinds Park (Plat No. 9589);
15. The Applicants, at the time of submission of Schematic Development Plan, shall provide a Road Improvement Plan for Girard Street, including its intersection with Goshen (North Summit) Road, in accordance with the approved Traffic Impact Study, to both the City and Montgomery County Department of Public Works and Transportation for review and receive approval of the plan prior to final site plan approval
16. Applicants are to complete a Road Improvement Plan for Girard Street prior to the approval of the final use and occupancy inspection of the residential units;

17. Applicants shall work with City staff and Montgomery County Ride-On regarding the relocation of both the western bus stop and eastern bus shelter within Girard Street public right of way and install a new bus shelter or provide funding not to exceed \$10,000.00 for the western bus stop;
18. Applicants shall provide Design Guidelines for the project in accordance with Zoning Ordinance §§ 24-22.3 and 24-160D.13, at the time of application for Schematic Development Plan; and
19. Applicants shall participate in the Art in Public Places and designate a site for the art at the time of Schematic Development Plan approval.

ADOPTED by the Mayor and Council of the City Gaithersburg, Maryland, on the 2nd day of June, 2008.

DELIVERED to the Mayor of the City of Gaithersburg this 2nd day of June, 2008.
APPROVED by the Mayor of the City of Gaithersburg this 2nd day of June, 2008.

SIDNEY A. KATZ, MAYOR
and President of the Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council in public meeting assembled on the 2nd day of June, 2008. This Ordinance will become effective on the 23rd day of June, 2008.

James D. Arnoult, Acting City Manager