

ORDINANCE NO. O-6-09

AN ORDINANCE TO REZONE 3.6859 ACRES OF LAND, CURRENTLY KNOWN AS 12-26 SOUTH FREDERICK AVENUE THAT INCLUDES PARCELS N323 & N271, KNOWN AS EXECUTIVE GARDENS APARTMENTS, IN THE CITY OF GAITHERSBURG, FROM THE EXISTING R-20 (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-309

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-309:

A. The application Z-309, filed by Mr. Jody Kline, of Miller, Miller, and Canby, for Keystone REI, requests that 3.6859 acres of land located at 12-26 South Frederick Avenue, that also includes Parcels N323 and N271, known as Executive Gardens Apartments, being more particularly described as follows:

Being all of the property described in a conveyance from CONSOLIDATED-EXECUTIVE, LLC a Maryland limited liability company, to EXECUTIVE GARDEN REO LLC, a Delaware limited liability company, by Special Warranty Deed dated June 16, 2006 and recorded among the Land Records of Montgomery County, Maryland in Liber 32522 at Folio 15, said property being all of Parcel A, Parcel B and Lot 1, as shown on a plat of subdivision entitled "LOT-1 AND PARCELS A & B, EXECUTIVE GARDEN APARTMENTS" and recorded among the aforesaid Land Records in Plat Book 155 as Plat 17582; 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 South 45°24' East, 240.57 foot line as shown on the aforementioned plat, said line also being the northeasterly right of way line of George Street, 50 foot right of way, and running thence with and along said right of as now surveyed

- 1.) North 45°19'28" West, 240.48 feet to a stone fo und marking the northwesterly corner of said Parcel A, said stone also lying on the southeasterly right of way line of a Service Road running from Maryland Route 117 to Maryland Route 355, said service road also being shown on a SRC plats 48219 and 48217; thence running with and along said service road the following three (3) courses
- 2.) North 44°00'57" East, 139.69 feet to a T-Bar fo und; thence
- 3.) North 42°49'40" East, 486.25 feet to a point; t hence
- 4.) North 83°22'15" East, 32.98 feet to a point on the southwesterly right of way line of Maryland Route 355, right of way width varies, as shown on said SRC Plat 48217; thence running with and along said Maryland Route 355 the following three (3) courses

- 5.) South 65°32'16" East, 50.80 feet to a point; thence
- 6.) South 55°20'02" East, 70.00 feet to a point; thence
- 7.) South 54°30'18" East, 99.60 feet to a point; thence departing said Maryland Route 355 and running with the common line between the aforesaid Lot-1 and Parcel B, Executive Gardens, and Parcel A as shown on a plat of subdivision entitled "PARCEL A, OBSERVATORY HEIGHTS" and recorded among the aforesaid Land Records in Plat Book 124 as Plat 14480 and Part of Lot 71 and Lots 72 thru 76 as shown on a plat of subdivision entitled "OBSERVATORY HEIGHTS" and recorded among the aforesaid Land Records in Plat Book 2 as Plat 138
- 8.) South 42°51'02" West, 697.38 feet to the POINT OF BEGINNING; Containing 160,57square feet or 3.6859 acres of land.

Be rezoned from the R-20 (Medium Density Residential) Zone to the CD (Corridor Development) Zone.

B. The applicant requests the rezoning to the CD Zone 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 schematic development plan, including the site plan, landscape plan, and conceptual architectural elevations, proposes to demolish the existing garden style apartments and redevelop the site with a 263-unit multiple family building with structured underground parking.

D. The Mayor and City Council and the Planning Commission conducted a joint public hearing on this application on March 16, 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 30, 2009. The Commission made its recommendation on May 6, 2009, and forwarded their recommendation of approval to the Mayor and City Council for Z-309. The Mayor and City Council closed their record on May 15, 2009.

E. On June 1, 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-309, 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-309 will provide economic vitality by creating a new multifamily community serving a diverse economic demographic through a variety of multiple family housing options and by focusing redevelopment in an underutilized area.

- b. Application Z-309 will incorporate innovative land planning practices and timeless architecture to create an appropriate scale of development that is more attractive and cohesive and provides an enhanced sense of place, contributing to the Frederick Avenue Corridor and also nearby Olde Towne.
- c. Application Z-309 provides for the redevelopment of an aging, declining apartment complex.
- d. Application Z-309 will provide for pedestrian enhancement by creating a sidewalk connection from the front end of the property to the adjunct property along South Frederick Avenue, and will improve the existing streetscape along the SHA service road by proposing street trees and creating an easier access to the site than what currently exists.
- e. Application Z-309 provides the applicant the ability to construct a multiple housing family building using quality architectural materials that will be consistent with and match the proposed Residences at Olde Towne project, creating an architectural theme along the SHA service road.

Standards & Requirements:

- a. Application Z-309 provides that the multiple family building complex fronts upon the public streets of South Frederick Avenue and the SHA service road.
- b. Application Z-309 provides that all off street parking is set back twenty feet (20') from any front building line due to the multiple family complex proposing an underground parking structure.
- c. Application Z-309 incorporates requirements from the Frederick Avenue Corridor Design Guidelines in that the design of the building provides frontage along public streets, providing off street parking so as to not be visible from the street, and providing adequate buffers from adjoining property by using heavy landscaping.

(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;

Application Z-309's site location was identified within the study limits of the Fairgrounds Commercial District of the 2001 Frederick Avenue Corridor Special Study Area Master Plan. Application Z-309 is provided the ability to rezone by the Frederick Avenue Corridor Special Study Area Master Plan, which states:

"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."

(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-309 proposes a residential use that demonstrates compliance with all the required adequate public facility ordinance (APFO) standards required by the City of Gaithersburg and will not have an adverse affect on adjacent properties or the character of

the corridor. The land use to the south and southeast is medium density residential and directly to the south is a CD zoned property used as commercial/office building. To the northwest is Barron's Lumber yard, which is used mainly for industrial purposes with a smaller commercial component. The proposed multiple family building will be built with the same style and character as the recently approved Residences at Olde Towne project, which is in close proximity to the subject redevelopment. These adjacent and nearby uses range in a height from two (2) to five (5) stories. The proposed higher-density residential use will complement the immediate neighborhood by introducing a new aspect to the mix of uses strived for in the corridor.

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

Application Z-309's intent to rezone is a reflection of change in the surrounding and adjacent neighborhoods. The current R-20 zoning of the subject property was established in the 1950s and 1980s and has not reconsidered since.

Many properties were comprehensively rezoned to the CD zone in conjunction with the 2001 Frederick Avenue Corridor Special Study Area Master Plan. The City has stated an adopted a policy towards upgrading its housing stock, in the 2003 Process and Overview Element. Two actions adopted under the Redevelopment Theme include "Consider waiving the density or height requirement for more desired project" and "Increase public green/open space through infrastructure redesign in existing neighborhoods." The Housing Theme includes the action "Encourage the redevelopment of aging apartment complexes. These adopted public policy actions coupled with the fact that the subject property confronts Frederick Avenue property zoned CD show a change that warrants a rezoning to the CD zone for the subject property and the 2001 Frederick Avenue Corridor Special Study Area Master Plan invites and encourages such rezoning.

For the reasons stated above, rezoning application Z-309 is granted with no conditions.

ADOPTED by the City Council this 1st day of June, 2009.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 1st day of June, 2009. APPROVED by the Mayor of the City of Gaithersburg, this 1st day of June, 2009.

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 1st day of June, 2009, and that the same was approved by the Mayor of the City of Gaithersburg on the 1st day of June, 2009. This Ordinance will become effective on the 20th day of June, 2009.

Angel L. Jones, City Manager