

B. Schematic Development Plan Approval

When the time came to move forward with potential development of individual sections of Lakelands, the Subject Property was placed within Phase 1 development as shown on a Schematic Development Plan, Application No. SDP-7-1 filed and reviewed by the City in the summer of 1997.

The legislative history for Application No. SDP-7-1 (i.e., Staff Report for Planning Commission, Staff Comments for City Council, Approval Resolution No. R-86-97) does not specifically address the Subject Property so the development potential of the Subject Property is controlled by the broad range of uses and densities approved for Phase 1, Lakelands.” However, the approved Phase 1 Schematic Development Plan for “LAKELANDS” does show a single building footprint on the Subject Property but without identifying its proposed use.

C. Site Plan Approval

Subsequently, the Subject Property obtained Final Site Plan Approval from the City Planning Commission per action of the Planning Commission on October 6, 1998. Sheet 9 in the City’s records for Site Plan Application No. L-1093 shows approval of the site for a “Restaurant, Class “A”, 6000SF,”an approval subject to nineteen (19) conditions.

The approved Final Site Plan also bears a note reading “Final Site Plan for a restaurant to be submitted at a later date.”

Notwithstanding the 1998 site plan approval for a Class “A” sit down restaurant to be located on the Subject Property, that approved plan has not yet been implemented.

D. Schematic Development Plan Application No. SDP-8551-2020

In 2021, the property owners applied to the City to amend the applicable Schematic Development Plan to allow for the construction and operation on the Subject Property of a one-story, 12,900 square foot daycare/early childhood education building with associated outdoor play area and parking lot.

This SDP amendment application was very controversial and resulted in vigorous community opposition to what was deemed to be despoilation of a natural area, with an adjacent lake, that had become, *de facto*, a community oriented green space.

Despite a recommendation of approval from the Planning Staff for the SDP Amendment, and a positive recommendation (vote of 3-2) from the Planning Commission to the City Council, a majority of the Council (3-2) eventually voted in August, 2021 to deny the requested Schematic Development Plan Amendment Application.

The Council's decision was appealed to the Circuit Court for Montgomery County, Maryland (Case No. 487194V). After oral argument before the Court by the Applicant, Counsel for the City and representatives for the neighborhood, Judge Harry Storm on June 13, 2022 affirmed the decision of the City Council to deny the SDP Amendment Application.

E. Current Status of Zoning Approvals

In light of all of the zoning history of the Subject Property described above, what remains in place is the fact that the site is still approved for development with a "Class A" restaurant upon final site plan review and action by the City Planning Commission. This application brings this matter to the City for closure.

III. APPLICANT'S PROPOSAL

151 Lakelands, LLC has been approached by the operators of a quality, white tablecloth, Class A restaurant known as "Eddie V's Prime Seafood" dining establishment. "Eddie V's" is a restaurant division within the portfolio of Darden Restaurants which includes such comparable dining brands as Capital Grille, Seasons 52, Olive Garden, etc. There are currently thirty (30) "Eddie V's" restaurants nationally with the closest dining venue located in Tyson's Corner, Virginia.

When Eddie V's became aware of the unique setting that the Subject Property provided with a) large surrounding population, b) easy access from adjacent transportation routes and c) a much desired water view dining environment, it promptly began planning about how to bring its food and entertainment specialties of seafood, prime steaks, cocktails and musical entertainment (jazz) to this remarkable setting.

This Final Site Plan Application seeks to reorganize the restaurant layout from what was shown in the previous Schematic Development Plan and Site Plan approvals to increase the size of the restaurant building to take advantage of the vista over Lake Varuna and to organize parking and site circulation in a manner to minimize site disturbance and loss of existing vegetation.

IV. COMPLIANCE WITH SECTION 24-170 OF THE CITY ZONING ORDINANCE

Section 24-170 ("General Conditions") sets forth the standards under which "...the City Planning Commission shall approve the site development plan only upon a finding by it that the buildings, structures and uses proposed will not..." conflict with the following conditions set forth in the City Zoning Ordinance" including:

(a) Adversely affect the health or safety of persons residing in or working on the land in question or in the neighborhood thereof.

A restaurant on this site has been viewed as an inherently compatible land use with its surroundings since its designation on the approved Schematic Development Plan of 1997. There is therefore no health or safety risk for the surrounding neighborhood from the operation of the proposed Eddie V's restaurant on the Subject Property.

In the Everbrook Day Care/Early Childhood Education proposal for this property reviewed in 2021, the community expressed concerns about traffic conflicts on Lakelands Drive between parents delivering or picking up children at the site with neighborhood commuter traffic and school bus movements. Because of the anticipated volume of vehicle traffic to and from the restaurant, and the peak time periods of the restaurant's operations, the Applicant's traffic study, when submitted to the City after traffic counts can be taken, will demonstrate why traffic associated with the restaurant's operations will not adversely affect the health or safety of residents or roadway travelers around the Subject Property and satisfies the City's adequate public facilities traffic and transportation standards.

(b) Be detrimental to the public welfare or adversely affect the use or development of adjacent or surrounding properties.

The Subject Property does not abut any properties developed with single family detached residents. Indeed, Lake Varuna and substantial green spaces surrounding the Lake separate nearby houses from the area to be developed on the 3.43 acre site. Furthermore, pedestrian trails surrounding the Lake have naturally grown up to allow residents to walk around and enjoy the benefits of Lake Varuna. The plans for the "Eddie V's" restaurant will not interfere with that pedestrian activity. Therefore because of the sheer linear separation of the Subject Property, which is definitively detached from the surrounding Lakelands residential neighborhoods, there is no detriment to the public welfare, nor is there any conceivable adverse affect on the use or development of surrounding properties

(c) Constitute a violation of any provisions of this chapter or any other applicable law, regulation or ordinance.

This Final Site Plan Approval Application is complete and thoroughly addresses all relevant provisions of the City's Zoning Ordinance and all applicable standards of the City's Adequate Public Facilities Ordinance. For instance, the Applicant's Traffic Study to be submitted will address how the surrounding transportation network is adequate to accommodate the proposed development and that circulation to and from the Subject Property can be conducted in a safe and efficient manner. Public water and sewer services are available to serve the proposal development and there are no reports or complaints about transmission or treatment of either public service. And, finally, the application complies with the City's requirement for emergency services since there are four (4) fire stations (Station 3 – Rockville, Station 8 – Gaithersburg, Station 31 – Rockville, 32 – Travilah) within a ten (10) minute response time from the Subject Property.

(d) Be incompatible or inharmonious with other existing uses or with existing and proposed adjacent development.

The Subject Property is located within the MXD zoned area that has become known as "Lakelands." The MXD zone is recognized for its goals of encouraging the "...integration and internal and external compatibility of applicable residential and nonresidential uses..." (Section 24-160.1(a)) and promoting the "...efficient use of land by locating employment and retail uses convenient to residential areas..." (Section 24-160.1(f)).

The City approvals for the area of “Lakelands” in which the Subject Property is located reflect the mission of the MXD zone to integrate residential and nonresidential uses. The Sketch Plan approval in 1997 that covered the Subject Property categorized Section 5, LAKELANDS with the broad land uses of “Residential/Retail/Commercial/Institutional.” When this property was included in the Phase 1 Development Area of Lakeland in Schematic Development Plan No. SDP-7-1 adopted in the summer of 1997, the approved SDP covered an area including single family detached residences, attached residences, multi-family residences, office building, retail/commercial structures and, standing along on the far side of Lake Varuna, a 3.0+ acre parcel of land with a freestanding, not residential, building with associated parking.

The point of all this repeat of the zoning history of the Subject Property is that the “Eddie V’s” site has always been viewed as appropriate for a nonresidential use that is consistent with the mixed use character of Section 5 (Sketch Plan Z-280) and Phase 1 of SDP-7-1 of the “Lakelands” community. Therefore, both as a matter of master plan compliance and consistency with the purpose clause of the MXD zone, the proposed use, regardless of its size, is not incompatible or inharmonious with existing adjacent development.

(e) Be inharmonious or inconsistent with the environmental standards of the city adopted by the city council pursuant to section 20-9 of the City Code and any amendments thereto.

Because of its history, and because of its location, the environmental sensitivity of the “Eddie V’s” proposal has been an important goal of the Applicant.

Because of its proximity to Lake Varuna, much thought and detailed planning has gone into the design for grading of the Subject Property and the organization of the stormwater management system for the site to ensure that it meets Best Management Policies imposed by the City. The SWM concept plan filed with the City in conjunction with this final site plan application indicates how the layout and the operation of the site meets the City’s strict environmental standards.

Similarly, the Applicant’s forest conservation plan submission shows how the design of the site complies with the requirements of the City’s forest conservation regulations. The Subject Property is proposed to be developed in accordance with the applicable FC standards set forth in the City Code with no waivers requested, with afforestation requirements satisfied on site and with limited reforestation required.

In summary, the “Eddie V’s” proposal does a superior job of addressing and satisfying the environmental standards of the City Code.

V. CONCLUSION

151 Lakelands, LLC, believes that the attached Final Site Plan Application is consistent with the requirements of the City Zoning Ordinance, is in accordance with all City APF and environmental standards, is in the public interest and should be approved in the form submitted.

Respectfully submitted,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a cursive, slightly stylized font. The first name "JODY" is written in all caps, and "KLINE" is written in all caps. There is a horizontal line above the signature.

Jody S. Kline