

CITY OF GAITHERSBURG
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**PLANNING COMMISSION
RESOLUTION APPROVING**

**AMENDMENT TO SDP-W2 TO APPROVE AN ADDITIONAL 103,657 SQUARE FEET
OF RETAIL/RESTAURANT SPACE, THEREBY INCREASING TOTAL SQUARE
FOOTAGE FOR SDP-W2 TO 460,000 SQUARE FEET, LOCATED AT THE
WASHINGTONIAN CENTER, GAITHERSBURG, MARYLAND**

SDP-W2

OPINION

This matter has come before the Planning Commission for approval of an amendment to a schematic development plan (SDP) for portions of land zoned Mixed Use Development (MXD). The Planning Commission's authority in this matter is pursuant to Section 24-160D.11 and 24-198(c) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code), which authorizes amendment of an approved SDP when *no change of use is involved* in the application by submission of the application to the Planning Commission in accordance with Article V of the City Zoning Ordinance. The subject case involves approximately 22.98 acres of land known as Parcel H, Block C of the Washingtonian Center, and is located between Interstate 270, Sam Eig Highway, and Washingtonian Boulevard. SDP-W2 was first approved by the Planning Commission on May 5, 1997 with a square footage limit of 356,343. The Planning and Code Administration received a request to amend the original SDP-W2 and increase the total limit of square feet by 103,657 for a grand total of 460,000 square feet of retail and restaurant space.

Operative Facts

A. Background

The Washingtonian Center was annexed into the City of Gaithersburg on July 9, 1991 comprised of 102.5711 acres of land. This development had received an approval from Montgomery County by Resolution Number 10-1592 adopted November 5, 1985 approving Zoning Application Number G-439 setting forth the right to develop 4,525,000 square feet of space in conformance with a concept plan approved as part of that application. The annexation agreement between the City of Gaithersburg, and the property owner states that the schematic development plan process is complete as set forth by the agreement unless subsequent amendments are requested by the property owner, or any party on its behalf.

The first amendment of the SDP, SDP-W1, was approved by the Mayor and City Council on October 7, 1996. That SDP called for the construction of an extended stay hotel. On January 3, 1997 the applicant, Washingtonian Associates (Hazel/Peterson Company), submitted the second amendment to the original plan for Washingtonian Center. The Mayor and City Council adopted the second amendment, SDP-W2, by resolution on May 5, 1997.

B. Current application

The Planning Commission reviewed this matter on April 15, 1998 at a regular scheduled meeting of the Commission. Proper notification was sent to all interested parties.

The application to amend the SDP was requested by the Peterson Company, the property owner. The application includes the placement of one building on the site which will increase the total square footage approved by SDP-W2 above the set limit of 356,343 square feet. The proposed amendment is for an additional 103,657 square feet of retail and restaurant space.

The Neighborhood Three Land Use Plan (the "Plan"), the relevant master plan for subject property, states that the land use on this property shall be commercial/industrial-research-office. The Plan promotes the clustering of development around the existing lake so that a lively pedestrian friendly commercial/retail entertainment center emerges. Development is limited to architecturally innovative buildings with commercial footprints of 25,000 to 80,000 square feet. The Plan indicates that buildings should front on streets, or pedestrian walkways with parking in the rear or the side. Any development must be innovative in that it provides for a unique retail/commercial experience that links the existing office and residential uses through a highly pedestrian oriented design. The staging elements of the Plan have been satisfied.

At that hearing before the Commission, the following testimony was given:

Planner Mlaker explained the SDP amendment is a result of a proposal in Site Plan W-1106 which exceeds the 356,343 square foot maximum development allowed for the retail portion of the Washingtonian Center by the approved SDP-W2.

Mlaker indicated that SDP-W2 and W-1106 were the subject of an April 13, 1998, Joint Worksession with the City Council. In response to greenspace issues raised at the worksession, Mlaker noted the retail portion of the SDP as proposed would still provide twenty-six percent (26%) greenspace. He indicated that twenty-five percent (25%) is the minimum required. The 26% greenspace includes trees, parking lot islands, sidewalks, roundabouts and plaza area, excluding the lake and surrounding green areas.

Regarding traffic concerns raised at the worksession, Mlaker indicated the City Traffic Engineer reviewed a subsequent traffic report and determined that a second traffic circle at the entrance to Kohl's is needed to effectively control traffic emanating from the

proposed parking garage. City Traffic Engineer Mumpower stated that a second roundabout/raised island will effectively handle the additional traffic without creating backups on Washingtonian Boulevard. He added that staff has reviewed the traffic studies which included the ultimate build out of the entire shopping center, including office buildings which have not yet been formally proposed. He also indicated that Montgomery County had reviewed the adequacy of County roads and how they will function in conjunction with this area.

Based on its review of the application and the standards for approval set forth in 24-170 and 24-171 of the City Zoning Ordinance, Planning Staff recommended approval of the amendment to SDP-W2

Testifying in support of the application was Robert Burton of the Peterson Companies, who stated that the planned Washingtonian Center environment, with its high density, pedestrian orientation, and numerous good quality retail opportunities, supports the applicant's request for flexibility an increase to a total of 460,000 square feet. He indicated that the additional space was to ensure the success of the project, given the costs of structured parking to avoid surface parking, as well as the high quality of design associated with the specific project.

David Kaysen, 1086 West Side Drive, testified in opposition to the amendment. He stated the thirty percent (30%) increase in retail space, from the original office space proposal, is excessive for this 2.4-acre site, noting the impact of the additional traffic would be felt by the residents after office hours. He urged the Commission to retain the originally-proposed square footage and commented that the Ad Hoc Committee who prepared the Neighborhood Three Master Plan draft document did not include the term "footprint" when limiting the size of any given retail facility to 80,000 square feet. He noted that a smaller anchor such as a supermarket would be more appropriate. Chairman Waters recalled that the intention had always been for high rise development for density purposes while minimizing sprawl, given the possibility of transit in this area. In closing, Mr. Kaysen stated his belief that insufficient notice was given to the public about this plan.

In response to Mr. Kaysen, Staff pointed out that notices were mailed two weeks in advance of this review, which is a normal procedure. Mr. Burton responded by suggesting that the proposed Target store would not be inappropriate for this project as it would invigorate and cause the center to thrive by attracting customers. Mr. Burton reiterated the added square footage is needed for economic reasons, noting the costs of the pedestrian bridge (\$6 million) and construction of Sam Eig Highway (\$4 million) which are the applicant's obligations.

Ann Somerset, 2 Dearden Place, on behalf of several people in the audience, urged the Commission to oppose the proposed expansion, noting the scope of the proposal is much too large to take action without significant public hearing and input as the effect of

the Target store would be substantial in terms of traffic. She added that W-1106 is beyond the scope of the approved SDP and bridges years of mutual compromise between the applicant and the residential communities. Chairman Waters pointed out, however, that much of the preliminary discussions at the time of the Master Plan and SDP reviews involved the uncertainties of development types and tenants and stressed the fact that the Planning Commission does have the authority to change uses permitted by an approved SDP.

Wendy Carpell, 9607 Athens Place, stated the expansion under consideration does not meet the intent of the Neighborhood Three Master Plan, but only meets the goals of the developer without considering the public interest or welfare, noting the cost consideration requested by the applicant is insufficient basis to fulfill the general welfare criteria. Mr. Waters responded indicating that the applicant had addressed and met substantial requirements of the City for an attractive and unique condensed center, avoiding large surface parking areas, the cost of which a large tenant can help finance since it attracts customers and, consequently, smaller merchants to buy retail spaces.

Michael Stone, Winners Drive resident, inquired whether a second traffic study was conducted to include the proposed expansion. Mr. Burton responded affirmatively.

Richard Arkin, 121 Selby Street, suggested flexibility be allowed to place small (20-30-foot deep) screening buildings at key locations, which he noted on the plan, to further the pedestrian-friendly/urban environment objectives of the SDP and Master Plan. He described a typical screener building with a store front on the ground level, parking behind, stairway to second level office, and maybe a 3rd floor for residential apartment.

Carol Martin, 23 Norwich Court, inquired about an environmental impact study associated with this proposal. Mr. Mlaker explained that a Natural Resources Inventory with Forest Stand Delineation, Soil Erosion and Sediment Control, was conducted and approved for the entire Washingtonian Center, a copy of which is available at City Hall, and indicated the measures contained therein are designed to handle the expansion. Ms. Martin expressed agreement with the opposition testimony and requested denial, adding that this proposal would negatively impact the neighborhood's quality of life due to traffic increase and air pollution.

Peggy Blaine, of Rodgers and Associates, engineer for the applicant, responded to a specific question raised by the opposition, noting that the designed stormwater management pond will handle the proposed retail expansion.

Don Daily, 11 Watchill Place; Betsy Newman, 409 Watchill Lane; Sean Diamond, 9756 Athletic Way; Suzanne Arnold, 3 Dearden Place; and Janina Beyder, Winners Drive resident, all supported the approved SDP and opposed the proposed additional square footage. Ms. Newman noted that none of the analogies that had been used to describe

this project in the past had included a Target type of store.

Phil Andrews, 3 Appleseed Lane, noted that given the substantial increase that is being proposed, the applicant had not demonstrated or proven the need for the proposed expansion, other than citing the additional monetary revenue.

Mr. Burton responded to the opposition witnesses by pointing out that the original square footage on the SDP approval resolution had been suggested by the applicant as a best guess figure at the time, noting that retail development projections are normally expected to change because they are based on the economy. Now that a specific tenant is determining its exact needs, it is appropriate to have flexibility to meet those needs.

Relevant Statutory Provisions

The following statutory provisions from the City of Gaithersburg Code, City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions which define the nature of the Planning Commission's amendment powers with regard to approved SDP's:

Section 24-160D.11 Procedures for amendment.

Amendments to a sketch plan or schematic development plan may be permitted, consistent with the procedures for amendment of optional method plans as provided in section 24-198(c) of this Code.

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Section 24-198 Findings required.

* * *

- (c) The schematic development plan may be amended:
 - (1) At any time before review and recommendation by the planning commission;
 - (2) At any time after planning commission review and prior to council action by resubmission to the planning commission for further review and recommendation;
 - (3) Subsequent to council action to approve as follows:
 - a. *Change in use involved.* By either the filing of a new application or resubmission to the planning commission for further evaluation, public hearing and recommendation to the council. The council shall approve or disapprove the recommendation of the planning commission, without the necessity of a public hearing, no later than

forty-five (45) days after receipt of the commission's recommendation or may, on its own motion, extend such time limit.

- b. *No change in use involved.* By submission to the planning commission for evaluation and approval in accordance with article V of this chapter.

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Sec. 24-170. General conditions.

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:

- (a) Adversely affect the health or safety of persons residing in or working on the land in question or in the neighborhood thereof.
- (b) Be detrimental to the public welfare or adversely affect the use or development of adjacent or surrounding properties.
- (c) Constitute a violation of any provisions of this chapter or any other applicable law, regulation or ordinance.
- (d) Be incompatible or inharmonious with other existing uses or with existing and proposed adjacent development.

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Sec. 24-170A. Special conditions.

The city planning commission may approve a site development plan for properties specifically identified in a master plan or amendment thereto having special conditions or requirements for the development and use thereof, only upon a finding that said site development plan is consistent with the conditions and requirement specified in the master plan or amendment regarding said property.

The special conditions and requirements for the development and use of these properties shall be imposed and set forth in the master plan or amendment thereto only after notice to the property owner and general public and a public hearing thereon as part of the master plan process. All such site development plans shall be subject to enforcement procedures and requirements applicable to site development plans generally as established by this Code.

The provisions of this section shall apply only to master plans and amendments thereto adopted after December 24, 1984.

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Sec. 24-171. Site plan review.

In the review and approval of a site development plan, the Planning Commission shall have the following powers which shall be exercised for the purpose of avoiding adverse impact on the neighboring properties and public facilities, reducing traffic hazards and improving traffic circulation within or without the property which is the subject of the plan, preserving existing desirable natural features, assuring adequate light and air to buildings within or without the subject property, providing adequate access to such buildings by fire and rescue equipment, providing convenient access to such buildings from off-street parking spaces, avoiding overcrowding of persons and buildings within the development, ensuring the provision or development of recreational and other amenities and facilitating the creation and maintenance of common or public open space, parking areas and private drainage systems.

* * *

- (j) To determine whether the site development plan will achieve a maximum of compatibility, safety and efficiency, considering but not limited to the following functions: Height, building design, arrangement and scale of development; vehicular circulation system, including access and off-street parking and loading; landscaping, screening, buffering, open space, lighting, signage and pedestrian circulation. The fact that a site plan complies with all of the stated general regulations, development standards or other requirements of the zone shall not, by itself, be deemed to create a presumption that the proposed site development plan is, in fact, compatible with adjacent land uses and development and, in itself, shall not be sufficient to require approval of the site plan.

Evaluation of Arguments, Evidence and Findings

The Planning Commission reviewed the evidence of record in this case which included, among other things, the applicant's request for an increase in the square footage limit for the SDP, the specific site plans associated with the increased square footage as simultaneously proposed in site plan number W-1106, a traffic impact study, landscape plans, building elevations and testimony of record. Based on its review of the evidence, the Planning Commission makes the following findings:

The Planning Commission finds that there is no change in use associated with the applicant's request to amend SDP-W2, thus the Commission has the authority to amend the SDP pursuant to 24-198(c)(3)b.

The Planning Commission takes specific note of the Plan's 80,000 square foot footprint limitation for the subject property and accepts that such limitation is a special

condition or requirement for said property. The Commission finds that the proposed increase in square footage, as shown by the applicant to be within the 80,000 square foot footprint limitation, is consistent with the conditions and requirements specified in the Plan regarding said property.

The Planning Commission has reviewed the request to increase the total square footage associated with SDP-W2 to a total of 460,000 square feet for its affects on the health or safety of persons working in the Washingtonian Center and finds that this square footage increase will not cause an adverse effect. The Commission finds that increasing density of retail development immediately adjacent to I-270, Sam Eig Highway and Washingtonian Center is both logical and sensible, having no adverse affect on either health or safety. The City Traffic Engineer's requirement for an additional roundabout/raised island will satisfy any concerns regarding traffic safety associated with the increased density.

The Planning Commission further finds that due to the site's location along I-270, Sam Eig Highway, and Washingtonian Center, with public access of all traffic being from these primary roadways, the increased density of development at the site will not be a detriment to adjacent or surrounding properties specifically, or to the neighborhood generally. With the addition of the soon to be constructed section of Washingtonian Boulevard and the new interchange at Sam Eig Highway, the subject site will allow ingress/egress of traffic in a safe manner. The Planning Commission has had the benefit of a traffic impact study as well as the testimony of the City Traffic Engineer, and is satisfied that traffic will not have an adverse impact on the surrounding land uses.

The Planning Commission has reviewed this SDP amendment in association with a specific proposed use of the site. As evidenced by past SDP approvals for the same site, an SDP amendment does not guarantee that any specific proposal will proceed with development and construction. However, in light of the fact that any proposed development will still require site plan review before this Commission, with all of the associated protections provided by that process, the Commission finds that the proposal for increased square footage will be compatible and harmonious with other existing and proposed adjacent development and will allow the Washingtonian Center - Retail Main Street to continue to develop in a positive manner.

The Commission finds reasonable the efforts being taken by the applicant to assure this project will be successful. The specific features of the current proposal associated with SDP-W2 are unique features and include parking garages with ground level stores. The Commission acknowledges that in order for smaller merchants in the center to survive it is logical for the developer to attempt to bring larger anchor tenants to the site. The larger anchor tenants support smaller stores and help pay for amenities such as the public plaza, bridge and streetscape which will make this site more attractive for consumers and residents. While the Commission is mindful of the magnitude of this application and the community's concern, it finds that based on compatibility, infrastructure adequacy, MXD Zone requirement compliance, and location, this site is ideal for applicant's proposed additional density.

Upon review of all the evidence, the Planning Commission further finds that the proposed amendment of the SDP will not violate Chapter 24 of the City of Gaithersburg Zoning Ordinance, nor any other applicable law, regulation or ordinance.

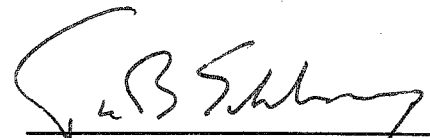
Conclusion

Upon consideration of all the evidence, and the testimony in favor of and in opposition to the amendment to SDP-W2, the Planning Commission concludes that SDP-W2 is in procedural conformance with Sections 24-160D.11 and 24-198(c) of the Zoning Ordinance, and that the applicant has met its burden of proof with regard to general and specific conditions of approval as set forth in 24-170 and 24-170A of the Zoning Ordinance.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Gaithersburg on the 3rd day of June, 1998, that the applicant's proposed amendment to SDP-W2, to increase the total limit of retail and restaurant square footage by 103,657 square feet, to a total of 460,000 square feet, be APPROVED.

ADOPTED by the Planning Commission of the City of Gaithersburg on the 3rd day of June, 1998. Commissioners Schlichting, Sexton, and Hicks being present and voting in favor of the action.



John Schlichting, Acting Vice
Chairman, Planning Commission

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Planning Commission, in public meeting assembled, on the 3rd day of June, 1998.



Jennifer Russel, Director
Planning and Code Administration