

**MEMORANDUM**

July 26, 2012

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Legislative Attorney  
SUBJECT: Zoning Text Amendment 12-09, Planned Development (PD) Zones – Hotels

Zoning Text Amendment (ZTA) 12-09, sponsored by Councilmember Riemer, was introduced on June 12, 2012.

This ZTA would allow hotels in PD zones if the density of the zone is 44 dwelling units per acre or greater. There are 3 sites in the County currently zoned PD-44 or greater. All of the sites are in the vicinity of the Bethesda Central Business District.

All PD zones require an approved development. That plan must show the location and use of all buildings; it must meet the purposes of the zone. Under ZTA 12-09, a property owner with an approved development plan would need to amend their plan to build a hotel on site.

ZTA 12-09 would require a finding that the hotel would be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development. Under these circumstances, a hotel would be permitted without a requirement for a special exception.

The Planning Board recommended approval of ZTA 12-09 with amendments: 1) limit hotels to PD zones that allow 60 units or more, located in CBDs or transit station development areas that are not abutting or confronting property zoned and used for one-family residential dwelling; and 2) repeat the requirement that the hotel must be compatible with other uses confronting, within and adjacent to the development.<sup>1</sup>

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<sup>1</sup> As introduced, ZTA 12-09 would require a hotel to satisfy §59-C-7.15. That section includes the following provision:  
59-C-7.15. Compatibility.

- (a) All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.
- (b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:
  - (1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and
  - (2) No building can be constructed to a height greater than its distance from such adjoining land....

The Council held a public hearing on July 17, 2012. The Council heard from 4 speakers, including the Planning Board's representative. Representatives of the owner of a PD-75 zoned property located at the northwest corner of Woodmont Avenue and Battery Lane spoke in favor of ZTA 12-09. The Civic Federation opposed the approval of ZTA 12-09. In their view, hotels are already allowed in PD zones if it is recommended in an approved master plan.<sup>2</sup> The Federation states that "by the sponsor's own admission, ZTA 12-09 was introduced to allow the owner of a single property (at the corner of Battery Lane and Woodmont Avenue) to develop that property in a manner not currently allowed."

**Staff recommendation:** Staff respectfully recommends that the Council disapprove ZTA 12-09. The ZTA is not consistent with the current purpose of the PD zones; there is no density limit to the size of hotel that can be approved, except a general finding of compatibility, and the change from residential use will eliminate the opportunity for any MPDUs. ZTA 12-09 would weaken the role of an adopted master plan by allowing a use not recommended in the land use plan.

## Issues

*Should a change of land use be accomplished by a ZTA?*

Hotels are not a residential use of property. Hotels have far more employees than residential uses. Hotels create more peak hour trips (per square foot of floor area) than residential uses.<sup>3</sup> The resident population is highly transient and experiences lower occupancy on weekends than weekdays. The PD zones are residential zones, unless the master plan recommends a different use. The proposed ZTA is a fundamental change that is generally accomplished by a zoning map amendment, not a ZTA.

The PD zones are antiquated. The Zoning Ordinance Rewrite would eliminate PD zones. ZTA 12-09 would create an incentive for a zone that is disfavored by Planning Staff. **Staff recommends disapproving ZTA 12-09 because it is too fundamental a change in the land use allowed by the zone.**

*How would ZTA 12-09 affect MPDUs?*

Residential development must provide moderately priced dwelling units (MPDUs). Hotels do not have an obligation to provide MPDUs. All of the sites that would be eligible to substitute a hotel instead of a residential development are around the Bethesda CBD. It is a location where MPDUs are in short supply. ZTA 12-09 would have the effect of reducing the potential for MPDUs. **Staff recommends disapproving ZTA 12-09, because it will have a negative affect on the potential for MPDUs.**

If Council disagrees with staff's recommendation, amendments to ZTA 12-09 should be considered.

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<sup>2</sup> §59-C-7.132. Commercial. ...

- (b) Commercial and industrial uses may be permitted in addition to the local commercial facilities permitted under paragraph (a) above, if any, subject to the following conditions:
- (1) That such uses are proposed by the appropriate master plan to be located within the area covered by the planned development zone.
  - (2) That such uses are so designed and located as to achieve the purposes of the planned development zone and to be compatible with other uses within and adjacent to the development.

<sup>3</sup> According to the Institute of Traffic Engineers 8<sup>th</sup> edition of the trip generation manual, an apartment building would be expected to generate .62 PM trips per room. The average apartment is somewhere between 1,000 to 1,200 square feet. A hotel room would be expected to generate .59 trips per room. The average hotel room is somewhere between 350 and 500 square feet.

*Is ZTA 12-09 consistent with the purpose of high density PD zones?*

The PD zones are floating zones. The zone can only be applied by the application of a property owner. A change can be made only if there is sufficient evidence that the application satisfies the purpose of the zone.<sup>4</sup> As introduced, a hotel would have to satisfy §59-C-7.15; that provision requires a land use to achieve the purpose of the zone in §59-C-7.11.

Sec. 59-C-7.1. P-D zone-Planned development zone.

59-C-7.11. Purpose.

...It is intended that development in this zone produce a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types....

As introduced, ZTA 12-09 would require a development to satisfy the purpose clause of the PD zones. If a hotel were a residential use, it would clearly meet the purpose of the zone. Case law finds that a hotel is a commercial use of property, not a residential use.<sup>5</sup> Hotels are not allowed in any residential zone.<sup>6</sup> In commercial zones and CBD zones, hotels are listed in the residential category but are treated as commercial uses (density is limited by FAR, not by number of units). **A hotel is neither a residential use nor a convenience commercial use as contemplated in the purpose provision of the PD zones.** Hotels could be one or the other commercial uses shown on an area master plan. **If ZTA 12-09 is approved, staff recommends amending Section 59-C-7.11 as follows:**

It is intended that development in this zone produce a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, hotels, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage hotels and a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types....

In the alternative, the ZTA should be amended so that a hotel need not comply with the purpose of the zone, but then a compatibility requirement should be added. This would be accomplished by the following revisions:

- (d) A hotel is permitted on property that is classified in a PD zone with a density of 44 dwelling units per acre or more. A hotel must [satisfy the requirements of 59-C-7.15] be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.

<sup>4</sup> *Aubinoe v. Lewis*, 250 Md. 645 (1968). A zoning decision by the Montgomery County Council was not sustained because of the lack of any evidence that the purpose of the R-H zone was satisfied. The R-H zone was not in accordance with the approved master plan.

<sup>5</sup> *Nelson v. County Council for Montgomery County*, 214 Md. 587 (1957).

<sup>6</sup> An "apartment hotel" is a use that may not be newly established after 1966. Apartment hotels are allowed in residential zones.

*Should the ZTA include a density limit?*

Residential uses are generally limited by the number of dwelling units per acre. Non-residential uses are limited by the amount of floor area allowed for each square foot of land area (floor area ratio). PD zones limit density only by the number of dwelling units; there is no FAR limit on commercial uses. As proposed, ZTA 12-09 would not have any upper limit on the density of a hotel. The limit on the number of dwelling units in the zone would not be applicable. A limit on the number of hotels units is not proposed. An FAR limit is not proposed. The only non-numeric limits would be the requirements for compatibility.

Historically, the average apartment building is 1,000 square feet per apartment. A zone that allows 44 units per acre would generally produce a building of 1 FAR. Between 2000 and 2008, that average may have been near 1,200 square feet per apartment. **A density formula that allowed 1,200 square feet for every dwelling unit allowed would generally be viewed as an equivalent density to the current PD zoning. Staff recommends using this formula to limit density.**

An alternative to calculating an FAR limit would be to have a limit on the number of hotel rooms. Hotel rooms are typically around 400 square feet. It would not be unreasonable to multiply the allowed number of dwelling units by 3 to create a hotel room density limit. Although the bulk would be the same, the trip generation for the hotel may be 3 times higher.

*Should the scope of ZTA 12-09 be limited?*

The Planning Board recommended amendments to limit hotels to PD zones that allow 60 units or more, located in CBDs or transit station development areas that are not abutting or confronting property zoned and used for one-family residential dwelling. As introduced, 3 sites could potentially have a hotel use. (See © 9.) Under the guidelines proposed by the Planning Board, there is only one site that qualifies for the hotel use. A ZTA that has only one beneficiary would be special legislation.<sup>7</sup> Staff does not recommend such severe limits on ZTA 12-09. It would raise the question of whether ZTA 12-09 was trying to benefit a single property.

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<sup>7</sup>Baltimore v. Byrd, 191 Md. 632 (1948).

We can only conclude that the ordinance was passed because of a desire to satisfy the owner of the lot...We consider the passage of the ordinance as an arbitrary act by the Mayor and City Council, discriminating against other lots situated within 300 feet of theatres, and violating the principle of equality and conformity which is the basis of proper zoning.

Humphrey v. Montgomery County Planning Board, unpublished (August 5, 2003).

Zoning Text Amendment No.: 12-09  
Concerning: Planned Development  
(PD) Zones - Hotels  
Draft No. & Date: 1- 6/5/12  
Introduced:  
Public Hearing:  
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**

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By: Councilmember Riemer

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- allow hotels in high density planned development zones; and
- generally amend the provision for commercial uses in PD zones.

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

DIVISION 59-C-7  
Section 59-C-7.13

“PLANNED UNIT DEVELOPMENT ZONES”  
“Uses permitted”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by 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-7 is amended as follows:**

2    DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES

3    \*   \*   \*

4    Section 59-C-7.132. Commercial

5    (b)   Commercial and industrial uses may be permitted in addition to the local  
6           commercial facilities permitted under paragraph (a) above, if any, subject to  
7           the following conditions:

8           (1)   That such uses are proposed by the appropriate master plan to be  
9               located within the area covered by the planned development zone.

10          (2)   That such uses are so designed and located as to achieve the purposes  
11               of the planned development zone and to be compatible with other uses  
12               within and adjacent to the development.

13    (c)   A transitory use is allowed [in accordance with] under Section 59-A-6.13

14    (d)   A hotel is permitted on property that is classified in a PD zone with a density  
15           of 44 dwelling unit per acres or more.

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

19

20    This is a correct copy of Council action.

21

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23    \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

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**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

**MONTGOMERY COUNTY PLANNING BOARD**

The Maryland-National Capital Park and Planning Commission

July 17, 2012

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 12-09

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 12-09 at our regular meeting on July 12, 2012. By a vote of 5:0, the Planning Board recommends approval of the text amendment as modified by the Board to minimize potential adverse impacts on one-family residential uses when allowing hotels in the higher density planned development (PD) zones. The Board also recommends several plain language and technical clarifications.

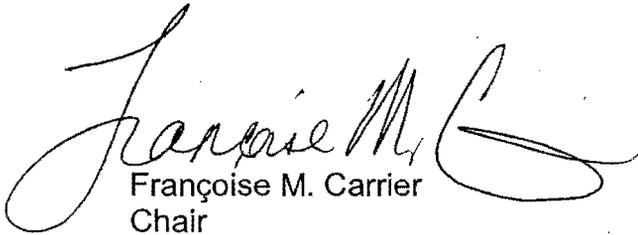
The modifications by the Board allowing a hotel to be built in certain PD zones without a master plan recommendation include: (1) changing the minimum PD density category from “high” (at 44 dwelling units per acre or greater) to “urban high” (at 60 dwelling units per acre or greater); (2) requiring that the PD zone be located within or in close proximity to a central business district or transit station development area, but not abutting or confronting property zoned and used for one-family residential homes; and (3) requiring that a hotel be compatible with other uses confronting, within and adjacent to the development.

The text amendment language as modified by the Board is included as an attachment to this memorandum, separate from the technical staff report.

ZTA 12-09 as introduced would specifically allow hotels in high density planned development zones that have a minimum density of 44 dwelling units per acre without a master or sector plan recommendation for such, but with a requirement that the hotel use be compatible with other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development. The Board believes that in certain circumstances hotels can be appropriate and compatible uses as part of the higher density PD zones, especially in the case of development located near central business districts or transit station development areas. The Board believes, however that the urban high density category (a density of 60 dwelling units per acre and greater) would be a better parallel to the intensity of development permitted in the central business districts or transit station development areas than using PD44 and greater as the density where hotels would be allowed. To further mitigate potential impacts to nearby residential communities, the Board also recommends that hotels that are not proposed by the appropriate master plan not be permitted in an urban high category PD zone that abuts or confronts property zoned and used for one-family residential dwellings.

#### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, July 12, 2012.

  
Françoise M. Carrier  
Chair

FC:GR/kr

PLANNING BOARD RECOMMENDED AMENDMENTS

1           **Sec. 1. DIVISION 59-C-7 is amended as follows:**

2   DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES

3   \*   \*   \*

4   **Section 59-C-7.132. Commercial.**

5   \*   \*   \*

6   (b)   Commercial and industrial uses may be permitted in addition to the local  
7       commercial facilities permitted under paragraph (a) and a hotel under  
8       paragraph (d), [above, if any,] subject to the following conditions:

9       (1)   [That] that such uses are proposed by the appropriate master plan to  
10       be located within the area covered by the planned development  
11       zone[.]; and

12       (2)   [That] that such uses are so designed and located as to achieve the  
13       purposes of the planned development zone and to be compatible with  
14       other uses within and adjacent to the development.

15   (c)   A transitory use is allowed [in accordance with] under Section 59-A-6.13.

16   (d)   A hotel is permitted on property that: (1) is classified in [[a PD zone with a  
17       density of 44 dwelling units per acre or more]] an "Urban High" residential  
18       density category (PD-60 or greater); (2) is located within or in close  
19       proximity to a central business district or transit station development area;  
20       and (3) does not abut or confront property zoned and used for one-family  
21       residential use. A hotel must satisfy the requirements of 59-C-7.15 and must  
22       be compatible with other uses confronting, within and adjacent to the  
23       development.

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

**Zoning Text Amendment (ZTA) No. 12-09, Planned Development (PD) Zones - Hotels**

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 Gregory Russ, Planner Coordinator, Functional Planning & Policy Division, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174

 Mary Dolan, Chief, Functional Planning & Policy Division, [mary.dolan@montgomeryplanning.org](mailto:mary.dolan@montgomeryplanning.org) 301-495-4552

Completed: 7/06/12

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**Description**

ZTA 12-09 amends the provision for commercial uses in Planned Development (PD) zones by allowing hotels in high density planned development zones that have a minimum density of 44 dwelling units per acre. The proposed language further requires a hotel to meet the compatibility findings of the PD zones. The existing Zoning Ordinance language requires commercial uses that are not local serving to be proposed by the master plan in addition to meeting a compatibility finding. ZTA 12-09 would eliminate the specific master plan recommendation requirement for a hotel but would retain a finding that the hotel be compatible with other uses within and adjacent to the development.

**Summary/Analysis**

Staff recommends approval of ZTA 12-09, with one modification, to allow hotels in high density planned development zones that have a minimum density of 44 dwelling units per acre. As introduced, the language requires a hotel to meet the compatibility findings of the PD zones. Staff recommends that an additional finding/requirement be included that states that the PD zone also must be located in close proximity to a central business district or transit station development area as defined in the zoning ordinance.

Under the PD zone requirements, in addition to the local commercial facilities depicted on the master or sector plan and those local serving facilities permitted at the discretion of the District Council (upon a finding that they are compatible with the development and are necessary for the service of the residents of the proposed development and adjacent residential under certain parameters), other commercial and industrial uses may be permitted subject to the following conditions:

- (1) That such uses are proposed by the appropriate master plan to be located within the area covered by the planned development zone.
- (2) That such uses are so designed and located as to achieve the purposes of the planned development zone and to be compatible with other uses within and adjacent to the development.

ZTA 12-09 would specifically allow hotels in high density planned development zones that have a minimum density of 44 dwelling units per acre without a master or sector plan recommendation for such but with a requirement that the hotel use be compatible with other uses within and adjacent to the development. Staff believes that in certain circumstances hotels can be appropriate and compatible uses as part of a high density PD zone development.

Staff recommends that an additional finding/requirement be included to specify that the PD zone must be located in close proximity to a central business district or transit station development area as defined in the zoning ordinance. This would be consistent with language used in the compatibility section of the PD zones addressing setbacks from one-family detached residential zones and consistent with areas typically designated for higher density development. The intent of this language as it has been interpreted by the District Council in a number of local map amendment cases is to distinguish areas that are close to a CBD, where residents should expect commercial uses nearby, from areas with no CBD in sight, where residents may expect a higher degree of privacy, quiet and residential setting. Although the language is not specific, it does allow a developer as part of a local map amendment (Development Plan) or Development Plan Amendment (DPA) to show how the site meets the criteria and how the hotel is compatible with other uses within and adjacent to the development.

#### Master/Sector Plan Impacts

As shown on the attached map (Attachment 2), there are a total of 3 existing sites in the County that are zoned PD-44 or greater, two within the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, and the third within the Bethesda CBD Sector Plan. Below is a summary of the approved rezoning and the most recent development plan.

*Site 1: Battery Lane/Woodmont Avenue-G-808; DPA 10-2, Zoned PD-75—Existing single-family house (Occupied by the Children’s Inn); proposed multi-story, 46-unit residential building, with 9 MPDUs and ground floor commercial. Maximum height-90 feet.*

*Site 2: Old Georgetown Road/Battery Lane-G 864; Zoned PD-44—two buildings; multi-family residential building with 107 units (17 MPDUs) and a maximum height of 94 feet; a combination church and community center with a maximum height of 78 feet.*

*Site 3: Arlington Road, between Bethesda Avenue and Bradley Boulevard; 7,000 square feet of commercial space; 145 multi-family residential units (15.2% MPDUs); Maximum height 59.9 feet.*

#### Conclusion

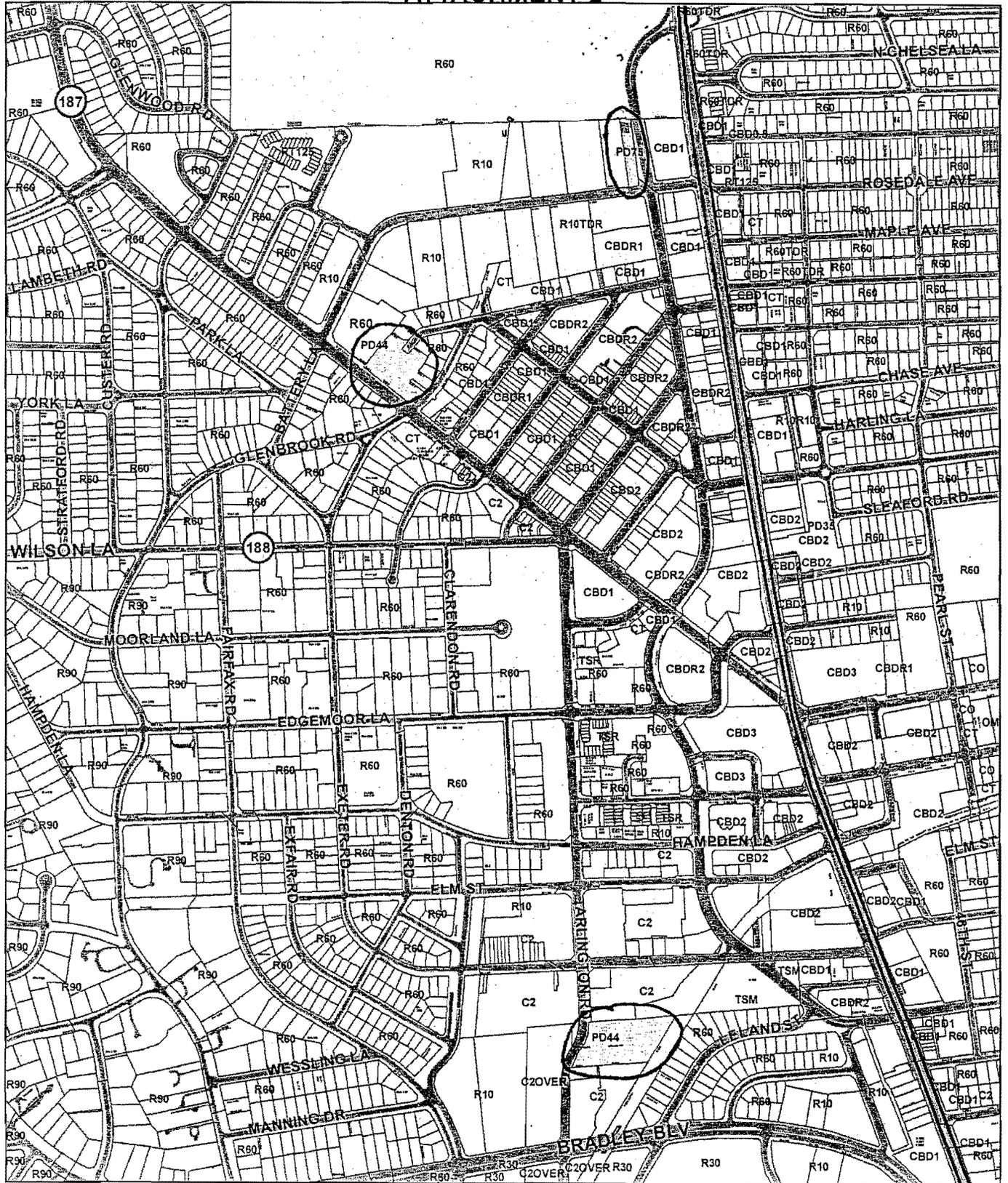
In staff’s opinion, in certain circumstances hotels can be appropriate and compatible uses as part of a high density PD zone development, especially in the case of development located near central business districts or transit stations development areas. As such, staff recommends that a requirement be included that permits hotels in high density PD zones only if located near CBDs or transit station areas. Staff further believes that the compatibility findings of the PD zones, along with the public input requirements of the local map amendment and development plan amendment provide additional opportunities to address the appropriateness of a development on a case by case basis.

GR/MD/kr

ATTACHMENTS

1. ZTA 12-09 as modified by staff
2. GIS Map of properties zoned PD-44 or greater
3. Excerpts from Resolutions approving existing impacted PD properties

# ATTACHMENT 2



## LEGEND

-  > PD- 44 Zone
-  Property Boundary
-  Zoning Boundary



not to scale

## ATTACHMENT 3

Resolution No.: 16-1520  
Introduced: October 19, 2010  
Adopted: October 19, 2010

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

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By: District Council

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**SUBJECT:** Approval of Development Plan Amendment (DPA) 10-2; Battery Lane, G-808

### OPINION

The application for Development Plan Amendment ("DPA") No. 10-2 was filed by Battery Lane, LLC on February 1, 2010. It seeks to amend the previously approved development plan for the Woodmont View project in Bethesda to add 10 feet 8 inches to the height of the approved residential building, for a maximum building height of 90 feet. The property consists of approximately 22,618 feet of land in the PD-75 zone, located at the northwest corner of Woodmont Avenue and Battery Lane, in Bethesda. It is currently improved with a single-family house, a 4-story office building, and associated asphalt paving for parking and driveway access.

Zoning Application G-808, approved on March 30, 2004, reclassified the site from the C-T zone to the PD-75 zone. The development proposal was for 10 townhouses designed to match the architectural appearance of the existing single-family house, built at the northern end of the property in phase one. The maximum building height, per the Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, was 65 feet. There is no specific height limit in the PD zone; it is to be established at the time of site plan.

The development proposal approved in the 2004 rezoning, which called for the construction of 11 townhouses, was revised in April 2007 by DPA-06-1. The development plan, as amended, allowed development of the site with an eight story, 46-unit residential building, including 8 MPDUs, at a building height of 79 feet, 4 inches; and a commercial use on the ground floor of the residential building. The existing single-family house on the northern end of the site was to be retained, but the existing four-story office building on the southern extreme of the property would be demolished.

In November 2008, the applicant filed for approval of a site plan for the multi-story building with 46 dwelling units, the restaurant, and the single-family house. Under the site plan application, building height would be increased from 79 feet 4 inches to 90 feet. The site plan was approved by the Planning Board on July 23, 2009 with a condition limiting building height

to 79 feet 4 inches as approved by DPA-06-1, but the Board acknowledged that a building height of 90 feet did not create issues with respect to compatibility, because taller buildings in the immediate vicinity either already existed or had been approved. The Board made it clear that if DPA-06-1 was amended to allow the additional height, the site plan did not need to come back for further review.

The current development proposal would retain the existing single-family house, now occupied by the Children's Inn, and provide a multi-story, 46 unit residential building, with nine MPDUs, and a commercial use on the ground floor. The increased building height would permit the applicant to change the unit mix to an all two-bedroom building, provide higher ceilings for all units, and increase the amount of green space.

The applicant has an approved development plan and an approved site plan for construction of the residential building at 79 feet 4 inches. Development Plan Amendment 10-2 as proposed by the applicant does not involve a change in the area zoned, the proposed uses, or development density. However, Technical Staff of the Maryland-National Capital Park and Planning Commission recommended against approving the DPA because it felt that increasing the building height 10 feet 8 inches above the already increased 79 feet 4 inch height would be a substantial departure from the Sector Plan's recommended 65-foot height limit. *See* Technical Staff reported of July 1, 2010 (Exhibit 28). The Montgomery County Planning Board disagreed. *See* Planning Board letter of July 27, 2010 (Exhibit 30).

At its regular scheduled meeting on July 15, 2010, the Planning Board voted unanimously to recommend approval of DPA-10-2. The Planning Board found that the application is consistent with the purposes of the Planned Development (PD) zone and it satisfies all relevant standards of the PD-75 zone. The Board, in disagreeing with its staff, found the application to be in substantial compliance with the land use recommendations of the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan and the 1994 Bethesda CBD Sector Plan. The Planning Board specifically considered whether it is appropriate and legally permissible to further increase the height of the development.

The Board expressed concern that, since the approved height already exceeds the master plan limit to accommodate the MPDUs, and the current application does not change the number of MPDU units, the proposal may not be in conformance with Section 59-D.1.61(a)(1). However, during the discussion, the applicant expressed an intention to increase the number of MPDU units by converting one of the market rate units into a two-bedroom MPDU unit, bringing the total number of MPDUs to 9 (19%). The Board considered the additional MPDU proffered by the applicant and found it to be a needed addition to the housing stock, particularly because it would be an affordable housing unit in the Battery Lane area of Bethesda.

The applicant also expressed an intention to make all units in the building two-bedroom dwellings, providing an unusually large number of two-bedroom MPDUs. This can only be achieved with the additional height requested. The Board found that providing a higher percentage of MPDU units (19%) as part of the proposed development and the need for additional height to accommodate the MPDUs in an all-two-bedroom building design ensured compliance with the Ordinance (Section 59-D-1.61(a)(1)). The Planning Board noted that

Section 59-D-1.61(a)(1) allows for the Master Plan height limit to be exceeded to the extent necessary to accommodate MPDU and bonus density units.

The Board suggested that the Binding Elements proffered by the applicant be amended to reflect the following elements:

1. The maximum number of dwelling units will be 47, including 19% MPDUs (or 9 MPDUs).
2. The building height is proposed **with a maximum height of 90 feet 0 inches** measured from the pavement centerline along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables).
3. The minimum setbacks will be 0 feet for the front yards at Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from existing building at the north property line.
4. The minimum green space will be 30% of gross tract area.
5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to the residents of the condominium building.
6. The maximum building coverage will be 60.5% of the site.
7. The minimum number of parking spaces for the residential units will be 54, and the number of parking spaces for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a Common Driveway agreement recorded at Liber 26425, folio 122 among the land records of Montgomery County. The Common Driveway agreement sets forth the agreement between the subject property owners and the adjacent property owner to share certain portions of the restrictive properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised stormwater management concept plan to be approved prior to site plan.
10. The street commercial space in the planned building will be occupied by a "quality restaurant" as described in the Institute of Transportation Engineers (ITE) trip generation manual 7<sup>th</sup> edition, page 1703, not by any more intensive commercial use (i.e. one producing more peak hour traffic).

On October 8, 2010, the applicant submitted a revised Development Plan to Technical Staff reflecting the revised Binding Elements in accordance with the Planning Board's recommendations. See Revised DPA 10-2 (Exhibit 35(a)).

The Planning Board further determined that because the proposed amendment will not result in a substantial change over the last approved plan, in terms of design, scale and massing, a public hearing by the Hearing Examiner would not be necessary and that the case should be sent directly to the Council for final decision.

There has been no opposition to DPA 10-2, and no request has been made for a hearing. Therefore, under the provisions of Zoning Ordinance §59-D-1.74(c)(3), "the office of zoning and administrative hearings [OZAH] must forward the planning board's report and recommendation directly to the council," without a hearing by OZAH. In these kinds of cases, a draft resolution is prepared by OZAH based solely on the record prepared by Technical Staff, the Planning Board's transmittal letter and Applicant's compliance therewith.

The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

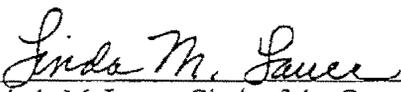
The District Council has reviewed DPA 10-2 and concluded that the DPA meets the requirements of the Zoning Ordinance, and its approval would be in the public interest. Based on this record, the District Council takes the following action.

**ACTION**

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

DPA 10-2, which requests an amendment to the Development Plan approved in April of 2007 in DPA 06-1, by allowing a maximum building height of 90 feet, by including 19% (9 MPDUs) and by specifying a maximum building coverage of 60.5%, **is hereby approved**, subject to the specifications and requirements of the Development Plan Amendment, Exhibit 35(a), **provided that** the DPA is submitted to the Hearing Examiner for certification within 10 days of the District Council's action, pursuant to the provisions of Zoning Ordinance §59-D-1.64.

This is a correct copy of Council action.

  
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Linda M. Lauer, Clerk of the Council

Resolution No.: 16-1540  
Introduced: October 26, 2010  
Adopted: October 26, 2010

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

By: District Council

**SUBJECT: APPLICATION NO. G-864, ON REMAND, FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Stephen Kaufman and Yum Yu Cheng, Attorneys for Applicant Christ Evangelical Lutheran Church of Bethesda-Chevy Chase, OPINION AND RESOLUTION ON APPLICATION.**

Tax Account Nos.	07-501-00420032	07-001-00420043
	07-501-00434051	07-001-00420054
	07-501-00420087	07-001-00420021
	07-001-00420065	07-001-00420076

**OPINION**

Application No. G-864 was filed on November 29, 2006 by Applicant Christ Evangelical Lutheran Church of Bethesda-Chevy Chase and former co-applicant, BA Old Georgetown Road, LLC.<sup>1</sup> It requests reclassification from the R-60 zone (single-family residential) to the PD-44 zone (Planned Development, 44 dwelling units per acre) of 1.87 acres of land<sup>2</sup> located at 8011 and 8015 Old Georgetown Road, Bethesda, Maryland, in the 7th election district. The subject site is identified on Tax Map HN23 as Parcels P860, P869, P816, P859; Lots 1, 2, 3, 4 and 11, Block B of Robertson's Addition to Bethesda; and Lot 9, Block C of Robertson's Addition to Bethesda.

Former Hearing Examiner Françoise Carrier held hearings in the case and recommended denial of the initial (*i.e.*, pre-remand) application in a report dated December 15, 2008. The District Council heard oral argument regarding the pre-remand proposal on February 3, 2009, and decided to remand the case for further proceedings. The Council's Resolution No. 16-838 specified that it was remanding the case to give Applicant the

<sup>1</sup> The former co-applicant, BA Old Georgetown Road, LLC, withdrew from the case following the remand. Ex. 363.

<sup>2</sup> The area to be rezoned does not include the area of a street (part of Rugby Avenue) and an alley (off of Glenbrook Road) that lie within the site and that the County Council declared abandoned at the request of Applicant (Exhibit 396); the combined area, including the abandoned area, is about 2 acres. It is this figure which is used to calculate density.

opportunity to revise its plans, consistent with the findings in the Hearing Examiner's pre-remand report. Applicant submitted a revised (*i.e.*, post-remand) development plan, and it was reevaluated by Technical Staff (Exhibit 385) and the Planning Board (Exhibit 392), both of which recommended approval. The Planning Board approval was by a vote of three to one.

Applicant's current proposal is to demolish the existing church and related structures on the site and construct two new buildings, a multi-family residential building with 107 units and a maximum height of 94 feet, and a combination church and community center, with a maximum height of 78 feet.<sup>3</sup> No commercial uses are proposed. As required under the PD zone, the application was accompanied by a Development Plan with detailed specifications related to land use, density, development standards, and staging. Development under the PD zone is permitted only in accordance with a development plan that must be approved by the District Council.

Hearings were held by former Hearing Examiner Carrier regarding the post-remand Development Plan on February 19, 22, and 23, 2010. After additional submissions by the parties, the record closed again on March 28, 2010. Ms. Carrier left the Office of Zoning and Administrative Hearings before she had the opportunity to write a report and recommendation in the post-remand case, and the Hearing Examiner's time for submitting a report was therefore extended by the Council until September 30, 2010. *See* Resolution 16-1430. Under Zoning Ordinance §59-H-5.13, the record in this case was reviewed by Hearing Examiner Martin L. Grossman, who filed his report and recommendation on September 29, 2010. The Hearing Examiner found that the proposed post-remand Development Plan (Exhibit 417(a)) was not in substantial compliance with the applicable sector plan, did not fully comply with the purposes, standards and regulations of the PD-44 zone, and does not provide for a form of development that will be compatible with adjacent development. Accordingly, the Hearing Examiner recommended denial of the application.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation dated September 29, 2010, including the report and findings of the Planning Board and Planning (Technical) Staff, are incorporated herein by reference. Oral argument was held before the District Council on October 19, 2010. Based on its review of the entire record, the Hearing Examiner's Report, and the oral argument (which was confined to the record), the District Council finds that the application meets the standards required for approval of the requested rezoning for the reasons in the Planning Board and Technical Staff's recommendation.

The subject property is the site of Christ Evangelical Lutheran Church of Bethesda-Chevy Chase (the "church"). The property consists of approximately 1.87 acres of land located at the northwest corner of Old Georgetown Road and Glenbrook Road in Bethesda, just north of the Bethesda Central Business District ("CBD"). The site is irregularly shaped, with approximately 320 feet of frontage along Old Georgetown Road on the south, 180 feet of frontage along Glenbrook Road on the east, and a depth of approximately 310 feet along its western property line. The center of the site's Old Georgetown Road frontage is occupied by

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<sup>3</sup> The original development plan had proposed to retain the existing church structure and add two new buildings – a community center building and a residential building.

the church building, a traditional, brick church with a tall spire. A three-story, brick-and-frame building located adjacent to the church to the east and connected to the church by a breezeway, is used as a community center. Immediately west of the church is a two-story residential building that formerly housed the Bethesda Fellowship House, an elderly day care center serving people with Alzheimer's disease, and is currently a rental dwelling. The rear part of the site holds a surface parking lot with 62 spaces. The subject site also contains two single-family homes, one located behind the community center facing Glenbrook Road, and the other behind the parking lot facing Rugby Avenue. The Rugby Avenue house is used for a child day care program and the Glenbrook Road house for emergency shelter and social services.

The subject property contains a number of trees, shrubs, and grassy areas near the buildings and along Old Georgetown Road. There are no wetlands, floodplains, forests, streams, rare or endangered species, or critical habitats on the property. There are no historic features on or adjacent to the property.

The surrounding area for this application consists of the area roughly bounded by Battery Lane to the north and west (including structures on the west side of Battery Lane between Keystone Avenue and Old Georgetown Road), Wilson Lane to the south, and Woodmont Avenue to the east.

The surrounding area contains a mixture of residential, office and institutional uses classified under the R-60 (single-family), R-10 (multi-family, high density), CBD (central business district) and C-T (commercial, transitional) zones. To the west, the subject property abuts the Bethesda-Chevy Chase Rescue Squad, which, like the subject site, is classified under the R-60 zone. The rescue squad property contains an institutional building estimated at 25 to 30 feet in height, with the rest of the site occupied by surface parking. Farther west are single-family homes in the R-60 zone and a smattering of multi-family and commercial buildings in the R-10 zone. These buildings range from 3 stories in height to a 12-story multi-family building along Battery Lane.

To the north and northeast, the subject property abuts and confronts a small residential enclave in the R-60 zone, consisting of approximately 20 single-family detached homes on Rugby Avenue and Glenbrook Road. The two roads meet at a joint intersection with Norfolk Avenue, forming a roughly triangular residential neighborhood. Farther north is a mixture of commercial and multi-family uses on the north edge of the Bethesda CBD, in the R-10 zone, with a variety of building heights. Battery Lane Park is located one block northeast of the subject site, stretching from the intersection of Glenbrook and Rugby up to Battery Lane.

On the block backing onto Glenbrook Road to the east, just inside the CBD boundary at the corner of Auburn Avenue and Norfolk Avenue, a nine-story, multi-family building with retail on the ground floor has been approved for construction. Directly to the east, the front part of the subject property confronts an eleven-story office building at the corner of Old Georgetown Road and Glenbrook Road in the CBD-1 zone. That building is a legal nonconforming use; it does not comply with current zoning requirements, but is permitted as a "grandfathered" use. Farther east, on the same side of Old Georgetown Road, is the bulk of the

Bethesda CBD, which contains buildings of varying heights, types, and uses in three CBD zones.

Across Old Georgetown Road, the subject site confronts single-family detached homes in the R-60 zone. Diagonally across Old Georgetown Road to the southeast is an office building in the C-T zone that has three stories facing Old Georgetown and four to the rear. Farther southeast on Old Georgetown Road are one and two-story buildings with commercial services and retail. To the south and west is the Battery Park single-family neighborhood in the R-60 and R-90 zones, stretching away from the CBD for many blocks.

The subject property was classified under the R-60 zone in a 1954 comprehensive rezoning. R-60 zoning was confirmed by Sectional Map Amendment in 1977 (SMA G-20) and 1994 (SMA G-711). The Woodmont Triangle Amendment to the Bethesda CBD Sector Plan, adopted in 2006, recommended designating the property R-60/PD-44. The Woodmont Triangle Amendment is hereinafter referred to as "the Sector Plan."

Applicant's current proposal is to rezone the subject site to PD-44, demolish the existing church and related structures on the site, and construct two new buildings, a multi-family residential building with 175,000 square feet of floor area, 107 dwelling units and a maximum height of 94 feet, and a combination church and community center, with 53,000 square feet of floor area and a maximum height of 78 feet. The pre-remand development plan had proposed to retain the existing church structure and add two new buildings – a community center building and a residential building. No commercial uses were proposed in either version.

The revised plan will reduce the overall church and community center from the original proposal by approximately 11,314 square feet of floor area, and the proposed residential building has been reduced by approximately 13,884 square feet of floor area. These reductions have permitted increased setbacks from adjoining properties. The height of the proposed residential building has been reduced from 106 feet to 94 feet, although the height of the proposed church/community center building has increased from 76 feet to 78 feet.

Since both pre- and post-remand proposals called for 107 dwelling units, of which 15% would be moderately priced dwelling units (MPDUs), there would be a total of 90 market rate units and 17 MPDUs. The roof of the proposed multi-family building is proposed to be partly a green roof with environmental and recreational benefits.

Reverend Tollefson, who has been the pastor at the church for more than 26 years, testified that the church intends for residents and church occupants to access and use all of the facilities and services connected with the project. He expects to work out an arrangement with residents of the new building and the larger community to make all of the facilities available to the community under a management agreement. Reverend Tollefson pledged the church's commitment to adhere to the written binding elements of the development plan, including the additional ones agreed to during the hearing. See Tr. 2-23-10 at 37.

Using a "Programmatic Stacking Diagram" (Exhibit 403), Reverend Tollefson outlined the uses proposed on each floor of the new church/community center building. See *id* at 44-49. The ground floor would have a lobby and the day care center. The next level would hold the two-level church sanctuary (with seating for 300), church offices, classrooms, and a balcony. Above that would be offices for non-profit groups, and above that a two-level multi-purpose social/recreational/assembly space that may be used for senior or youth programs, community theater, music, etc. The multi-purpose space would be built on a basketball court design that qualifies for the local youth league but is not a full court. See Tr. 2-23-10 at 59.

The vast majority of the parking would be contained within the below-grade levels of the proposed garage. Under the Zoning Ordinance, the residence would be required to have 153 spaces, and the church/community center 62 spaces, for a total of 215 required spaces. Applicant plans to provide a total of 236 parking spaces.

Three vehicular access points are planned for the site, Old Georgetown Road, Rugby Avenue and Glenbrook Road, although Binding Element 9 would limit the Rugby Avenue access to emergency vehicles.

Under Zoning Ordinance §59-D-1.11, development under the PD zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. §59-D-1.3.

Once approved by the District Council, the development plan is binding on the Applicant, except where particular elements are identified as illustrative or conceptual. The project is subject to site plan review by the Planning Board, and minor changes to the plan may be made at that time. The principal specifications on the development plan – those that the District Council considers in evaluating compatibility and compliance with the zone, may not be changed without further application to the Council to amend the development plan.

The principal component of the development plan in this case is a document entitled "Revised Development Plan," Exhibit 417(a), which is reproduced in the Hearing Examiner's post-remand report at pages 22 through 24.

Exhibit 417(a) satisfies the requirements of Code §59-D-1.3 by showing access points, the approximate locations of the proposed buildings, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for Old Georgetown Road and Glenbrook Road, and areas intended for common use but not public ownership (*i.e.*, the green roof, the ground level landscaped areas, setback areas, and walkways).

The Development Plan specifies 12 textual binding elements, which are items that the Applicant wished to make definite, but were more readily expressed in text than in the graphics. Many of these textual binding elements were added following the remand in an effort

to meet concerns of the Planning Board, the Hearing Examiner, and the community. The textual binding elements are as follows:

**TEXTUAL BINDING ELEMENTS\***

1. The density of the site will be limited to that permitted in the PD-44 zone, including the MPDU density bonus.
2. Primary access points will be from Old Georgetown Road and Glenbrook Road.
3. Within the 60' setback, measured from the face of curb of the existing Old Georgetown Road, the new buildings will not exceed 50' in height as measured from the terrace grade.
4. The maximum height of the residential building will not exceed 94 feet.
5. The maximum height of the church/community center will not exceed 78 feet.
6. The maximum number of dwelling units will be 107, including 15% MPDUs.
7. The green space will meet or exceed 50% of the gross lot area.
8. All green areas (including active/passive recreation rooftop green area) will be accessible to all residents or occupants of the buildings.
9. Except for emergency vehicles, no direct vehicular access from Rugby Road is permitted through the property.
10. The pedestrian path from Rugby Road to Glenbrook Road is to be opened to the public.
11. The location and footprint of the buildings, including the minimum setbacks, as shown on the Development Plan, are intended to set the location of the buildings. However, minor adjustments to the buildings' location will be permitted at site plan review to satisfy environmental site design and stormwater management requirements.
12. The upper three floors of the north wing of the residential building facing Rugby Road will be stepped back on a 1:1 ratio reflecting a 10-foot setback on each of the floors.

The subject application seeks to rezone the property from the R-60 zone to the PD-44 zone. The PD-44 zone falls into a category known as "floating zones." A floating zone is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-tailored specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types

of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council.

Accordingly, the evaluation of zoning issues must begin with the Development Plan and proceed to the requirements of the zone itself. Before approving a development plan, the District Council must make five specific findings under Section §59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas.

In addition to these 5 findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to the County, all zoning power must be exercised:

*“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, M-NCPPC Article (Art. 28), Md. Code Ann., §7-110].*

The “Required Findings” are discussed below. Based on its review, the District Council concludes that the evidence in this case supports all of the required findings.

**a. The first required finding as to consistency with the Sector Plan and other County policies:**

*(a) The proposed development plan is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies. However:*

*(1) To permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a development plan may exceed:*

*(A) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but must not exceed the maximum density of the zone; and*

*(B) any building height limit recommended in a master plan or sector plan, but must not exceed the maximum height of the zone.*

*The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units. . . .<sup>4</sup>*

<sup>4</sup> The remaining language of this provision is irrelevant to this case.

The District Council agrees with the Hearing Examiner's finding that the multi-family use proposed is consistent with the PD-44 zone recommended by the Sector Plan. The District Council disagrees with the Hearing Examiner's finding that the proposed development plan is not in substantial compliance with the recommendations of the Sector Plan.

The Sector Plan does not boldly say it recommends densities permitted in the PD-44 zone; rather, it says, "This Plan recommends PD-44 zoning provided that issues of compatibility with existing single-family homes can be addressed." [Emphasis added.] See Sector Plan at p. 23. The District Council finds that Applicant has sufficiently addressed these compatibility problems. The proposal conforms to the density recommendation in the Sector Plan. The proposed two buildings are bulky structures; however, the Development Plan requires significant setbacks from all its single-family detached home neighbors, particularly those homes across Old Georgetown Road. The proposed buildings will not be out of place in the general context of all the buildings in the larger surrounding area. The setbacks to the houses along Rugby Avenue are compatible in its urban context. The Council gives great weight to the recommendations of the Planning Board and Technical Staff with regard to compatibility.

Compatibility is not just a question of the overall building context in the surrounding area; it is also, and perhaps most importantly, a question of harmony with the immediate neighbors. One of those immediate neighbors is the eleven-story building across Glenbrook Road from the subject site.

The District Council disagrees with the assessment of the Battery Park Citizens Association, as expressed in its resolution of January 13, 2010 (Exhibit 400), that the revised plans have exacerbated compatibility problems vis-à-vis the Battery Park neighborhood across Old Georgetown Road to the southwest of the site, by pushing the mass closer to the roadway in an effort to improve compatibility with adjoining properties. Although one Battery Park resident described the proposal as a 285-foot-long building at a height of 102 feet (94 feet plus the eight-foot terrace) staring directly at his neighborhood from across the street, the buildings would be separated from the Battery Park Community by the setback to Old Georgetown Road and the right of way of Old Georgetown Road. In the Council's opinion, the architectural differentiation between the 2 buildings and the distance between the Battery Park neighborhood and the 2 buildings will make for a compatible relationship.

The District Council also disagrees with the Hearing Examiner that the proposed plan violates the Sector Plan's tenting principle. The site is next to an 11 story building, and the proposed buildings will be lower than that height.

Finally, Council agrees with the Planning Board's finding that the proposed development is in substantial compliance with the building height recommendation of the Sector Plan. The "Vision Division" of Technical Staff noted that Lots 4, 9 and 11, within the subject site, are within the 35 foot height limit area. Since the Applicant's proposed setbacks include Lots 9 and 11, there is no violation of the 35-foot height recommendation on those lots; however, Lot 4 is only partially included in the proposed setback, and the proposed 78-foot tall church/community building intrudes about 19 feet into the 35-foot height limit area. Page 4 of

Resolution No.: 17-330  
Introduced: January 24, 2012  
Adopted: January 24, 2012

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

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By: District Council

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**SUBJECT:** APPLICATION DPA 11-4, FOR DEVELOPMENT PLAN AMENDMENT of the development plan approved by the Council in LMA G-861 on November 18, 2008; Cindy M. Bar, Esquire, Attorney for the Applicant, Keating Project Development, Inc; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 07-00435988, 07-00435955 and 07-00435990.

**OPINION**

The application for Development Plan Amendment (DPA) No. 11-4 was filed by Keating Project Development, Inc., on September 2, 2011. It seeks to amend the previously approved development plan for the 7001 Arlington Road Post Office project in Bethesda by reducing the amount of commercial space on the site from 30,000 square feet to 7,000 square feet and increasing the number of dwelling units from 105 to 145. The amendment does not change the previously approved building volume and massing or its site layout (including building height and scale, setbacks, open space, and access points).

The reduction in commercial space is largely necessitated because the United States Postal Service (USPS), an originally proposed tenant, continues to consolidate facilities across the country and no longer wishes to keep this facility in Montgomery County. Despite the reduction in commercial space, the applicant still proposes to provide street-lining retail along Arlington Road to help further activate the roadway. However, removing the originally approved USPS workroom causes a 23,000 square-foot decrease in commercial space. Other notable changes to the plan include increasing MPDUs from 12.5 percent to 15 percent, reducing parking from 287 to 215 spaces, and removing an entire level of below-grade parking.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed an undated report (Exhibit 21) recommending approval of the Development Plan Amendment without the need for a hearing by the Office of Zoning and Administrative Hearings (OZAH). An Addendum to the Staff Report evaluating school capacity issues was issued on December 21, 2011 (Exhibit 22). In the interest of brevity, the Staff report and its Addendum are incorporated herein by reference.

At its regularly scheduled meeting on December 15, 2011, the Planning Board voted unanimously to recommend approval of DPA-11-4, based on the reasoning in the Technical Staff report. In the absence of any opposition, the Planning Board also recommended that the matter be forwarded to the Council without a public hearing before the Hearing Examiner, as permitted by Zoning Ordinance §59-D-1.74(c)(3). See Planning Board letter of December 21, 2011 (Ex. 23).

The Planning Board found that the additional units and decreased commercial space will not have any substantive impact on the development objectives for the area. The Board stated (Exhibit 23, pp. 1-2):

The proposal is consistent with the goals and objectives of the Bethesda CBD Sector Plan. The amendment will not alter the compatibility of the project with surrounding development or compliance with the PD-44 Zone's purpose and standards. The DPA is consistent with the findings made by the District Council at the time of the 2008 development plan approval and still satisfies all applicable standards with the additional dwellings and reduced commercial space.

Technical Staff described the subject site in its report (Exhibit 21, p. 2):

The subject property consists of approximately 2.7 acres located at 7001 Arlington Road, Bethesda, between Bethesda Avenue and Bradley Boulevard. The site is roughly a parallelogram in shape, with about 277 feet of street frontage on Arlington Road, and approximate depths of 487 feet along its northern property line and 423 feet along its southern property line. The majority of the site is impervious, and is currently developed with a United States Postal Service (USPS) facility, which includes a large surface parking lot and one entrance driveway along Arlington Road. The elevation rises about ten feet from the southwest corner of the site to the northeast corner. Vegetation is limited to a small lawn area with ornamental trees on the west side of the building, and several areas on the north and east sides of the parking lot with scrub vegetation. The site has no forest, streams, wetlands or specimen and significant trees.

The surrounding area, as outlined by Staff, consists of an area roughly bounded by Hampden Lane to the North, Woodmont Avenue and the Sacks residential neighborhood to the east, Bradley Boulevard to the south, and Fairfax Road/Clarendon Road to the west. Technical Staff described the area as follows (Exhibit 21, pp. 2-3):

The surrounding area is predominantly commercial in nature, containing a mix of uses. To the north and south, the subject property abuts commercial properties in the C-2 Zone such as a tire store and an auto dealership to the north, and an office and retail complex with multiple buildings and parking garage to the south. Farther north are additional retail and mixed use developments along Bethesda Avenue and Elm Street.

To the east, the subject property abuts the Capital Crescent Trail, a 90-foot wide public right-of-way containing a paved walking and biking trail. In the vicinity of the subject site, the Trail consists of a 10-foot wide asphalt path and a three-foot wide stone-edge path, as well as a landscaped seating area with benches and a water fountain that serves as a trailhead for the Bethesda Central Business District (CBD). On the east side of the Trail is a community of one-family detached homes known as the Sacks neighborhood, which is classified under the R-60 Zone. Roughly 600 feet east of the subject site is the boundary of the Bethesda CBD, and the Bethesda Metro Station is approximately 1,800 feet from the site.

To the west of the site, across Arlington Road, is the Bradley Shopping Center, which is zoned C-2 and contains a variety of retail establishments including a hardware store, a variety store, a drug store and a delicatessen. Diagonally to the northwest is the Euro Motorcars car dealership, and beyond it to the north is additional retail. Farther west, along Clarendon Road, is a row of multifamily and other residential uses.

The initial application, known as G-861, was filed in November 2006. After multiple hearings and substantial public testimony, including a remand procedure, the Council ultimately approved the PD-44 Zone for the property on November 18, 2008, in Resolution 16-768 (Exhibit 17). The development plan approved at that time (Exhibit 5), called for 105 dwelling units and 30,000 square feet of commercial space. The 30,000 square feet of commercial space on the site was comprised entirely of USPS uses: a 7,000 square-foot retail store along Arlington Road and a 23,000 square-foot workroom.

The Applicant is now proposing the following changes to the approved 2008 plan:

- A reduction in commercial space from 30,000 square feet to 7,000 square feet, due to the removal of the 23,000 square-foot USPS workroom
- An increase in residential units from 105 to 145, using bonus density provisions of §59-C-7.14(c)
- An increase in MPDUs from 12.5 percent to 15.2 percent
- A reduction in parking spaces from 287 to 215
- A reduction in gross floor area of the project from 195,000 to 172,000 (again, due to the removal of the 23,000 square-foot USPS workroom)

These changes are reflected in the proposed amended development plan, DPA 11-4 (Exhibit 30). Technical Staff describes the changes as follows (Exhibit 21, pp. 4-5):

Incorporating the above changes, the applicant now proposes a five-story, mixed use development consisting of multifamily residential and street-lining retail in a single building along Arlington Road. The residential component will have a maximum of 145 multifamily dwelling units, including 15 percent MPDUs. The maximum building height along Arlington Road will be 59.9 feet. The front façade of the building faces the Arlington Road streetscape, which will be enhanced during site plan review to provide a wide, pedestrian-friendly urban sidewalk at the subject property. The ground floor will contain 7,000 square feet

of retail space at the front façade of the building, with a parking structure comprising the remaining ground level. Due to the grade of the site, the retail along Arlington is at-grade, while the parking structure transitions to below-grade behind the retail storefronts. Therefore, parking and loading activities are provided below-grade, behind the retail storefronts and under the residential units, so associated trips and activity levels will have minimal impacts to pedestrians along Arlington road, trail users, or nearby residents of the Sacks neighborhood. The exterior wall of the parking structure will extend nearly to the rear property line adjoining the Capital Crescent Trail but will be almost fully underground. The originally approved lower level of the parking structure will be removed. The visible floors of the building will be set back 60 feet from the Capital Crescent Trail, creating a significant area for landscaped open space bordering this heavily trafficked portion of the path.

The ground-level will serve as a platform for the four-story residential portion of the building. The residential portion of the building will cover a roughly Z-shaped area of the parking facility roof, with two short wings parallel to Arlington Road and the Capital Crescent Trail, and a longer wing connected on the diagonal. The rest of the parking facility roof will be covered by landscaped terraces to comply with the PD Zone requirement that 50 percent of the site be occupied by green area. The terraces will be common space for building residents and will be accessible from the first floor of the residential portion of the building. The main entrance to the residential building will be at ground level, at the southern corner of the building's Arlington Road façade.

The walls of the four residential stories are specified to be 60 feet from the rear property line, not including patios or terraces. The 60-foot rear buffer is comprised of amenities consisting of patios, walkways and landscaped terraces gradually sloping to the Capital Crescent Trail. The elevation from the trail to the base of the residential building is approximately eight feet above the Capital Crescent Trail. As shown during the 2008 hearings, the proposed building will have no shadow impact on the Capital Crescent Trail, even during the time of the longest shadow at the winter solstice. If the amendment to the development plan is approved, the landscaped rear yard of the 60-foot buffer will be carefully articulated during site plan review to be a visually appealing amenity for users of the Capital Crescent Trail.

To allow the proposed changes, two binding textual elements on the 2008 development plan must be changed. Binding Element No. 3, which limited the total residential unit count to 105, would now limit the total residential unit count to 145, and the MPDU percentage specified in Binding Element No. 4, which had been 12.5%, will be raised to 15.2% (if 145 units are approved for construction). Despite the changes, the proposed building will have the same volume and massing as approved in the 2008 development plan.

The District Council agrees with Technical Staff that the intent of the Bethesda CBD Sector Plan continues to be served by this new proposal, even with the increase in dwelling units and the decrease in commercial square footage (Exhibit 21, p. 8):

This proposal continues to meet the intent of the Plan by adding housing to the CBD in a way that fits into the existing community, provides a transition from the one-family neighborhood to the commercial area of Arlington Road, and provides street-oriented commercial that helps maintain the Arlington Road District as a community retail and service business area. The increase in dwelling units does not affect the size, the height, or the form of the approved building in the original development plan and therefore the proposal continues to fit the neighborhood. The increase in dwelling units will also contribute to the Sector Plan objective of providing a variety of housing types within the CBD. The increase in number of dwelling units will result in additional moderately priced dwelling units, which furthers the objectives of the Sector Plan.

Technical Staff also reviewed the purpose clause and regulations of the PD-44 Zone, and the District Council finds that the proposed DPA would be compliant therewith. Exhibit 21, pp. 7-15. In addition, the District Council agrees with Staff's conclusion that "the impact from 145 dwelling units should not adversely affect the Bethesda-Chevy Chase school cluster." Exhibit 22.

The District Council further finds that the proposed DPA would not alter the compatibility of the project with surrounding development or compliance with the purposes of the PD-44 Zone; that the proposed development plan amendment is consistent with the findings made by the District Council at the time of the 2008 development plan approval; and that the development plan, as amended, would still satisfy all applicable standards. Exhibit 21, p. 15.

Applicant filed its affidavits of mailing and posting on January 6, 2011. Exhibits 26(a) and (b). On January 12, 2012, the Applicant submitted a revised Development Plan Amendment to correct a typographical error, thereby completing the record. The revised DPA 11-4 was marked as Exhibit 30.

As previously noted, the Planning Board recommended that the matter be forwarded to the Council without a public hearing before the Hearing Examiner, unless public opposition developed. There has been no opposition to DPA 11-4, and no request has been made for a hearing. Therefore, under the provisions of Zoning Ordinance §59-D-1.74(c)(3), "the office of zoning and administrative hearings [OZAH] must forward the planning board's report and recommendation directly to the council," without a hearing by OZAH. In these kinds of cases, the District Council's action is based solely on the record prepared by Technical Staff and the Planning Board's transmittal letter.

The record is now complete, and the matter can be considered directly by the District Council without the need for a hearing or recommendation by the Hearing Examiner.

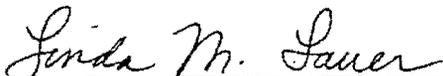
The District Council has reviewed DPA 11-4 and concluded that the DPA meets the requirements of the Zoning Ordinance, and its approval would be in the public interest. Based on this record, the District Council takes the following action.

Action

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

DPA 11-4, which requests an amendment to the Development Plan approved in LMA G-861, on November 18, 2008, in Resolution 16-768, by allowing a reduction in commercial space from 30,000 square feet to 7,000 square feet; an increase in residential units from 105 to 145; an increase in MPDUs from 12.5 percent to 15.2 percent; and a reduction in parking spaces from 287 to 215, **is hereby approved**, subject to the specifications and requirements of the Development Plan Amendment, Exhibit 30, **provided that** the Applicant submits to the Hearing Examiner for certification, a reproducible original and three copies of the Development Plan Amendment approved by the District Council, within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

  
Linda M. Lauer, Clerk of the Council

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**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

July 17, 2012

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**Via Hand Delivery**

Hon. Roger Berliner, Council President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: Battery Lane, LLC (“Batter Lane”)  
TESTIMONY IN SUPPORT OF ZTA 12-09 Planned Development (PD) Zones - Hotels

Dear President Berliner and Members of the County Council:

This firm represents Battery Lane and Laurence Lipnick, the owner of a property located at the intersection of Woodmont Avenue and Battery Lane in Bethesda (the “Property”). We appreciate the opportunity to provide background information and testimony in support of proposed ZTA 12-09 which would add “hotel” as a permitted use in high-density PD Zones.

ZTA 12-09 should be enacted for the following reasons:

- The addition of a hotel use to the high-density PD zones will add important flexibility to the zone.
- ZTA 12-09 will affect a limited number of properties that are currently zoned PD-44 or higher.
- The Compatibility standards contained in 59-C-7.15 will, by the terms of the ZTA, apply to ensure the compatibility of the hotel use for sites that are in close proximity to a CBD.
- The County should encourage a variety of uses in the PD zones as long as compatibility with surrounding uses and neighborhoods will be established during the development approval process.
- The proposed ZTA should not be deferred until the zoning re-write process reaches the Council because the zoning code overhaul process is fraught with uncertainty, and could take several years to come to fruition. There are current projects with development approval which could take advantage of the ZTA, providing economic development and a needed service.

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Hon. Roger Berliner, Council President  
July 17, 2012  
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The Property, which is zoned PD-75, has been approved for an 8-story multi-family building with a restaurant use on the ground floor in accordance with Development Plan No. 10-2, and Site Plan No. 820090010. The Property is unique because, as a land condo, it shares site access and green space with the land unit situated on the same lot, but to the south, owned by a non-profit known as the Children's Inn. The Children's Inn provides housing for sick children and their families in connection with treatment received at the National Institutes of Health (NIH), which is adjacent to the Property. The location of the Property is perfect for the Children's Inn's mission, and our client has always felt that the remainder of the Property is uniquely suited to provide temporary housing for visiting professionals, wounded veterans, the families of patients receiving care, or individuals engaging in other activities at NIH or the nearby Naval Hospital. Mr. Lipnick's ability to explore these exciting opportunities is severely hampered by PD zone's rather limited permitted commercial uses.

The Property represents a exceptional example of a high density PD zone, on the edge of and adjacent to, the Bethesda CBD where a hotel use would work particularly well, and could easily be compatible with surrounding uses and buildings, while providing a needed service in close proximity to NIH and the Naval Hospital.

We respectfully request that the County Council favorably consider the proposed ZTA 12-09 to add hotels as permitted uses in high-density PD zones designated 44 dwelling units per acre or higher. Please include this correspondence in the hearing record.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Debra S. Borden

cc: Mr. Laurence Lipnick



July 17, 2012

5104 Elm St., Bethesda MD 20814 (301)652-6359 email: theelms518@earthlink.net

**Civic Federation testimony to County Council Opposing Approval of ZTA 12-09, Hotels in PD Zones**

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of their Planning and Land Use Committee. A majority of our Executive Committee members having voted in favor of this position, the MCCF recommends disapproval of ZTA 12-09.

A primary purpose of the PD zone is to encourage creation of housing. The Purpose section of the PD zone reads, in part: "It is intended that development in this zone produce a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown in the area master plan, and related public and private facilities." [See County Code Sec.59-C-711.]

So hotels are already permitted in the PD zones under the allowance for "other commercial and industrial uses." But the zone requires hotels also meet the two tests in place for all other commercial and industrial uses: first, that such use be recommended for the property in the applicable master plan; and second, that the use be determined to be compatible with existing and planned future development both adjacent to, and within, the PD zoned property.

This is a ZTA which, by the sponsor's own admission, has been introduced to allow the owner of a single property (at the corner of Battery Lane and Woodmont Avenue in Bethesda) to develop that property in a manner not currently allowed. Not because hotels aren't allowed in the PD zone--they are. But because this particular PD zoned property is not recommended for a hotel in the *Bethesda Sector Plan*. Two other PD zoned properties have been included within the ambit of the legislation, thereby avoiding the prohibition on spot zoning. But these other two sites seem inappropriate for hotel use, since they abut and confront single-family residential zoned properties that are in residential use. It might be better to amend the *Bethesda Sector Plan* to recommend a hotel on the Battery Lane property.

The Battery Lane site has been the subject of a rezoning into the PD-75 zone and two Development Plan Amendments, approved by District Council in order to create housing on the site. It should also be remembered that DPA 06-1 approved for this site (Resolution 16-98, dated April 24, 2007) contained Binding Element #10: "The Street commercial space in the planned building will be occupied by a 'Quality Restaurant' as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (*i.e.* one producing more peak hour traffic)." This restriction could prevent the other associated commercial uses that often accompany the guest rooms in a hotel--namely, boutique retail shops, bars, and rental space for social events and corporate meetings.

It has been suggested that ZTA 12-09 might be amended to remove the requirement for master plan recommendation for hotel use. This would leave only the singular protection of the compatibility requirement, allowing a less stringent standard for approving a hotel than for all other commercial or industrial uses in the PD zones. This change in zoning standards designed to accommodate a single property is an example of how the zoning ordinance has become overly complicated; and as a result of its possible unintended negative consequences the MCCF respectfully urges disapproval of this ZTA.



July 25, 2012

Planning, Housing and Economic Development Committee  
Montgomery County Council  
100 Maryland Avenue, 6th floor  
Rockville, Maryland 20850

via email

Subject: Additional Civic Federation comments on ZTA 12-09, Hotels in PD Zone, for  
PHED Committee worksession on July 30

Dear PHED Committee Chairman Floreen and members Leventhal and Elrich,

First, I misspoke when delivering the Montgomery County Civic Federation (MCCF) testimony on ZTA 12-09 at the July 17 Council hearing. I stated that "Two other PD zoned properties have been included within the ambit of the legislation, thereby avoiding the prohibition on spot zoning." That was an incorrect reference, as this ZTA does not propose the rezoning of any properties. What I was referring to is the prohibition on "special laws" designed to single out a property for non-uniform treatment (as defined by Circuit Court Judge John Debelius III in his unpublished Opinion in *Humphrey v. Montgomery County Planning Board*, August 5, 2003).

This prohibition on "special laws" would apply to ZTA 12-09 if, as the Planning Board recommends, the two PD-44 zoned properties are exempted from the revised standards being proposed in the ZTA, leaving only the PD-75 zoned site on the northwest corner of Woodmont Avenue and Battery Lane to fall within the ambit of the legislation. But the Board recommended removing those two PD-44 zoned sites (a church property on Old Georgetown Road and the former Post Office site on Arlington Road, both in Bethesda) because they do not believe a hotel on either site would be compatible with existing abutting and confronting single-family zoned properties which are in residential use.

Let me point out that even if ZTA 12-09 were to apply to all three PD zoned properties in Bethesda, the replacement of the residential component with an ancillary commercial use (i.e.; a hotel) would result in a government facility and hotel on the site on Woodmont Avenue at Battery Lane, a church and hotel on the Old Georgetown Road site, and a hotel with convenience retail on the former Post Office site on Arlington Road. None of these developments would satisfy the primary purpose of the PD Zone, which is to encourage developments with a balanced and coordinated mixture of housing and convenience commercial uses. As a result, the MCCF believes the most appropriate action for you to take is to recommend the Council disapprove ZTA 12-09, or simply let it die in committee. Thank you for considering our views.

Sincerely,

/s/

Jim Humphrey  
Chair, MCCF Planning and Land Use Committee

cc: Jeff Zyontz