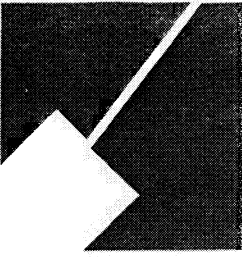


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

MCPB
Item #10
6/12/03

DATE: June 12, 2003
TO: Montgomery County Planning Board
VIA: Joseph R. Davis, Chief, Development Review *JRD*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To making technical corrections to the date of the Declaration of Covenants and easements referenced in Section 59-C-5.476(b)(1); and clarifying and confirming the intent that the Higher Education Campuses are subject to separate master plans of development and are not subject to the Declaration of Covenants and the Life Sciences Center Development Plan.

TEXT AMENDMENT: No. 03-11
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: District Council at the request of the County Executive
INTRODUCED DATE: May 13, 2003

PLANNING BOARD REVIEW: June 12, 2003
PUBLIC HEARING: June 17, 2003; 1:30 PM

STAFF RECOMMENDATION: APPROVAL

PURPOSE OF THE TEXT AMENDMENT

To making technical corrections to the date of the Declaration of Covenants and easements referenced in Section 59-C-5.476(b)(1); and clarifying and confirming the intent that the Higher Education Campuses are subject to separate master plans of development and are not subject to the Declaration of Covenants and the Life Sciences Center Development Plan.

BACKGROUND/ANALYSIS

The proposed text amendment language is as follows:

- (b) *The following regulations are applicable in the LSC zone:*
- (1) *In the Shady Grove Life Sciences Center except as provided below, applicants for site plan or subdivision plan approval must [enter into an agreement with the Montgomery County Government by signing] subject the project for which approval is sought to the Amended and Restated Declaration of Covenants and Easements [as recorded March 15, 1989] dated March 9, 1990 and recorded May 25, 1990 in Liber 9332 at folio 591, or as the same may be subsequently amended, governing the development of the Shady Grove Life Sciences Center. Applicants for site plan or subdivision plan approval for projects on properties identified as Higher Education Campuses in the 1995 Shady Grove Life Sciences Center Development Plan were not intended to be burdened by the Amended and Restated Declaration of Covenants and Easements and are not required to subject projects on the Higher Education Campuses to the requirements of the Amended and Restated Declaration of Covenants and Easements.*
- (2) *Properties within the Shady Grove Life Sciences Center, except as provided below, are subject to the provisions of:*
- (A) *an approved subdivision plan which may restrict the maximum density allowed, and*
- (B) *the 1986 Shady Grove Life Sciences Center Development Plan, as amended. This provision (B) shall not apply to the projects on the properties identified as the Higher Education Campuses in the 1995 Shady Grove Life sciences Development Plan. Any application of the 1986 Shady Grove Life Sciences Center Development Plan to such Higher Education Campuses arises by private agreement only.*

The Zoning Text Amendment (ZTA) covers two basic elements of Section 59-C-5.476. First, the ZTA corrects reference in the Zoning Ordinance to reflect the specific Life Sciences Center (“LSC”) covenant that the original legislation was intended to reference. The current reference in the Zoning Ordinance is to a covenant that does not exist. Second, the ZTA clarifies that the Zoning Ordinance should not subject the Higher Education Campuses to such covenant, because the covenant itself specifically intends to exclude them.

At the time that the Johns Hopkins Campus Master Plan (Site Plan No. 8-86065A) and Building No. 3 (Site Plan No. 8-03016) went to the Planning Board in February 2003, there was notation in the Staff Report, of this open issue regarding the relation of the campus to the LSC. (Both Plans were reviewed favorably by the LSC Architectural Review Committee.) This ZTA represents the resolution of the issue.

Covenant Reference.

Section 59-C-5.476 requires that in the Life Sciences Center, applicants for a site plan must “enter into an agreement with the Montgomery County Government by signing the Declaration of Covenants and Easements as recorded March 15, 1989.” No such covenant exists.

There was a covenant dated March 15, 1989, but recorded March 16, 1989, covering only parcels N, O and P at the Life Sciences Center. The covenant governing parcels N, O and P was amended later that year and again about a year later, in May 1990, when the County recorded an “Amended and Restated Covenant” covering the entire portion of the Life Sciences Center (“LSC”) that the County was to lease (including N, O & P). The May 1990 Covenant put in place various development standards and use restrictions for the Life Sciences Center, before the LSC Zone was created. At that time, there was no Life Sciences Center Zone, therefore the only real development standards were in the LSC Development Plan. The LSC was zoned R-200 and developed under the use “County Medical Center.” The 1990 Covenant, which is the one the County has been operating under, was dated March 9, 1990 and recorded May 25, 1990. The consensus is that this 1990 Covenant is that which was intended to be referenced in Section 59-C-5.476 when the LSC Zone was created. Part of the purpose of the ZTA is to correct the covenant reference.

Higher Education Campuses are Excluded from the 1990 Covenant.

The 1990 Covenant indicates it is not intended to encumber the University of Maryland or Johns Hopkins Properties, which are defined as the “Higher Education Campuses” both in the 1990 Covenant and the 1995 LSC Development Plan. The Development Plan also indicates that each of the campuses have individual master plans, separate from the overall LSC Development Plan. The 1990 Covenant was established prior to the time that there was the specific Life Sciences Center Zone for the area. At that time, the Covenant had to accomplish what the use and development standards of the Zoning Ordinance now accomplish.

The County agreed that the Hopkins Campus should not be subject to the 1990 Covenant. The County also agreed that the Campus would not be required to join the 1990 Covenant as a part of development, as the Covenant specifically excludes the Higher Education Campuses from its coverage. Therefore, a requirement in the Zoning Ordinance that the Hopkins Campus “sign” the 1990 Covenant, would be directly contrary to the instruction of the 1990 Covenant itself--that the Higher Education Campuses are not to be encumbered by the Covenant.

The language of the Zoning Ordinance, however, could be interpreted to require the Higher Education Campuses to be encumbered by the Covenant. Therefore, an Opinion of Counsel could not indicate that a site plan would be “in compliance with” the Zoning Ordinance without having signed the 1990 Covenant. Such an opinion is necessary for financing and title insurance for the planned implementation of the approved new Building No. 3 and subsequent buildings under the Master Plan for the Johns Hopkins Campus. This proposed ZTA is to clarify this issue and to allow the conclusion to be

made that the Hopkins campus, which remains subject to the LSC Zone, can be “in compliance with” the Zoning Ordinance.

Staff has no objection to the clarification of the intent of the Declaration of Covenants and Easements and the correction of the date associated with these documents.

RECOMMENDATION

Staff recommends approval of the proposed text amendment to making technical corrections to the date of the Declaration of Covenants and easements referenced in Section 59-C-5.476(b)(1); and clarifying and confirming the intent that the Higher Education Campuses are subject to separate master plans of development and are not subject to the Declaration of Covenants and the Life Sciences Center Development Plan.

Attachment 1 depicts the proposed text amendment as proposed.

GR

Attachments

1. Proposed Text Amendment 03-11
2. Excerpts from the 1990 Declaration of Covenants

ATTACHMENT 1

Zoning Text Amendment No: 03-11
Concerning: Life Sciences Center
Amendments
Draft No. & Date: 1 – 5/8/03
Introduced: May 13, 2003
Public Hearing: June 17, 2003; 1:30 PM
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- making technical corrections to the date of the Declaration of Covenants and easements referenced in Section 59-C-5.476(b)(1); and
- clarifying and confirming the intent that the Higher Education Campuses are subject to separate master plans of development and are not subject to the Declaration of Covenants and the Life Sciences Center Development Plan.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-5 “INDUSTRIAL ZONES”
Section 59-C-5.476(b) “Procedure for application and approval”

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 59-C-5 is amended as follows:**

2 **DIVISION 59-C-5. INDUSTRIAL ZONES.**

3 * * *

4 **59-C-5.47. Special regulations LSC zone.**

5 * * *

6 **59-C-5.476 Procedure for application and approval.**

7 (a) * * *

8 (b) The following regulations are applicable in the LSC zone:

9 (1) In the Shady Grove Life Sciences Center except as provided below,
10 applicants for site plan or subdivision plan approval must [enter into
11 an agreement with the Montgomery County Government by signing]
12 subject the project for which approval is sought to the Amended and
13 Restated Declaration of Covenants and Easements [as recorded March
14 15, 1989] dated March 9, 1990 and recorded May 25, 1990 in Liber
15 9332 at folio 591, or as the same may be subsequently amended,
16 governing the development of the Shady Grove Life Sciences Center.
17 Applicants for site plan or subdivision plan approval for projects on
18 properties identified as Higher Education Campuses in the 1995
19 Shady Grove Life Sciences Center Development Plan were not
20 intended to be burdened by the Amended and Restated Declaration of
21 Covenants and Easements and are not required to subject projects on
22 the Higher Education Campuses to the requirements of the Amended
23 and Restated Declaration of Covenants and Easements.

24 (2) Properties within the Shady Grove Life Sciences Center, except as
25 provided below, are subject to the provisions of:

26 (A) an approved subdivision plan which may restrict the maximum
27 density allowed, and

1 **(B)** the 1986 Shady Grove Life Sciences Center Development Plan,
2 as amended. This provision (B) shall not apply to the projects
3 on the properties identified as the Higher Education Campuses
4 in the 1995 Shady Grove Life sciences Development Plan. Any
5 application of the 1986 Shady Grove Life Sciences Center
6 Development Plan to such Higher Education Campuses arises
7 by private agreement only.

8 (3) * * *

9 59-C-5.477. Existing approved buildings, building permits, or uses.

10 * * *

11 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
12 date of Council adoption.

13
14 This is a correct copy of Council action.

15
16
17
18 _____
19 Mary A. Edgar, CMC

20 Clerk of the Council

DECLARATION OF COVENANTS AND EASEMENTS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND EASEMENTS (hereinafter, "Declaration"), made this 15 day of March, 1989, by Montgomery County, Maryland; a political subdivision (hereinafter, "County").

WITNESSETH:

RECITAL 1. The County is the fee simple owner of certain property described in Exhibit A, attached hereto and incorporated herein (hereinafter, the "Property");

RECITAL 2. That parcel known as the Johns Hopkins University Parcel recorded among the Land Records of Montgomery County, Maryland at Liber 7687 in Folio 544 is included in the Property Description in Exhibit A, however, it is not intended to be included within the property encumbered by this Declaration;

RECITAL 3. That parcel known as the Gudelsky Tract is included in the Property Description in Exhibit A, however, it is not intended to be included within the property encumbered by this Declaration;

RECITAL 4. The County intends that the Property serve life sciences research, including but not limited to biological, biophysical, and bioelectronic research, development and manufacturing activities and directly related educational, housing and support services which are incidental to such activities;

RECITAL 5. The County intends that the Property be used and improved consistent with the Shady Grove Life Sciences Center Development Plan dated September 16, 1986 and the Development Criteria (hereinafter, "Development Plan") copies of which are attached hereto as Exhibit B;

RECITAL 6. The Development Plan describes a land use pattern wherein the Life Sciences Center is divided into physical areas specifically designated for certain permitted uses authorized by this Declaration;

RECITAL 7. The area known as the Health Care Core is that property and the improvements thereon, located within the Life Sciences Center: bound on the east and south by Medical Center Drive; bound on the west by Broschart Road; and bound on the north by the southern limit of the Johns Hopkins University Parcel recorded among the Land Records of Montgomery County, Maryland at Liber 7687 in folio 544;

RECITAL 8. The area known as the Higher Education Campuses is that property and the improvements thereon, located within the Life Sciences Center consisting of :

- 1) that parcel known as the Johns Hopkins University Parcel recorded among the Land Records of Montgomery County, Maryland at Liber 7687 in Folio 544; and
- 2) that fifty (50) acre parcel known as the Gudelsky Tract recorded among the Land Records of Montgomery County, Maryland at Liber 4077 in Folio 401;