

10b. 2012SP-023-001

BL2012-248 McGuire

BURTON HILLS

Map 131-06-0-A, Parcel(s) 001

Council District 25 (Sean McGuire)

Staff Reviewer: Jason Swaggart

A request to rezone from the R15 to SP-O district for property located at 1 Burton Hills Boulevard, at the southeast corner of Hillsboro Pike and Burton Hills Boulevard (9.17 acres) and within a PUD Overlay, to permit office uses, requested by Barge Cauthen & Associates, applicant, for EP Real Estate Fund, L.P., owner. (See also Planned Unit Development Proposal No.18-84P-001)

Staff Recommendation: Approve with conditions and disapprove without all conditions.

APPLICANT REQUEST

Amend PUD overlay to permit office uses and rezone property from R15 to SP.

Amend PUD

A request to amend a portion of the Burton Hills Commercial Planned Unit Development Overlay District located at 1 Burton Hills Boulevard, at the southeast corner of Hillsboro Pike and Burton Hills Boulevard (9.17 acres) zoned One and Two Family Residential (R15) and proposed for Specific Plan – Office (SP-O), to permit a four-story, 110,000 square foot office building and structured parking where a four-story, 54,000 square foot office building and structured parking were previously approved and increase the total floor area for office uses in the overlay from 550,000 square feet to 660,000 square feet.

Zone Change

A request to rezone from the One and Two Family Residential (R15) to Specific Plan – Office (SP-O) district for property located at 1 Burton Hills Boulevard, at the southeast corner of Hillsboro Pike and Burton Hills Boulevard (9.17 acres) and within a PUD Overlay, to permit office uses.

Existing Zoning

The site is zoned R15 and is part of the larger Burton Hills Planned Unit Development (PUD) overlay district. The PUD permits office uses only on this site.

Proposed Zoning

Specific Plan-Office (SP-O) is a zoning District category that provides for additional flexibility of design, including the relationship of streets to buildings, to provide the ability to implement the specific details of the General Plan. This Specific Plan includes office uses.

CRITICAL PLANNING GOALS

- Promotes Compact Building Design
- Supports Infill Development
- Supports Walkable Neighborhoods

The proposed request promotes compact building design and supports infill development which supports walkability. The request will permit increase the intensity of development on the site which is located in a developed area where infrastructure is in place. The area contains a variety of housing options and numerous amenities and services which will provide housing choices and services within walking distance of the subject location.

GREEN HILLS/ MIDTOWN COMMUNITY PLAN

Office Concentration (OC) policy is intended for existing and future large concentrations of office development. It is expected that certain types of commercial uses that cater to office workers, such as restaurants, will also locate in these areas. Residential uses of at least nine to twenty dwelling units per acre (Residential Mixed Housing density) are also an appropriate secondary use.

Consistent with Policy?

Yes. The proposed zoning and PUD amendment will permit additional office uses, which is consistent with the Office Concentration land use policy.

PUD OVERLAY HISTORY

The Burton Hills Planned Unit Development was originally approved in 1984 and included office, multi-family, single-family, amenities and a church. The overall plan was approved under the previous zoning code (COMZO). COMZO did not require overlays to be consistent with the base zoning district, which is the reason why this office use currently has a residential base zoning district. There have been many revisions and one amendment to the overall PUD in the past under both COMZO and the current zoning code. The plan was last amended by Council in 1998, for 550,000 square feet of office uses within the overall PUD. The last revision was approved by the Planning Commission in 2007 and increased the overall floor area for office uses in the PUD to 604,000 square feet. The last revision did not require Council approval. The Commission found the proposal was consistent with the concept of the council approved master development plan; that the overall floor area was not

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increased over ten percent of the overall floor area that was approved by Council; and that the request was consistent with all other requirements of Section 17.40.120.G. which authorizes the Planning Commission to approve revisions to a PUD master development plan.

August 9, 2012 deferral and questions from Planning Commission

This request was originally heard at the August 9, 2012, Planning Commission meeting. The public hearing was held and closed. The Commission deferred the request to the September 27, 2012, meeting in order for planning staff to address specific questions raised by the Commission concerning the request. Questions arose from information that was presented to the Commission during the Public Hearing. The Commission requested staff research the history of the PUD and provide information relating to the PUD at the September 27, 2012, meeting.

During the Public Hearing, documents were given to the Commission indicating that the original PUD included conditions that conflict with the current request. The opponents presented these documents to support their primary concern relating to the proposed building height. According to the opponent, the original overlay limited the height for the site to three stories and that the height restriction was to preserve views of downtown from other buildings in the development. Since the August meeting, the applicant has had numerous discussions about the design of the plan and has changed their request to reduce the height of the building from seven stories to four stories (maximum height 90 feet to maximum height 60 feet), including four floors of underground parking.

Staff explained that they could not verify the origin of the documents presented at the meeting at that time. Staff also explained that the original approval letter on file did not include any conditions and that conditions are typically included in the approval letter. Staff further explained that the overlay had been amended by Council in 1998 and that the amendment did not include any conditions; therefore, even if the conditions presented by the opponent were part of the original approval, they are not part of the currently approved PUD plan requirements. *Lastly and most importantly, staff explained that the current request is an amendment which must be approved by Council and should be considered under today's land use policies since it is a new zoning request.* The Commission asked staff to address several questions which are as follows:

Question 1:

What is the history of the non-residential development? How did it evolve?

The Burton Hills Planned Unit Development was originally approved in 1984 and included office, multi-family, single-family amenities and a church. For the purpose of this discussion only the non-residential development will be outlined. While this discussion will only include the history of the non-residential component it is important to note that staff reviewed all the files in the overlay. The following table contains the full development history of the non-residential component of the overlay (phase one is the subject site).

MPC Approval Date	Action	Application Type	Scope	Phase
March 14, 1984	Approved with conditions	Preliminary	850 Residential Units and 550,000 SF office	N/A
September 12, 1984	Approved with conditions	Revision and Final	Revised original layout (has been constructed) 120,000 SF Office (3 story)	1
March 12, 1986	Approved with conditions	Revision and Final	Revised original layout (has been constructed) 107,500 SF Office (5 story)	2
January 21, 1988	Approved with conditions	Final	107,000 SF Office (5 story)	3

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MPC Approval Date	Action	Application Type	Scope	Phase
September 21, 1995	Approved	Remove original conditions	Removed development restrictions established by the 1984 General Plan Amendment and Preliminary PUD approval	N/A
April 18, 1996	Approved with conditions	Revision	Revised layout , 86,000 SF Office (5 Story	5
May 16, 1996	Approved with conditions	Final	86,000 SF Office (5 Story)	5
December 12, 1996	Approved with conditions	Revision	Reallocate 30,489 SF from Phase 5 to Phase 4 (Ph. 4 goes from 107,500 SF to 137,989 SF)	4 and 5
February 27, 1997	Withdrawn	Withdrawn	Increase floor area from 137,000 SF to 147,000 SF	4
June 4, 1997	Approved with conditions	Revision	Movement of building, 137,989 SF	4
January 22, 1998	Disapproved	Amendment	1,200 seat, 111,000 SF church, 5 story 130 SF, office and 110,000 SF 120 unit assisted living facility	N/A
March 14, 1998	Approved	Amendment	1,200 seat, 111,000 SF church, 120 unit assisted living facility	N/A
June 25, 1998	Approved with conditions	Revision and Final	130,000 SF office (reduced floor area from 137,000 SF)	4
September 13, 2001	Approved with conditions	Revision and Final	137,906 SF office, 6 story (up from 130,000 SF)	4
September 27, 2007	Approved with conditions	Revision	New 54,000 SF office (4 story) <i>this is less than 10 percent increase over what was originally approved by Council in 1984</i>	1

As shown on the above table there have been numerous revisions made to the development since the original 1984 approval. In fact, no part of the overlay (non-residential or residential) with the exception of phase three has developed exactly as shown on the original plan. With the exception of the 1998 amendment all changes (revisions) were approved by the Planning Commission and did not require Council approval.

Question 2:

Where did the conditions presented by the opponent come from? Were there any conditions with the original 1984 approval?

Staff located the document that was presented to the Commission. The document contains numerous conditions including language regarding height. It states:

“The four office structures attached to the parking deck shall not exceed six stories in height. The northernmost office structure shall not exceed three stories in height.”

While the document was located in the file and is likely the Planning Commission’s conditions of approval, there is no way to verify its origins. Staff searched for the minutes from the March 14, 1984, meeting however, the 1984 volume is incomplete so

no further information could be found. Conditions of approval are typically contained within the approval letter. The approval letter dated March 19, 1984, indicates that the approval was conditional but conditions are not included in the letter. The letter does however refer to the conditions being attached. The 1984 approval also included an amendment to the general plan. Some documents, including the September 21, 1995, approval to remove a condition of the 1984 approval, indicates that the conditions presented by the opponent were conditions to the General Plan. The Planning Commission's 1984, approval letter included a statement that conditions were part of the approval; however, they were not included in that approval letter, nor as part of the PUD ordinance, or on the master development plan.

Question 3:

Did the last amendment remove any previous conditions?

No. Unless an amendment directly removes or modifies previous council conditions then all previous conditions should carry forward. The 1998 amendment only covered a portion of the overlay which did not include the current site; therefore, the 1998 amendment would not have negated any original PUD conditions. *It is important to note here that the enacting PUD legislation in 1984 did not include any conditions.*

Question 4:

Did the Planning Commission have the authority to approve the 2007 revision?

The opponent contends that the above cited condition limiting height prohibited the Planning Commission from approving a four story building, because it could only be approved by Council as an amendment. *Staff finds that the Commission had the authority to approve the 2007 revision.*

Section 17.40.120.G permits the Planning Commission to approve "minor modifications" under certain conditions.

G. Status of Earlier Planned Unit Developments (PUDs). The following provisions shall apply to a planned unit development (PUD) approved under the authority of a previous zoning code and remaining a part of the official zoning map upon the enactment of this title.

1. The planned unit development (PUD) shall be recognized by this title according to the master development plan and its associated conditions specified in the PUD ordinance last approved by the metropolitan council prior to the effective date of the ordinance codified in this title.
2. The planning commission may consider and approve minor modifications to a previously approved planned unit development subject to the following limitations. All other modifications shall be considered by the planning commission as an amendment to the previously approved planned unit development and shall be referred back to the council for approval according to the procedures of Section 17.40.120(A)(5). That portion of a planned unit development master plan being amended by the council shall adhere to all provisions of this code:
 - a. In the judgment of the commission, the change does not alter the basic development concept of the PUD;
 - b. The boundary of the planned unit development overlay district is not expanded;
 - c. There is no change in general PUD classification (e.g. residential to any classification of commercial or industrial PUD; any change in general classification of a commercial PUD; or any change in general classification of an industrial PUD);
 - d. There is no deviation from special performance criteria, design standards, or other specific requirements made part of the enacting ordinance by the council;
 - e. There is no introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access;
 - f. There is no increase in the total number of residential dwelling units originally authorized by the enacting ordinance;
 - g. There is no change from a PUD approved exclusively for single-family units to another residential structure type;
 - h. The total floor area of a commercial or industrial classification of PUD shall not be increased more than ten percent beyond the total floor area last approved by the council.
 - i. If originally limited to office activities, the range of permitted uses in a commercial PUD shall not be expanded to broader classifications of retail, commercial or industrial activities, unless such activities are otherwise permitted by the underlying base zone district. The permitted uses within the planned unit development shall be those specifically authorized by the council through the adopted master development plan, or by the existing base zone district beneath the overlay, whichever is more permissive.
 - j. If originally limited to office, retail and other general commercial activities, the range of permitted uses in a commercial PUD shall not be expanded to include industrial activities, unless such activities are otherwise permitted by the underlying base zone district. The permitted uses within the planned unit development shall be those specifically authorized by the council through the adopted master development plan, or by the existing base zone district beneath the overlay, whichever is more permissive.
 - k. If originally limited to commercial activities, the range of permitted uses in a commercial PUD shall not be expanded to broader classifications of retail, commercial or industrial activities, unless such activities are otherwise permitted by the underlying base zone district. The permitted uses within the planned unit development shall be those specifically authorized by the council through the adopted master development plan, or by the existing base zone district beneath the overlay, whichever is more permissive.

- l. In the determination of the commission, the nature of the change will have no greater adverse impact on those environmentally sensitive features identified in Chapter 17.28 of this code than would have occurred had the development proceeded in conformance with the previous approval.
- m. In the judgment of the commission, the planned unit development or portion thereof to be modified does not meet the criteria for inactivity of Section 17.40.120.H.4.a.

The above specified section of the Zoning Code clearly authorized the Commission to approve the 2007 revision. Said section recognizes PUDs approved under the previous zoning code by the master development plan and its associated conditions specified in the PUD ordinance last approved by the metropolitan council. It has been argued that the Commission violated section 2.d which requires Council to approve any changes that would alter any special performance criteria, design standards, or other specific requirements approved under the Council approved enacting ordinance. The original PUD master development plan contains no conditions or height restrictions and there are no conditions within the enacting PUD ordinance (O84-270). Since there are no conditions or height limits stated on the original master development plan or ordinance, then staff contends that the Commission did not violate Section 2.d. As previously stated, the Commission removed one of the conditions included in the document cited by the opponent in 1995. As in 1995, the Commission had the authority to approve the 2007 revision which permitted a four story structure without requiring Council approval.

The 2007 approval in question was for a new four story office building on the subject site. Staff found the proposal consistent with the original master plan's office concept and that it was consistent with the Office Concentration land use policy. The request did not increase the overall floor area above ten percent of what was approved by Council and met all other standards for a minor modification (revision). The Commission concurred with staff's recommendation, and as stated above was consistent with the requirements of the Zoning Code to consider the changes as a Revision to the PUD.

It is important to note that since the deferral the applicant has submitted revised plans. In an attempt to address concerns raised, the building height has been reduced from seven stories (maximum 90 feet) to four (maximum 60 feet) consistent with the 2007 plan. While the height has been reduced the overall office floor area remains the same at 110,000 square feet. The bulk of the parking on the revised plan is subgrade. The remainder of the report has been revised to reflect this change.

PLAN DETAILS

The subject site is a small portion of the larger PUD. It includes a three-story, 120,000 square foot office building and associated surface parking. *The primary intent of this request is to increase the overall floor area for office uses on the subject site by adding a four-story 110,000 square foot office building where a four-story, 54,000 square foot office building was previously approved (this is in addition to the existing 120,000 SF office building).* The plan also proposes minor revisions to an existing surface parking lot. The request will increase the overall floor area for office uses on the site to 230,000 square feet and 660,000 square feet for the overall PUD. The Council approved master development plan is for 550,000 square feet of office uses. Since the subject request increases the floor area over ten percent (605,000 SF) of the floor area that was last approved by Council (1998), the zoning requires Council approval. PUD amendments must meet current zoning requirements for that portion of the PUD that is being amended. Today's Zoning Code requires that overlays and PUD amendments be consistent with their base zone district; therefore, the PUD application is tied to a zone change for a Specific Plan district that will regulate bulk standards (setback, height, floor area, etc.).

Proposed SP-O Zoning

The proposed SP-O is a regulatory zoning which will regulate bulk standards and parking standards similar to any other zoning district. The standards under the proposed SP are as follows:

- Permitted Uses: All uses permitted by the ORI zoning district
- Minimum Lot Area: None
- Maximum FAR: 0.7 (structure parking does not count towards FAR)
- Maximum ISR: 0.9
- Maximum Building Height: 60 feet
- Front Yard Setback: 35 feet from public ROW (Hillsboro Pike and Burton Hills Blvd)
- Side Yard Setback: 10 feet from all shared property lines
- Rear Yard Setback: 10 feet from all shared property lines
- Parking: 3 spaces per 1,000 square feet

The proposed SP also requires that development meet current tree density requirements. Any standards not specifically called out in the SP will fall under the ORI base zoning district. The proposed SP is similar to other office districts in the zoning code. For example it will permit a FAR slightly under what is permitted in the OL zoning district and an ISR consistent with ORI. The major difference in the proposed SP district and other office zoning districts is that it permits slightly fewer parking spaces and a smaller rear yard setback. Under the parking requirements found in the Zoning Code the building including the existing 120,000 square foot building would require 766 parking spaces (one space for every 300 square feet), where under the proposed SP district only 690 parking spaces are required. Typical office districts require a 20 foot rear yard setback where the proposed SP district permits a ten foot rear yard setback.

Site Plan

The plan calls for one new office building and the rearrangement of an existing parking lot. As proposed the new office building will be located near the intersection of Hillsboro Pike and Burton Hills Boulevard. It will be four stories in height with

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110,000 square feet of office space. Surface parking is also provided. Access to the site will be from Burton Hills Boulevard. No direct access is proposed to Hillsboro Pike.

ANALYSIS

The proposed PUD amendment and zone change are consistent with the Office Concentration land use policy and meet two critical planning goals. These changes will provide for additional corporate office space which is needed in Davidson County. The additional office space will provide opportunities for new jobs in a growing area that can provide housing options and numerous amenities and services for future tenants.

Since the August 9, 2012, meeting, the applicant has revised the building from seven stories to four stories (90 feet tall to 60 feet tall). The four story building will still obstruct some views from the adjacent building to the north; however, views from the upper floors will be preserved. Staff finds that the need for high-quality corporate office space in Davidson County coupled with the fact that the proposed site location meets several critical planning goals outweigh this issue. Staff also finds that the proposed amendment to the PUD and the limited land area being amended complies with the Metro Zoning Code and specifically Metro Code Section 17.36 and 17.40.

STORMWATER RECOMMENDATION

Approved

PUBLIC WORKS RECOMMENDATION

Approved with conditions

1. The developer's final construction drawings shall comply with the design regulations established by the Department of Public Works. Final design may vary based on field conditions.
2. All driveway ramps should be ST-324.
3. Indicate solid waste plan – dumpster and recycling container locations with SU-30 turn template.
4. Modify signalized intersections on Hillsboro Rd to provide video detection and provide pedestrian facilities at northern signal.
5. Submit parking analysis. Modify median opening at relocated eastern driveway.

Maximum Uses in Existing Zoning District: **R15**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
General Office (710)	1.75	-	54,000 SF*	831	115	140

*FAR regulated by PUD Overlay

Maximum Uses in Proposed Zoning District: **SP-O**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
General Office (710)	1.77	-	110,000 SF*	1436	203	203

*FAR regulated by PUD Overlay (does not include existing floor area)

Traffic changes between maximum: **R15** and proposed **SP-O**

Land Use (ITE Code)	Acres	FAR/Density	Total Floor Area/Lots/Units	Daily Trips (weekday)	AM Peak Hour	PM Peak Hour
-	-	-	+56,000	+605	+88	+63

STAFF RECOMMENDATION

Staff recommends that both request be approved with conditions as they are both consistent with the land use policy for the site and meets several critical planning goals.

CONDITIONS

18-84P-001 (PUD Amendment)

1. This approval does not include any signs. Signs in this planned unit development must be approved by the Metro Department of Codes administration. For the purposes of review all signs shall be consistent with the ORI zoning district.
2. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.
3. If the PUD final site plan or final plat indicates that there is less acreage than what is shown on the approved preliminary plan, the final site plan shall be appropriately adjusted to show the actual total acreage, which may require that the total number of dwelling units or total floor area be reduced.

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1. Uses in the SP are limited to office uses and all other uses permitted by the ORI zoning district.
2. No final site plan is required for this SP District as long as the PUD overlay remains. If the overlay is canceled then any new redevelopment will require a final site plan for the SP.
3. For any development standards, regulations and requirements not specifically shown on the SP plan and/or included as a condition of Commission or Council approval, the property shall be subject to the standards, regulations and requirements of the ORI zoning district as of the date of the applicable request or application.
4. A corrected copy of the preliminary SP plan incorporating the conditions of approval by the Planning Commission and Council shall be provided to the Planning Department prior to the filing of any additional development applications for this property, and in any event no later than 120 days after the effective date of the enacting ordinance. The corrected copy provided to the Planning Department shall include printed copy of the preliminary SP plan and a single PDF that contains the plan and all related SP documents. If a corrected copy of the SP plan incorporating the conditions therein is not provided to the Planning Department within 120 days of the effective date of the enacting ordinance, then the corrected copy of the SP plan shall be presented to the Metro Council as an amendment to this SP ordinance prior to approval of any grading, clearing, grubbing, final site plan, or any other development application for the property.
5. Minor modifications to the preliminary SP plan may be approved by the Planning Commission or its designee based upon final architectural, engineering or site design and actual site conditions. All modifications shall be consistent with the principles and further the objectives of the approved plan. Modifications shall not be permitted, except through an ordinance approved by Metro Council that increase the permitted density or floor area, add uses not otherwise permitted, eliminate specific conditions or requirements contained in the plan as adopted through this enacting ordinance, or add vehicular access points not currently present or approved.
6. The requirements of the Metro Fire Marshal's Office for emergency vehicle access and adequate water supply for fire protection must be met prior to the issuance of any building permits.

Items 10a and 10b were discussed at the same time.

Mr. Leeman presented the staff recommendation of approval with conditions and disapproval without all conditions.

The Public Hearing was closed at the August 9, 2012 Planning Commission Meeting.

Councilmember Claiborne inquired if the original PUD included any conditions.

Mr. Leeman clarified that there were some conditions in the file, but they were not included in the 1984 council ordinance nor were they on the PUD plan from 1984, therefore they are unenforceable. The proposal being considered now is for a new zone change and PUD amendment that has to be considered on its own. The original PUD is not a factor in this decision.

Jon Michael stated that the Planning Commission has the authority to amend the PUD and change the zoning.

Chairman McLean inquired as to the 60' height starting point.

Mr. Bernhardt clarified that it starts the same way that Codes measures it – the average of the elevation across the front.

Mr. Clifton inquired if the building height reduction is consistent with the 2007 plan.

Mr. Adkins stated that Davidson County needs all the tax dollars, economic development, and jobs that we can keep and spoke in support of staff recommendation.

Chairman McLean asked the applicant as well as the opposition to explain what has changed from the August 9, 2012

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Planning Commission meeting that has been agreed or disagreed upon.

John Aiken, Aiken Partners, stated that the building height has been reduced from seven stories to four stories, existing green space will be maintained, lighting impact concerns will no longer be a concern, storm drainage will be improved, all construction traffic will exit on to Hillsboro Road, a traffic study will be conducted and the applicant will work with the city to come up with solutions for traffic calming.

George Dean, Tune, Entekin and White, speaking for the opposition, stated that the Commission should uphold the original conditions and require the applicant to comply.

Ms. LeQuire asked Mr. Dean if height is the main reason for the opposition.

Mr. Dean stated that traffic concerns as well as the lack of transparency on the process are also issues.

Mr. Gee stated that this meets policy.

Mr. Gee moved and Dr. Cummings seconded the motion to approve with conditions and disapprove without all conditions. (7-0)

Resolution No. RS2012-177

"BE IT RESOLVED by The Metropolitan Planning Commission that 2012SP-023-001 is Approved with conditions and disapproved without all conditions. (7-0)

The proposed SP zoning district permitting offices is consistent with the Office Concentration land use policy.