PETITION TO AMEND ZONING DISTRICT
Before The Dover City Council
September 13, 2004

Applicants/Owner	Rebecca Gates and Joseph Gates 605 South State Street Dover, DE 19901
Equitable Owner	Bayhealth Medical Center, Inc. 640 South State Street Dover, DE 19901
Location:	605 South State Street across from South Street intersection
Size:	3.60 acres +/-
Present Zoning:	R-10 (One Family Residence Zone)
Proposed Zoning:	IO (Institutional and Office Zone) permitting business, professional, or governmental offices, and research, design and development laboratories, including incidental clinics, cafeterias and recreational facilities for the exclusive use of company employees. Public and institutional uses including hospitals, sanitariums, for general medical care, medical clinics, libraries, police stations, court houses, transit centers, schools, colleges and universities, places of worship, philanthropic and eleemosynary institutions, parks, playgrounds, public indoor recreation centers, civic centers, athletic fields and public utility rights-of-way. Through the Conditional Use process, planned senior housing developments are permitted.
Present Use:	Two buildings of the residence and a shed
Proposed Use:	Hospital offices with no changes to the buildings proposed
File Number:	Z-04-08

Findings and Recommendations of the Dover Planning Commission

This petition was considered at the August 16, 2004 meeting of the Planning Commission. The following members were present: Mr. Friedman, Mr. Nichols, Mrs. Young, Mr. Tolbert, Mr. Holt, Mr. Winsley, Mr. DiMondi, Mr. VonReider, and Col. Welsh.

The Planning Commission recommends that this request for rezoning from R-10 to I-O be approved. The motion for approval of the rezoning passed 9-0 of those members present.

The following information was considered by the Planning Commission:

Surrounding Land Uses:
The area of petition consists of one parcel located on the east side of South State Street across from the intersection with South Street known as 605 South State Street. The property is currently zoned R-10 (One Family Residence Zone). The proposed zoning is IO (Institutional and Office Zone). Immediately surrounding this property is one parcel currently owned by the equitable owner and zoned IO. The major part of the adjacent parcel is to the south and includes the structure known as the Scull Mansion (Cultural Resource Survey #K-126, individual property listed in the National Register of Historic Places). The parcel does surround the subject parcel with a 27 +/- feet border on three sides. This is an area of mixed zoning and mixed uses. To the north is the Elm Terrace neighborhood zoned R-8 One Family Residential. To the west is an area largely influenced, if not owned by, Bayhealth Medical Center zoned IO with the parcel on the corner of South Street zoned RGO (General Residence and Office). The property to the east includes hospital uses and ends at the St. Jones River, all zoned IO. The actual uses in the area are primarily medical related offices and a residential area.

Comprehensive Plan:
In the 2003 *Comprehensive Plan Update*, the Land Development Plan recommends Residential Use for this property. The conflict with the Comprehensive Plan has been addressed by the Office of State Planning Coordination by the issuance of a waiver from further State review of the proposal and stipulating that the rezoning is in the interest of the community. See attached letter.

Request for IO (Institutional and Office Zoning)
The types of permitted uses in the IO (Institutional and Office Zoning) are outlined in Article 3 §10 and include a variety of office type uses.

> Section 10. Institutional and Office Zone (IO).
> Uses Permitted. Business, professional, or governmental offices, and research, design and development laboratories, located entirely within a building on the same lot therewith, including incidental clinics, cafeterias and recreational facilities for the exclusive use of company employees. Public and institutional uses including hospitals, sanitariums, for general medical care, medical clinics, libraries, police stations, court houses, transit centers, motor vehicle storage and repair facilities accessory to a public or institutional use, schools, colleges and universities, places of worship, philanthropic and eleemosynary institutions, parks, playgrounds, public indoor recreation centers, civic centers, athletic fields and public utility rights-of-way and structures necessary to serve areas within the city. Restaurants accessory to permitted uses located on the same lot.

As required with a request for IO (Institutional and Office Zone) Zoning, the applicant submitted a Preliminary Site Plan. This Plan shows basic information on the existing buildings, parking areas, and landscaping. Because there are no changes to the buildings or site proposed with this rezoning, no changes are noted on the plans. The subject property meets the requirements that it have a minimum width of 50 feet and depth of 100 feet. There is no minimum lot area requirement. Since any allowed use under the new zoning district will require a site plan, the reuse, redevelopment or expansion of the existing buildings on the site will require a Site Plan reviewed by the Planning Commission as per the *Zoning Ordinance.*

Other Considerations:
While the subject parcel is surrounded by lands zoned IO, it functionally abuts a residential neighborhood. The distance of the developed portions of the property are most remote from this neighborhood. The request is being made to allow the holdings of Bayhealth Medical to maintain common zoning and permitted uses and is a part of the facility's campus plan. Compliance with all requirements of the *Zoning Ordinance* will be reviewed as part of the Site Plan approval process.

Recommendation of the Planning Staff:
Although the Comprehensive Plan recommended the parcel be retained as residential, the waiver obtained from the Office of State Planning accurately depicts the value of the property in the campus of Bayhealth Medical. The primary zoning to the south and east are the same as proposed and the adjacent residences are relatively remote from the buildings on the site. The Planning Staff recommends that the rezoning from R-10 to IO be approved.

Advisory Comments to the Applicant:

1) The applicant shall be aware that approval of the Rezoning does not represent Site Plan approval. A separate application process for Site Plan approval is required for the development of this property due to the change of use.

2) The details of the Plan will be reviewed during the Site Plan process for compliance with the *Zoning Ordinance*. These items include site access, curbing, parking, utilities, tree plantings, Dumpster location, lighting, etc.

Public Comments:
The application was represented by Gregory V. Moore, Becker Morgan Group and Jerry Peters, Director of Planning for Bayhealth Medical Center, Inc.

The following individual appeared and spoke in regards to the rezoning application:

Mrs. Rose Bryan, 600 South State Street – She noted changes in the area surrounding the hospital, the number of properties in hospital or hospital related ownership, and her concerns about the hospital's future overall plan for development. (The written statement she submitted at the hearing is attached.)

A memorandum dated August 12, 2004 was received from Gene Ruane, Dover Councilman: Second District regarding Dover's Institutional Master Plan Review Process and the Gates/Bayhealth Medical Center and Zimmerhaus II/Wesley College Applications. The Planning Commission members received this via email and a hardcopy was provided to them at the August 16, 2004 meeting.

Agency Comments from DAC Report:
Department of Public Works has no objections to the rezoning. They also noted the future review and calculation of impact fees should additional fixtures be added.
The City Electric Department has no comments on the rezoning application.
DelDOT has no comments on the rezoning.

Attachments to the Report:

Exhibit Location Map

Development Advisory Committee Application Review Commentary (comment sheets) from the following:

Department of Public Works
City Electric Department
Delaware Department of Transportation

Letter from Office of State Planning Coordination – June 30, 2004

Exhibits from Public Hearing at Planning Commission:

- **Written statement read by Mrs. Rose Bryan**
- **Summary of Bayhealth/ Gates Property/ Master Planning Process submitted to staff by Gregory V. Moore on 8/16/04**

Memorandum from Gene Ruane, Dover Councilman: Second District – August 12, 2004 regarding Dover's Institutional Master Plan Review Process and the Gates/Bayhealth Medical Center and Zimmerhaus II/Wesley College Applications.

CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

APPLICANT D.A.C. MEETING DATE: July 29, 2004

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APPLICATION: **Lands of Rebecca Gates at 605 South State Street: Rezoning from R-10 to IO**

FILE#: Z-04-08 **REVIEWING AGENCY: City of Dover Public Works**

CONTACT PERSON: Scott Koenig or Andrew Riggi **PHONE#: 736-7025**

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THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY AND STATE CODE REQUIREMENTS:

1. The Department of Public Works has no objection to the proposed rezoning of tax parcel ED-05-77.13-01-49.00-000 from R-10 to I-O.

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

ADVISORY COMMENTS TO THE APPLICANT:

2. Should any changes to the building become proposed at any time, particularly regarding the addition of fixtures, additional information must be submitted to our office for review and the calculation of impact fees. A maximum credit of 2 E.D.U.s will be provided at that time by our office for the 2 dwelling units currently location on the property.

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

CITY OF DOVER
DEVELOPMENT ADVISORY COMMITTEE MEETING
APPLICATION REVIEW COMMENTARY

JULY 29, 2004 - 10:00 A.M. - CAUCUS ROOM

APPLICATION: LANDS OF REBECCA GATES – 605 S. STATE STREET

FILE NO.: Z-04-08 **REVIEWING AGENCY**: CITY OF DOVER ELECTRIC

CONTACT PERSON: STEPHEN A. ENSS **PHONE #:** 736-7091

THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY & STATE CODE REQUIREMENTS:

THE ELECTRIC DEPARTMENT REVIEWED THE APPLICATION AND HAS NO COMMENTS.

RECOMMENDATIONS SUGGESTED FOR AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

ADVISORY COMMENTS TO THE APPLICANT:

IF YOU SHOULD HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CONTACT STEPHEN ENSS AT 736-7091 OR CONTACT THE PLANNING DEPARTMENT AT 736-7010 AS SOON AS POSSIBLE.

CITY OF DOVER

DEVELOPMENT ADVISORY COMMITTEE

APPLICATION REVIEW COMMENTARY

D.A.C. MEETING DATE: JULY 29, 2004

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APPLICATION: LANDS OF REBECCA GATES AT 605 S. STATE STREET -REZONING

FILE#: Z-04-08 REVIEWING AGENCY: DELDOT

CONTACT PERSON: RICHARD A. WOODHALL PHONE#: 760-2262

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THE SUBJECT PROPOSAL HAS BEEN REVIEWED FOR CODE COMPLIANCE, PLAN CONFORMITY AND COMPLETENESS IN ACCORDANCE WITH THIS AGENCY'S AUTHORITY AND AREA OF EXPERTISE.

THE FOLLOWING ITEMS HAVE BEEN IDENTIFIED AS ELEMENTS WHICH NEED TO BE ADDRESSED BY THE APPLICANT:

CITY & STATE CODE REQUIREMENTS:

NO COMMENTS

RECOMMENDATIONS SUGGESTED AS CONDITIONS OF APPROVAL TO MEET CODE OBJECTIVES:

ADVISORY COMMENTS TO THE APPLICANT:

IF YOU HAVE ANY QUESTIONS OR NEED TO DISCUSS ANY OF THE ABOVE COMMENTS, PLEASE CALL THE ABOVE CONTACT PERSON AND THE PLANNING DEPARTMENT AS SOON AS POSSIBLE.

City Of Dover, Delaware
Department of Planning and Inspections

M E M O R A N D U M

DATE: August 17, 2004

TO: Gene Ruane, Dover Councilman, 2nd District

FROM: James J. Galvin, Jr., AICP
Director of Planning & Inspection

RE: Dover's Institutional Master Plan Inclusion

Thank you for your letter. As you know, the Comprehensive Plan is an important document that helps guide the Department, the Planning Commission and the City through the coming five years. It is a prospective document that institutes some working goals for us all during this period.

You raise several issues in your correspondence to which I will respond with this memorandum. In general, however, the document is a plan that was developed at a point in time with the information known at that time. The plan did not, nor likely could, speculate on all potential (appropriate) opportunities for specific parcels, whether in the City of Dover or a potential annexation. As such, a plan must be able to respond to changing circumstances until a new plan is developed. Any change may be in the best interest of a property owner or a prospective owner, but it must be in the best interest of the City of Dover as a whole.

The City of Dover established a policy to "Participate in the Master Planning process for institutional facilities and campuses and encourage approval by the Planning Commission of the Master Plan as outlined in the Zoning Ordinance" as you cited. This is actually a two fold policy.

Encouraging Institutional Planning

The first is to "(p)articipate in the master planning process for institutional facilities and campuses…". The staff of the Department of Planning and Inspections met with the major institutions prior to or during the development of the Comprehensive Plan Update of 2003. For example, I believe every Director of the Office of Planning and Inspections has met with Dr. Miller or Dr. Coplan, as has the City Council, to discuss their Master Plan for the campus. Their Plan influenced the Comprehensive Plan's Land Development Plan as evidenced by the Land Development Map 11-1 potential development category for the block bounded by N. Governors, N. New, Fulton and Cecil.

BayHealth is working on their Master Plan and has shared some of their findings with staff of this Department, as well as the State Office of Planning Coordination. I believe their preliminary findings were presented to staff including Mr. Jorgensen and to the Planning Commission Chair, Mr. Friedman during the preparation of the Plan Update. Delaware State University is in the process of developing a new Campus Plan and has hired a firm to assist them. We fully anticipate input into the plan after the preliminary work has been completed, particularly identifying utility locations and projecting attendance. The University has undertaken this newest Campus Plan at the suggestion of the Planning Commission.

All of these are examples that relate to our local institutions preparing or sharing master plans and including City staff in the process at some point. Master Plans are typically not a continuous project for such institutions. Just as they were involved in the development of the City's Comprehensive Plan in 2003, we will continue to request input into the process of institutional plan development as the opportunity exists. At times, we have virtually mandated an institution complete such a plan. We can not, however, insist that they consult with staff or accept our suggestions during the development phase. For the most part our comments are well received.

Planning Commission Approval

The second policy statement included in the Comprehensive Plan encourages "…approval by the Planning Commission of the Master Plan as outlined in the Zoning Ordinance." The referenced section of the Zoning Ordinance is Article 10, Section 2.58 is supplemented by Section 2.491. The former describes the time frame of consecutive construction projects that would be required for consideration for site master plan approval. The specific citation reads:

> "…approval of the master plan shall remain valid for a period not to exceed five (5) years from the date of planning commission approval, provided that the authorized construction or use has commenced within one (1) year of approval and is proceeding toward completion, unless an extension of time is applied for by the applicant and granted by the planning commission. In addition, the time between the completion of one phase and the initiation of the next phase shall not exceed a period of two (2) years."

Thus, the approval of master plans by the Planning Commission is to accommodate several potentially separable construction projects that are likely to occur over a five year period. There is no requirement referenced in the Comprehensive Plan or the Zoning Ordinance for an institution to publically

share their master plan. There may be a disincentive for an institution to release strategic information on potential property acquisitions.

To answer your specific questions:

1, 2 and 3) Representatives from the Department of Planning and Inspections has met with BayHealth to review the plans they have prepared to date. They have no immediate plans for expansions that would suggest a master plan approval process. We have made comments on the nature of their plans and have offered our technical assistance for a master plan submission to the Planning Commission. The only other institution that is actively preparing a new plan is Delaware State University, It is our understanding that they have not progressed beyond the site information gathering stage. We have spoken with University representatives about staff participation in the plan development phase. Wesley College had developed a master plan they are using to guide decisions. It is not being updated. It is my understanding that the City Council was offered the opportunity to visit the campus and review the plan that was developed.

4) I can only speak to the recent history on BayHealth's plan. The potential purchase of the Gates property was presented during my introduction to the institution's draft plans. My introduction to the Wesley College Plan shortly after arriving did not include any plans for use of the Zimmerhaus II facility as dormitories. My understanding is that the idea was developed within a few months of application for a change of use.

5) The Zoning Ordinance at Article 10, Sections 2.491 and 2.58 describes the process for presenting an institution's master plan. It is specifically related to sequential construction projects and includes a public hearing before the Commission.

6) Neither BayHealth nor Wesley College have presented any projects that would meet the thresholds for a master plan review by the Commission.

7) I hope that the information presented in this response and as answers to specific questions documents that the Department of Planning and Inspections has followed the policies of the Comprehensive Plan. The one institution that made application followed the processes required for such a request. The Wesley College related application was made by a private entity. Consideration of these did not and does not constitute a "violation" of the Comprehensive Plan by the City.

8) The Department of Planning and Inspections has and will encourage our institutions to involve staff and/or the Commission in the development of their plans. We are aware of two that are on-going. As the plans result in site plan requests before the Planning Commission, we will require them to present their plans for development during the five year period in conformance with their Master Plan and our Zoning Ordinance.

9) We are constantly evaluating the efficacy of our policies and regulations and

may request some changes to the Zoning and/or Subdivision ordinances in the future. No changes are necessary to meet the intent of the Comprehensive Plan. I do not anticipate any change that would require the institutions to present their Master/.Campus Plans for "certification" by the City. To the extent that we can encourage presentation of Master Plans to the Planning Commission, we will do so. We will require that development proposals that potentially include multiple stages be presented as site Master Plans before the Commission.

Conclusion

The Department of Planning and Inspections has complied with the intent of the Comprehensive Plan and the requirements of the Zoning Ordinance in reviewing and presenting requests from BayHealth Medical Center and the principals of Zimmerhaus II.

The entities that would likely be involved in master planning and development of a scale that would require master plan review as defined by the Zoning Ordinance, are those that are critical to the health and well being of City of Dover and our residents. Their activities may have an impact on their neighborhoods. Therefore, it is most important for the City, including staff, the Commission and the City Council, to maintain a relationship with each of them. Staff can (and does) provide technical assistance with the Master Plans when they are being developed. With participation of the Commission, we can be a filter for ideas. We can all be supporters of their sound land use decisions.

I am available to discuss this matter with you or any of the other recipients.

cc: President and Members of City Council
Tony DePrima, City Manager
Dr. Scott Miller, President, Wesley College
Tom Burns, Chairman of BayHealth Medical Center Board
Dennis Klima, President & CEO, BayHealth Medical Center
Connie Holland, Director, State Office of Planning Coordination

September 13, 2004

TO: Mayor and City Council

FROM: Gene Ruane

SUBJECT: Continuation of the Transportation Advisory Committee

I believe that the historical outline which I provided to the Mayor and Council on May 20, 2004 provides compelling evidence why the Transportation Advisory Committee should continue as a separate Council committee..

I request that my May 20, 2004 memorandum be included by reference in the minutes of this meeting.

In that memorandum I explained how the Committee was first established by a unanimously approved Council Resolution in October, 2001; and, then unanimously approved by an Ordinance, just a year ago this month.

All but three of the members of that Council are still members of the current Council and none of these six members has ever personally indicated to me or to my knowledge to members of the public that the Transportation Advisory Committee had not effectively addressed some of the city's most pressing transportation issues.

I think they have not done that because they know in their hearts that this Committee was outstanding in closely coordinating its efforts with the State Department of Transportation, the Dover/Kent MPO, the Central Delaware Chamber of Commerce, the Dover Parking Authority, the Delaware Truckers Association, the Dover Planning and Public Works Department and other important transportation related organizations and individuals who are responsible for transportation investments and services in Dover and Kent County..

They know that its three Council members and its two civilian members, Mr. Chris Asay and Mr. Richard Ornauer did in fact make the contributions which Mr. Ornauer outlined so well in his Letter to the Editor, dated September 8, 2004, which I request be included by reference with the record of this meeting. After all, he and Mr. Asay provided much of the knowledge and dedication that made this Committee so successful.

If this committee is abolished, the transportation priorities which the city has already identified with the assistance of this dedicated committee and future transportation needs **will not** receive the priority attention that only a dedicated council committee can provide.

As Mr. Steven Cain, the President of the Mayfair, Crossgates, Wedgwood, Mayfair II Civic Association stated in his August 23, 2004 letter, if this Council adopts these ordinances tonight, the Council will be sending "the wrong message to the citizens of Dover"; and, I might add to all those organizations that I just mentioned.

They will understand that transportation issues are no longer considered important enough by the Dover City Council to receive the concentrated effort that only a dedicated committee can provide.

Instead, they are being told that the Council will be acting more efficiently when transportation issues are actually being relegated to a shared responsibility of a Public Safety committee, whose critical responsibilities, as Councilman Ritter has shown in recent months already justify a single focused committee.

As Mrs. Janice Sibbald, pointed out in her August 15, 2004 letter, critical transportation issues like those associated with the proposed West Dover Connector will not get the attention from the Council that they deserve.

Her neighbors also realize this, and that's why she has spoken up and testified and written letters. And, I request that her letters and the others this Council has received be included by reference and date when the minutes of this meeting are adopted.

Isn't it ironic that one of the chief sponsors of this Ordinance to merge the two committees has already unfairly critized Councilman Ritter for holding meetings that take too much time….and the Safety Committee has not even begun to address transportation issues in any serious way. What does that criticism say about the future success of a combined Committee?

The existing responsibilities of the Public Safety Committee, which include matters related to both our Police and Fire Service, will be adversely affected because of the time and effort that transportation issues will demand.

The meeting agenda of the Public Safety Committee has already been lengthened to the point where sufficient time will not be allowed for the serious exchange of information and discussion that are necessary for informed decision making.

State officials and representatives from other organizations and citizens whose interest is only in transportation issues or public safety issues have already had to sit through meetings until the topic of their expertise and/or interest is addressed.

So, why is this proposal being placed before the Council? The Council just reviewed the number and responsibilities of the council's committees in September 2003.

What has changed since then? I have not heard anything other than the Council Presidency.

Have the sponsors of this proposal, who all voted affirmatively to establish the Transportation Committee as a standing committee of the Council learned something about the Committee's activities since then which justify the elimination of the Committee?

I certainly would like to know what has happened since then to change your minds.

May 20, 2004

TO: Mayor and City Council

FROM: Gene Ruane

SUBJECT: Continuation of the Transportation Advisory Committee

Although I have not seen the amendments, I have been led to believe that a proposal will be presented to a meeting of the Council on Monday, May 24, 2004 which will effectively delete the Transportation Advisory Committee as a standing committee of the Council and transfer its responsibilities to the Public Safety Advisory Committee.

I believe that the attached historical outline provides compelling evidence why the committee should continue. It explains why the Transportation Advisory Committee was established and how it has, for the last three years, effectively addressed some of the city's most pressing transportation issues, in close coordination with the State Department of Transportation and other important transportation related organizations and individuals who are responsible for transportation investments and services in Dover.

If this committee is abolished, the transportation priorities which the city has already identified with the assistance of this committee and future transportation needs will not receive the priority attention that only a dedicated council committee can provide.

Members of the general public, State Transportation Department officials, other individuals and the other organizations with which the existing committee has established good working relationships will understand that transportation issues are no longer considered important enough by the Dover City Council to receive the concentrated effort that only a dedicated committee can provide.

Instead, transportation issues will be relegated to a shared responsibility of a Public Safety committee, whose critical responsibilities already justify a single focused committee. Critical transportation issues like those associated with the proposed West Dover Connector will not get the attention from the Council that they deserve.

The existing responsibilities of the Public Safety Committee, which include matters related to both our Police and Fire Service, will also be adversely affected because of the time and effort that transportation issues will demand.

The meeting agenda of the Public Safety Committee will be lengthened to the point where sufficient time will not be allowed for the serious exchange of information and discussion that are necessary for informed decision making.