

ORDINANCE NO. O-2-12

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR AN AMENDMENT TO PREVIOUSLY-APPROVED SKETCH PLAN APPLICATION Z-301 AND APPROVING A NEW SKETCH PLAN IDENTIFIED AS APPLICATION Z-301(A) FOR LAND, KNOWN AS THE SPECTRUM AT WATKINS MILL ROAD, LOCATED AT THE NORTHWEST CORNER OF WATKINS MILL ROAD AND NORTH FREDERICK AVENUE, CONTAINING APPROXIMATELY 40.1 ACRES OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)

**Z-301(A)**

OPINION

Joint Application Z-301(A)/SDP-11-002 has come before the Mayor and City Council for approval of an amendment to sketch plan Z-301 and an amendment to schematic development plan SDP-07-001 for land zoned Mixed Use Development (MXD). Application Z-301(A) has come before the Mayor and City Council for approval as an amendment to the previously approved sketch plan, Z-301. The City Council's authority in this matter is pursuant to § 24-160D.11 of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code).

The subject case involves approximately 40.10 acres of land and concerns the development of the property known as Parcels N668, N663, N565, P360, P356, P457, N561, P450, N455, N686, N572, N613 (no changes are proposed for parcels N686, N613, and N572). The subject property ("Property") is located east of Interstate 270 and west of Maryland Route 355, and is bounded on the west by Md. Route 355, to the north by P370 & P182 (Potomac Electric Power Co.), and to the east by parcel N391 (Colonial Pipeline Co.), Parcels N526 and N417 (Humane Society of the United States), and Interstate 270. The Property is currently bounded on the south by Watkins Mill Road extended.

OPERATIVE FACTS

A. Background

The subject Tax Parcels, originally a portion of tax parcel 910 were annexed into the City of Gaithersburg in 1968. In 2006, the Mayor and City Council approved rezoning application Z-301 and schematic development plan SDP-05-003 with 29 conditions as listed in Resolution R-65-06. The applicant subsequently submitted application SDP-07-001 to amend the approved schematic development plan which was approved via Resolution R-92-07. The site has received final site plan approval for Phases 1A and 1B and associated infrastructure via applications SP-07-017 and SP-09-004, respectively.

B. Current Application:

On September 20, 2011, Mr. Pete Henry of BP Realty Investments, LLC, submitted a joint application for amended sketch plan Z-301(A) along with schematic development plan, SDP-11-002. The sketch plan proposes 214,810 square feet of mixed office, restaurant, commercial, service station, senior center/public uses, including 669 multi-family residential units to be built in two phases on approximately 40.1 acres of land.

The Z-301(A) application proposes the development of the property in two phases that shall become binding upon Sketch Plan approval. They are as follows:

**Phase 1: Commencement at Approval of the Final Site Plan**

61,710 sf	Mixed Use (retail/restaurant) - Buildings A (retail), B, C (retail and restaurant), D, F, H (retail), M, and T
8,000 sf	Mixed Use (office/bank) - Buildings L and S
29,200 sf	Montgomery County Police Station - Building P
30,000 sf	City Senior Center - Building Q
511	Multi-family units - Buildings A, C and H

**Phase 2: Commencement at commencement of Watkins Mill Road Interchange**

17,000 sf	Mixed Use (retail/restaurant) - Building K (retail/restaurant) and R (retail)
64,100 sf	Mixed Use (office/bank) - Buildings K and O
4,800 sf	Mixed Use (service station) - Building N
158 ea	Multi-family units Age Restricted - Building R

The Mayor and City Council and Planning Commission held a consolidated joint public hearing regarding application Z-301(A) and SDP-11-002 on January 17, 2012, at which time evidence was received on the subject application. A presentation was given by staff discussing the application. Mrs. Leigh Henry, on behalf of the applicant, answered questions from the Council and Planning Commission. During the course of the hearing the following concerns and questions were raised regarding the proposed plan:

- Pedestrian linkages to the site
- Unit mix among the three residential buildings in Phase One
- Retail condition along the Building H frontage of Spectrum Avenue
- Traffic conditions at the intersection of Montgomery Village Avenue and North Frederick Avenue

In response to the issues above, the Applicant and design team revised and resubmitted the plan. In response to the comment made regarding pedestrian access into the site, the applicant revised the proposed plan to provide pedestrian access along Watkins Mill Road. The applicant further provided an updated traffic analysis and statement regarding the current traffic conditions at the intersection of North Frederick Avenue and Montgomery Village Avenue, which indicates that critical lane volumes at this intersection are actually lower than they were in 2007. Furthermore, the proposed residential unit mix and retail/restaurant mix has been modified, which has further reduced the anticipated peak traffic generated by the development, ensuring that the traffic generated by the proposed modification is within the limitations established by SDP-07-001.

The Applicant submitted correspondence regarding the proposed unit mix that indicates that Building H will feature a unit mix that has a higher percentage of studio apartments than buildings A and C. Overall, the predominant unit type will be one bedroom units, with two and three bedroom units being a much smaller percentage of units. Finally, the applicant has also revised the building elevations along the Spectrum Avenue Frontage of Building H to further define and enhance the retail presence along this street. Staff has also added a condition that the applicant work with staff to further refine the pedestrian experience along the street frontage during the final site plan review stage.

At the conclusion of the joint public hearing, the Planning Commission voted to keep their record open until five (5) PM on February 2, 2012, and the Mayor and City Council voted to keep their record open until five (5) PM on March 1, 2012. The Planning Commission made its recommendation on February 15, 2012, and forwarded its recommendation of approval to the Mayor and City Council for Z-301(A). Based on their review of the evidence, the Planning Commission further found that the Z-301(A) application is in conformance with the MXD (Mixed Use Development) Zone of the City's Zoning Ordinance and recommended approval with the following conditions:

1. The project shall be phased as follows:  
**Phase 1** commences at approval of the final site plan and shall permit the following:

Buildings and associated infrastructure: Building A (multi-family residential/retail), Building B (retail/restaurant), Building C and C-3 (multi-family residential/retail/restaurant), Building D (retail/restaurant), Building F (restaurant), Building H (multi-family residential/retail/restaurant), Building L (office/bank), Building M (retail), Building P (Police facility and associated future parking deck), Building Q (City senior center), Building S (office/ bank), Building T (office); and all other parking and related facilities for the above, as required. Provided that the number of available parking spaces provided never falls below the

required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

**Phase 2** commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Buildings: Building K (retail/restaurant/office above deck); Building N (service station), Building O (office/bank), and R (age-restricted multi-family residential and retail) and parking and related infrastructure for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

The property included in the Second Phase is intended to be fully developed and not held as open space (except as shown on the submitted SDP), and such development density noted above is intended to commence construction concurrent with the commencement of construction of the Watkins Mill Interchange. If the Watkins Mill Interchange project has not commenced on or before March 1, 2015, or is abandoned by the Maryland State Highway Administration (SHA), the Developer may apply to the City for an amendment to the Sketch Plan.

2. The applicant is to work with City and Montgomery County Transportation staff to develop, fund in the amount of \$500,000 and implement a Transportation Demand Management Plan to mitigate the effects of the proposed development on surrounding intersections. As an alternative, the applicant, the City Manager, and Montgomery County could reach an agreement whereby the Montgomery County Department of Transportation would administer and manage the TDM Plan. The applicant must escrow \$500,000 or an equivalent bond or letter of credit with the City to fund the TDM Plan prior to applying for final site plan approval. Applicant is to provide a preliminary plan at final site plan. A Transportation Demand Management Plan shall be operational at the time that the first certificate of occupancy is issued. Upon written agreement by both parties, the amount of funding and its allocation and use can be reduced, eliminated, or reallocated to a specific project necessary to further the strategic directions of the City;
3. The applicant shall be required to construct the tennis court, pool and clubhouse generally shown on the SDP concurrently with the construction of Building C condominium;

4. The applicant shall work with City Staff on the continued refinement of pedestrian and bicycle linkages between buildings and throughout and around the site. A final pedestrian/bicycle plan, including a sign program for such path, bike racks, etc., extending to and from the site and through the site be reviewed as part of the final site plan for Building H;
5. The applicant shall receive approval of a final utility plan from the Department of Public Works and letters from appropriate utility agencies including, but not limited to, Washington Gas, PEPCO, Verizon, and WSSC prior to the issuance of Public Works permits for each phase;
6. The applicant shall obtain a letter of agreement from SHA for access from Md. Rte. 355 and for any grading/disturbance of the revertible slope easement along Md. Rte. 355 prior to approval of final site plan;
7. The applicant shall submit a noise analysis for current and future traffic noise impacts on the site and a noise abatement plan as part of the final site plan application. Noise abatement measures should seek to achieve the 65 dBA exterior noise guideline and the 45 dBA interior noise guideline.
8. As part of building permit application and prior to approval of building permits, the applicant shall submit certification by a professional engineer with competency in acoustical analysis that the building shells will attenuate exterior noise levels to an interior level not to exceed 45 dBA Ldn. A final noise mitigation plan shall be reviewed and approved by staff prior to the issuance of building permits;
9. The applicant to ensure that the design of all multi-story buildings with ground floor retail accommodate mechanical vent shafts through all floors for the first floor units;
10. The applicant to work with staff to locate new bus shelters near the Travis Avenue and Watkins Mill Road entrances to the development. The bus shelters shall be the City prototype without advertising;
11. The applicant to provide Art in Public Places Program (AIPP) and commit funding to be approved by city staff and AIPP committee during the final site plan stage for building H;
12. Prior to the issuance of the first building permit, the Developer shall dedicate to The City of Gaithersburg , the lot shown on the attached SDP containing Building P and the surrounding parking areas for the use as a Senior Center, subject to a cross parking easement. In

addition to the Dedication, Developer shall, as part of the construction of the initial phase of the Spectrum project: (a) rough grade the Building Q pad, (b) provide water, sewer, sanitary sewer, electricity and gas lines to within fifteen feet (15') of the Building Q pad, and (c) construct, at Developer's cost, the 89 parking spaces within the Building P lot as shown on the SDP (including lightning, striping) and perimeter landscaping) to the back of curb for the building pad, of which 75 space shall be attributable to the Senior Center, and 14 spaces shall be attributable to the balance of the Developer's project.

13. The applicant shall work with staff to refine and enhance the pedestrian experience along Spectrum Avenue prior to final site plan approval for Building H.
14. The applicant shall work with staff to redesign/reorient Building L to minimize views of the drive through.
15. Road construction phasing: Public road improvements including curb and gutter, paving, storm drain, sidewalk and street lights shall be completed in the following sequence:
  - i) Post Preserve Road from existing Maryland Route 355 to Station 5+81.50, and Spectrum Avenue from station 18+80.78 to existing Maryland Route 355 shall be constructed prior to occupancy permits being issued for Buildings A, B, C or S.
  - ii) Spectrum Avenue from station 11+20 to 18+80.78, and Spectrum Boulevard from Watkins Mill Road to Spectrum Avenue shall be constructed prior to occupancy permits being issued for Buildings D, E, F, G, H, I, J, K, L, and M.
  - iii) Spectrum Avenue from station 7+24.83 to 18+80.78 shall be constructed when the parking lot for future Building Q is constructed.
  - iv) Spectrum Avenue from existing Professional Drive to station 7+24.83 shall be constructed prior to occupancy permits being issued for Building R.

### C. Evaluation and Findings

The Mayor & City Council agrees with the findings, conclusions, and recommendations of approval by the City Planning Commission and City staff. The Mayor & City Council finds those recommendations to be well reasoned and adopts and incorporates their findings as part of this action.

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

- a) The Spectrum at Watkins Mill application provides a mixed use environment that will be developed in accordance with Design Guidelines that ensure design flexibility and coordination of architectural style of buildings and signage.
- b) The Spectrum at Watkins Mill will provide a mix of land uses including residential, commercial, recreational, and open space that work to complement one another within a neighborhood framework.
- c) The proposed mix of land uses, single and multiple-family residential and commercial, are compatible with the surrounding existing and future uses.
- d) The Plan, as submitted, encourages the efficient use of land by: locating employment and retail uses convenient to residential areas; reducing reliance upon automobile use with a compact mixed-use pedestrian oriented town center design; and providing useable open space and active recreation areas by way of the various public and natural open spaces, both developed and preserved.
- e) The proposed development meets the minimum standards for development within the MXD zone in that the property contains approximately 40 acres of land area, the property is served by sewer and water service, and it is located adjacent to and readily accessible from existing and planned highways that are adequate to service the proposed development.
- f) The proposed sketch plan is within the density and height requirements of the MXD zone.

*(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 Property is located within the Northern Employment District of the *Frederick Avenue Corridor Land Use Master Plan*, a portion of which was adopted as a Special Study Area to the Master Plan for the City of Gaithersburg in 2001. The Corridor Master Plan identified the property as a “future mixed-use development parcel. Uses should include commercial, residential and retail.” Buildings are intended to be placed along the edges of the site with parking located behind the buildings. Recommendations in the Corridor Plan for development within 600 feet of Frederick Avenue, including design, building placement, landscaping, pedestrian orientation, open space,

and proposed uses (residential, commercial, public, and retail) have been incorporated into the proposed Casey East development, and as such, the proposed development complies with the recommendations of the Master Plan. There are no additional recommendations for the property in either the 2003 Land Use Element or the draft 2009 Land Use Element.

- (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.*

The proposed development is internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned areas and adjacent areas. Internally, the proposed development provides a mix of uses that will provide residents and visitors a variety of commercial, residential, and recreational opportunities in an inviting environment. The proposed internal uses are compatible on site, as well as with off-site adjoining commercial and residential land uses. The on-site commercial uses will benefit both future residents of the development, as well as those residents and employees within the nearby residential and commercial areas. The on-site apartments will provide residential opportunities for employees within the nearby employment district along North Frederick Avenue.

In conclusion, the Mayor & City Council finds that Z-301(A), as submitted in accordance with § 24-160D.11 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 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.

#### AMENDMENT TO SKETCH PLAN Z-301(A)

#### ORDINANCE

NOW, THEREFORE, BE IT ORDAINED by the City Council of Gaithersburg, that Application Z-301(A), being an application filed by BP Realty Investments, LLC, is hereby approved with the following conditions required of the applicant:

1. The project shall be phased as follows:  
**Phase 1** commences at approval of the final site plan and shall permit the following:

Buildings and associated infrastructure: Building A (multi-family residential/retail), Building B (retail/restaurant), Building C and C-3 (multi-family residential/retail/restaurant), Building D (retail/restaurant),



Building F (restaurant), Building H (multi-family residential/retail/restaurant), Building L (office/bank), Building M (retail), Building P (Police facility and associated future parking deck), Building Q (city senior center), Building S (office/ bank), Building T (office); and all other parking and related facilities for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

**Phase 2** commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Buildings: Building K (retail/restaurant/office above deck); Building N (service station), Building O (office/bank), and R (age-restricted multi-family residential and retail) and parking and related infrastructure for the above, as required. Provided that the number of available parking spaces provided never falls below the required number of parking spaces, parking may be initially constructed as surface parking to City standards and then replaced with buildings and structured decks as shown on the SDP.

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allocation and use can be reduced, eliminated, or reallocated to a specific project necessary to further the strategic directions of the City;

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  - iv) Spectrum Avenue from existing Professional Drive to station 7+24.83 shall be constructed prior to occupancy permits being issued for Building R.

ADOPTED by the Mayor and City Council of Gaithersburg, Maryland, on the 19<sup>th</sup> day of March, 2012

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SIDNEY A. KATZ, MAYOR  
and President of the Council

DELIVERED to the Mayor of the City of Gaithersburg this 19<sup>th</sup> day of March, 2012. APPROVED by the Mayor of the City of Gaithersburg this 19<sup>th</sup> day of March, 2012.

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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 19<sup>th</sup> day of March, 2012. This Ordinance will become effective on the 9<sup>th</sup> day of April, 2012.

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Angel L Jones, City Manager