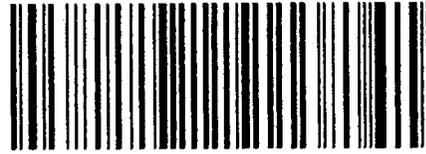


Agenda Item No. 4
Resolution No. _____
Introduced: _____
Adopted: _____

July 16, 2007

Marilyn Praisner, Council President
Office of the County Council
100 Maryland Avenue
Rockville, MD 20850

CERTIFIED MAIL™



7004 0750 0000 4531 7838

2007 JUL 18 AM 9:19

RECEIVED
MONTGOMERY COUNTY
COUNCIL

Dear Madam President:

I am a homeowner at 2208 Predella Drive in the Plyers Mill townhouse community in Silver Spring, Md. I am requesting an oral argument before the Council to discuss the concerns I have regarding its recommendation to approve Zoning Application No. G-858, submitted by Kaz Development, LLC, to build houses on the site being vacated by the Montgomery College School of Art and Design at Georgia Avenue and Evans Drive, located directly behind the townhouses' property. I oppose more development on this site.

I do not own a car and only ride the bus during inclement weather, therefore I feel the subsequent traffic congestion and increased gridlock that this development would bring to the immediate vicinity will infringe upon my personal right to safely walk to and from the Forest Glen Metro station, via Evans Drive and Douglas Avenue, which I do daily.

Presently, I avoid walking on Georgia Avenue during rush hour due to the narrow sidewalks' close proximity to steady, speeding traffic. More development on the Montgomery College school site will undoubtedly increase this traffic flow, which will spill onto Evans Drive and Douglas Avenue, neither of which have sidewalks.

Pedestrians, like me, must already walk in the streets. I fear that the increased traffic on these two thoroughways will no longer make walking there a viable option, further limiting my capacity to safely travel on county streets.

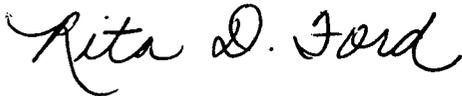
In addition, in the 7 years since I've purchased my home, I have witnessed the erosion of green space throughout my community. I feel that the residents of Plyers Mill and the surrounding areas should have accessible green space, giving us the freedom to stroll close to our homes at dawn or dusk. We should not have to be subjected to constantly having to cross congested Georgia Avenue to travel east or walking towards Kensington further west in order to enjoy park land. We are already enveloped in a sea of houses and need to maintain as much open, green space as possible.

Therefore, to maintain safe, pedestrian traffic in Montgomery County, preserve the county's environment and the quality of life for us citizens, I oppose more development

(i)

on this site. These quality-of-life issues are of grave concern to me, and I request the opportunity to address them before the Council. If you have additional questions, I can be reached at (202) 693-8671 (wk.), or (301) 649-1336 (hm.). I will also fax a copy of this letter to you on Tuesday, July 17 to ensure its timely receipt by the Council.

Sincerely yours,

A handwritten signature in cursive script that reads "Rita D. Ford". The signature is written in black ink and is positioned above the typed name.

(Ms.) Rita D. Ford

Cc: Stacy P. Silber, Esquire

Marilyn Praisner, County Council President
100 Maryland Ave.
Council Office Building
Rockville, MD 20850

FAX: 240-777-7888

July 16, 2007

Dear Ms. Praisner,

I respectfully request to present oral arguments to the County Council regarding the rezoning application G-858, for a proposed townhouse development at the site of the Montgomery College of Art and Design, at the corner of Georgia Avenue and Evans Drive.

I make this request as both a party of record and an aggrieved person. The issues that have not been adequately addressed include:

- 1. Storm Water Drainage.
- 2. Sewer Systems/WSSC.

I am aware that these topics are included in the Applicant's proposal, and in the Hearing Examiner's summary. I expect that my comments would be brief, perhaps 5 minutes. I think that these are very important concerns that the Council should hear and consider before deciding on the Applicant's request for rezoning, and materially affect myself and others neighboring the area.

Sincerely,

Christine Ollo
2304 Lillian Drive
Silver Spring, MD 20902

301-933-1487

RECEIVED
MONTGOMERY COUNTY
COUNCIL

2007 JUL 18 PM 2:34

Holland Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center
Suite 800
Bethesda, MD 20814-6301
www.hklaw.com

TO:

Judy Brewer
NAME

COMPANY/FIRM

240/777-6665
FAX NUMBER

CITY

STATE

(TELEPHONE NUMBER)

FROM:

Stacy P. Silber
NAME

301/664-7621
TELEPHONE

4
TOTAL PAGES (Including Cover Sheet)

FOR THE RECORD:

DATE: July 20, 2007

URGENCY: SUPER RUSH

RUSH REGULAR

FAXED BY:

FILE #: 104470

CLIENT NAME: 00001

CONFIRMED: YES NO

NAME:

TIME:

If you did not receive all of the pages or find that they are illegible, please call 301 654 7800

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MESSAGE:

RECEIVED

JUL 20 2007

OFFICE OF ZONING AND
ADMINISTRATIVE HEARINGS

Holland+Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center, Suite 800
Bethesda, MD 20814-6337
www.hklaw.com

July 20, 2007

Stacy P. Silber
301 664 7621
stacy.silber@hklaw.com

Via Hand-Delivery

Ms. Marilyn Praisner
President
Montgomery County Council
Stella B. Werner County Office Building
100 Maryland Avenue
Rockville, MD 20850

Rc: Montgomery College of Art & Design Property
Local Map Amendment G-858

Dear President Praisner:

On behalf of the Applicant in the above referenced case, I am writing to respectfully request that the District Council deny pending requests for oral argument. As discussed herein, oral argument is unnecessary because the Record is replete with information addressing each issue raised in the subject requests for oral argument. We thus respectfully request that the District Council approve the subject rezoning, and affirm the recommendations of the Planning Board Staff, Planning Board (in a unanimous recommendation) and the Hearing Examiner that the subject Local Map Amendment meets all applicable requirements of the Montgomery County Code (the "Code") regarding a rezoning to an RT-12.5 Zone.

The subject Montgomery College of Art & Design property (the "Montgomery College Property") is located in the northwest quadrant of Georgia Avenue and Evans Drive, in Silver Spring. It is truly a smart growth site being located approximately 4,000 feet from both the Wheaton and Forest Glen Metro Stations. Hearing Examiner Report ("Report") at p. 6; Transcript before Hearing Examiner at pp. 99-100. The Applicant requests a rezoning of the Montgomery College Property from the R-60 Zone to the RT-12.5 Zone to allow a maximum of 27 dwelling units, including 12.5% MPDUs (i.e. 4 MPDUs based on 27 dwelling units). This results in an effective density of 10.7 dwelling units/acre. Report at pp. 65-66. The Planning Board and its Staff and the Hearing Examiner concluded that "Applicant's proposed development on the subject property will provide the medium density residential housing that is compatible with existing townhouses and single-family residences and consistent with the goals of the *Master Plan for the Communities of Kensington-Wheaton.*" (Report at p. 26) (emphasis in original).

The basis for requests for oral argument is on the matters of traffic, pedestrian safety, green area, stormwater drainage and sewer systems. As discussed throughout the record for this case (the "Record"), and articulated at length in the Hearing Examiner's Report, these issues have been addressed and the subject Application complies with all applicable requirements of the Code.

Ms. Marilyn Praisner, President
July 20, 2007
Page 2

A. Record Evidence Demonstrates That Proposed Project Decreases Traffic From What Currently Exists Today, And Improves Pedestrian Safety.

In a letter to Council President Praisner dated July 16, 2007, a resident of the adjacent townhouse community wrote ("Townhouse Letter") "[m]ore development on the Montgomery College school site will undoubtedly increase this traffic flow, which will spill onto Evans Drive and Douglas Avenue, neither of which have sidewalks." As noted in the Record, a traffic study was not required to meet Local Area Transportation Review ("LATR") standards, because the project generates less than 30 peak hour trips. Report at pp. 27-28. Although a traffic analysis was not required, traffic counts were taken and demonstrated that the subject 27 unit townhouse community will generate fewer trips than currently generated by the existing College use. Report at pp. 27-28. The Hearing Examiner concluded that: ". . . the proposed development will actually create less traffic than the existing use on the site, and therefore, the Hearing Examiner concludes that any community concern about increases in traffic is unwarranted." Report at p. 34 (emphasis added).

In addition, as discussed within the Record, pedestrian safety is improved, and sidewalks are proposed as part of the subject Application. The Applicant proposes to add sidewalks on Evans Drive and Douglas Avenue. In addition, larger than required street trees will be planted along the perimeter of the Property. Report at p. 36-37. A pedestrian connection through the subject property north to Lillian Drive will also be provided. Report at p. 36. Furthermore, the Applicant proposes to stripe a crosswalk across both Evans Drive and Georgia Avenue, and create a pedestrian refuge in the median island on Georgia Avenue. This crosswalk and refuge do not exist today. Report at p. 35.

B. Applicant Proposes To Preserve And Create Green Area On The Montgomery College Property.

As discussed within the Record, the Applicant is required to provide 45% green area on the Montgomery College Property, and is proposing 50% green area. Report at p. 39. Included within this 50% is a forest conservation easement that will be enhanced through afforestation and the provision of a footpath. Report at p. 38-39. Also included is an environmental open space created in the northwest corner of the site that will protect the existing wetland and tree area. Report at p. 48. Furthermore, the Applicant proposes to provide recreational facilities, including a village green type sitting area, in an amount above the requirement for such a development, with final figures being calculated at site plan. Report at 54. In addition, the Applicant has agreed, through a binding element, to allow public access to the forest conservation easement area to the extent allowed by the Maryland-National Capital Park & Planning Commission. Report at p. 15. The Hearing Examiner indicated that the "Applicant has more than met the "preservation of open space" concerns of the community." Report at p. 39.

Individuals in the community had indicated a desire for the Montgomery College Property to be acquired by the County, possibly through the Legacy Open Space Program, for use as a park. Ms. Sandberg, the Legacy Open Space Program Manager for the Montgomery County Department of Parks, indicated that a request to consider, or a designation of a property for Legacy Open Space should not delay or influence the subject rezoning application. Report at p. 43. Maryland case law supports this County policy. Report at p. 43-44.

Ms. Marilyn Praisner, President
July 20, 2007
Page 3

C. Stormwater Management And Sewer System Adequacy Have Been Thoroughly Reviewed And Determined Adequate.

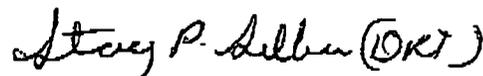
Issues relating to stormwater management and sewer system adequacy have been discussed at length in the record, and applicable plans and reports have been reviewed and approved by the Department of Permitting Services and WSSC, respectively. Report at pp. 33-34; 54-55; 69. As part of the Application, the Applicant proposes to install a new storm drain pipe, and Record evidence indicates that such pipe will have greater capacity than the existing pipes, which should have a positive benefit on upstream neighbors. Report at p. 33. In addition there is record evidence that WSSC's capacity more than meets the demand which will be generated by the subject development. Report at 33-34; 55. In addition, the Record reflects that ". . . the project's tie into the WSSC water and sewer facilities would not have any adverse impact on the adjacent townhouses or single-family communities." Report at p. 34.

In summary, the Hearing Examiner thoroughly reviewed, and received expert testimony which demonstrated that the subject project fully complies with all requirements necessary to rezone the Montgomery College Property to the RT-12.5 Zone. After such significant analysis, the Hearing Examiner concluded in his Report that the application satisfies the requirements of the RT-12.5 Zone, and its Purpose clause (being both appropriate and serving as a transition); the application proposes a form of development that would be compatible with land uses in the surrounding area; and the requested reclassification to the RT 12.5 Zone has been shown to be in the public interest.

Accordingly, we respectfully request the District Council deny the pending requests for oral argument and approve the Application in accordance with the recommendations of the Planning Board Staff, the Planning Board (in a unanimous recommendation) and the Hearing Examiner.

Respectfully submitted,

Holland & Knight LLP


Stacy Plorkin Silber

cc: Via Hand Delivery
Martin Grossman, Esq.
Jeffrey Zyontz, Esq.
Martin Klauber, Esq.

Via UPS:
Mr. Russell Belcher
Ms. Rita D. Ford
Ms. Christine Olio



MONTGOMERY COUNTY, MARYLAND

ZONING CONTRIBUTIONS DISCLOSURE STATEMENTS

LOCAL MAP AMENDMENT G-858

PROPERTY LOCATED AT 10500 GEORGIA AVENUE, SILVER SPRING

DATE BEFORE COUNCIL JULY 24, 2007

ZONING CONTRIBUTIONS DISCLOSURE TABLE

Zoning Case	Applicant	Recipient of Contribution	Date of Contribution	Amount of Contribution
G-858	Kaz Brothers, LC	Friends of Doug Duncan	09/03	\$1,000
			12/03	\$ 500
			12/04	\$ 500
			10/05	\$ 500
		Friends of Mike Knapp	07/04	\$1,000
			10/05	\$ 500
		Friends of George Leventhal	09/04	\$1,000
		Citizens for Steve Silverman	09/04	\$1,000
			12/04	\$1,000
			09/05	\$ 500
		Friends of Michael Subin	09/04	\$1,000
			04/05	\$2,000
		Friends of Nancy Floreen	04/04	\$ 500
Dennis Campaign Committee	09/04	\$1,000		



9

Zoning Case	Applicant	Recipient of Contribution	Date of Filing	Amount of Contribution
G-858 cont'd	Thomas N. Hudson and Hudson Land, LLC	Friends of Nancy Floreen	06/04	\$ 100
		Friends of Michael Subin	06/03	\$ 500
			04/05	\$ 1,000
		Citizens for Steve Silverman	10/04	\$ 500
			01/05	\$ 250
			01/06	\$ 200
Total				\$14,550

10

Agenda Item No. 4
Resolution No. _____
Introduced: July 24, 2007
Adopted: _____

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

By: County Council

Subject: APPLICATION NO. G-858 FOR AMENDMENT TO THE ZONING ORDINANCE
MAP, Stacy P. Silber, Esquire, Attorney for Applicant, KAZ Development, LLC,
OPINION AND RESOLUTION ON APPLICATION Tax Account Nos.
1301099346, 1301099357, 1301099368, 1301099370, 1301099381, 1301099392,
1301099404, 1301099415, 1301099426 and 1301103427.

OPINION

Application No. G-858, filed on October 3, 2006 by Applicant Kaz Development, LLC, requests reclassification from the R-60 Zone to the R-T 12.5 Zone of 2.53 acres of land located at 10500 Georgia Avenue in Silver Spring, on the site of the Montgomery College of Art and Design (MCAD). The application was filed under the Optional Method authorized by Code § 59-H-2.5, which permits binding limitations with respect to land use, density and development standards or staging. Applicant proposes to build a development that consists of twenty-seven new townhomes, including four moderately priced dwelling units (MPDUs). The proposal is set forth in a revised Schematic Development Plan (SDP), Exhibit 60(d), which contains an illustrative diagram and a specification of the binding elements, as well as other information regarding the development.

Most of the subject property is owned by the Montgomery College Foundation, Inc., which filed a letter indicating that Applicant is the contract purchaser (contingent upon the rezoning), and that the Foundation consents to the rezoning application filed by the Applicant. The remainder of the property consists of portions of adjacent rights-of-way to be abandoned by the State and County. The State Highway Administration (SHA) filed a letter dated August 16, 2006, stating its agreement to the inclusion

of approximately 500 square feet of its right-of-way in the application. The Planning Board recommended approval of Montgomery County's abandonment of its rights-of-way in a letter dated April 19, 2004, and the Council conditionally approved the abandonment on July 3, 2007, in three Resolutions, 16-233, 16-234 and 16-235. When the Montgomery County rights-of-ways (about 28,317 square feet) are abandoned, the land will revert back to Montgomery College Foundation, Inc. When the State Highway right-of-way (about 500 square feet) is abandoned, SHA has indicated that it will be offered for sale to the Applicant, Kaz Development, LLC, as the contract purchaser of Lots 1-9 and Lot 18.

The Hearing Examiner recommended approval of the application on the basis that the R-T 12.5 Zone at the proposed location would satisfy the requirements of the zone and its purpose clause; that the proposed reclassification and development would be compatible with land uses in the surrounding area; and that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation dated July 11, 2007 is incorporated herein by reference. Technical Staff of the Maryland-National Capital Park and Planning Commission ("M-NCPPC") and the Montgomery County Planning Board ("Planning Board") also recommended approval.¹

A public hearing was convened on May 21, 2007, at which time the Applicant presented the testimony of six witnesses. Testimony was also presented by Russell D. Belcher, representing the McKenney Hills Carroll Knolls Civic Association, which did not take a position either for or against the application. There were no opposition witnesses; however, e-mails from a few neighbors expressing various concerns and their preference that the site be made into a park under the "Legacy Open Space" (LOS) program, rather than rezoned for townhouse development, were received by Technical Staff during

¹ The Planning Board's approval recommendation was subject to a proviso that one of the proposed binding elements, regarding donation of the MPDU lots to Habitat for Humanity, be removed from the revised SDP. Applicant modified its SDP accordingly.

its review. Following the hearing, but while the record was still open, a number of neighbors filed letters and a petition opposing the development and seeking instead to have a park on the subject site.

Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner. The District Council does not, at this time, consider the question of whether the site is appropriate to be designated as Legacy Open Space. That issue will be addressed in the first instance by Legacy Open Space Program officials, as well as the Planning Board and its Technical Staff, after due consideration of the pending request by some community residents that it be so considered. The Council may not allow considerations of possible future inclusion of a property in the LOS Program to affect its determination of a pending application to rezone that property. *Freeman v. State Roads Commission*, 252 Md. 319, 329-30, 250 A.2d 250, 255-56 (1969).

The Property, Surrounding Area and Zoning History

The subject property, which has an area of about 110,315 square feet (2.53 acres), is located in the northwest quadrant of Georgia Avenue and Evans Drive, in Silver Spring. It is comprised of Lots 1 - 9 in Block C, Lot 18 in Block H-H, and portions of adjacent rights-of-way to be abandoned by the State and County, all in the Carroll Knolls Subdivision. The intersection of Georgia Avenue and Plyers Mill Road is about 900 feet to the north of the site. The Wheaton Metro Station is about 4000 feet to the north, and the Forest Glen Metro Station is about same distance to the south.

The subject property is irregular in shape and fairly flat. The eastern portion (Lots 1 through 9), where the townhouse development is proposed, is roughly rectangular. The western portion (Lot 18 and the County right-of-way), which is forested and contains wetlands, is highly irregular in shape. A storm drain easement runs diagonally through the property. The property has about 242.27 feet of frontage along Georgia Avenue and 223.32 feet along Evans Drive. The property will also have frontage along Douglas Avenue when Douglas Avenue is extended as proposed in the application. The eastern portion of the

property (Lots 1 through 9) contains the MCAD, which is a one-story institutional building of approximately 13,500 square feet with a 60-car parking lot, a lawn and some perimeter landscaping.

Currently, vehicular access to the subject property is via Evans Drive, a primary residential road with a 100-foot right-of-way. Evans Drive connects to Georgia Avenue (MD 97), which is a major highway with a 120-foot right-of way and six travel lanes. The intersection of Georgia Avenue and Evans drive is not signalized, but in the part of Georgia Avenue adjacent to the subject property, there is a median. There is pedestrian access to the site from a "lead walk," off of the sidewalk that runs along the Georgia Avenue frontage. The Georgia Avenue sidewalk immediately abuts the street, and no tree panels separate it from the roadway. There is also a footpath that runs through the western undeveloped portion of the property.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. Technical Staff recommended adopting the following definition of the surrounding: The area encompassed by Plyers Mill Road to the north, Hutting Place and Haywood Drive to the west, Dennis Avenue to the south, and, to the east, the rear property lines of properties east of Georgia Avenue, between Dennis Avenue and Plyers Mill Road. The Hearing Examiner accepted this definition of the surrounding area, as does the District Council.

According to Technical Staff, the surrounding area is mainly developed with single-family homes on land zoned R-60, plus townhomes to the north of the subject property on land zoned R-T 15 and R-T 12.5. The single-family homes to the west of Georgia Avenue are located within the Plyers Mill Estates subdivision and the Carroll Knolls subdivision. The single-family homes within the surrounding area to the east of Georgia Avenue are within the Glenview and Evans Parkway subdivisions. The townhouse

development at the corner of Plyers Mill Road and Georgia Avenue is zoned R-T 15 and has 30 lots on 1.87 acres of land, for an approximate density of about 16 units per acre. The older townhouse development that surrounds the corner townhouse development to the south and west has 93 lots on 7.54 acres, for an approximate density of 12 units per acre. Both of these townhouse developments were once on land zoned R-60, and were rezoned pursuant to Zoning Applications G-786 (adopted 3/27/2001) for the northernmost development, and F-951 (adopted 9/21/76) for the southernmost, older development. Also within the surrounding area is a church in the southeast quadrant of Georgia Avenue and Plyers Mill Road on land zoned R-60. Directly opposite the subject property to the east, across Georgia Avenue, is the Evans Parkway Neighborhood Park, which was recently expanded to include the parcel at the corner of Georgia Avenue and Evans Parkway.

Technical Staff recounted the zoning history of the area. The subject property was classified under the R-60 Zone in the 1958 Countywide Comprehensive Zoning. The R-60 Zone was reconfirmed by Sectional Map Amendments (SMA) G-136 and 137 (10/24/78); SMA G-744 (6/24/97); SMA G-761 (7/14/98); and SMA G-795 (4/16/02). The site was granted a special exception, S-493, on August 4, 1976, to run a private educational institution (MCAD). The Board of Appeals revoked the special exception in 2004, because Montgomery College, which acquired the property, is a public entity and does not need a special exception to operate a school in the R-60 Zone.

Proposed Development

The Applicant proposes to construct twenty-seven, rear garage, three-story townhouse units, including four MPDUs, for a density of 10.7 dwelling units per acre. Zoning Ordinance §59-C-1.74 permits a density of up to 15.25 dwelling units per acre in the R-T 12.5 Zone, when MPDUs are included on site. In this case, that would permit Applicant to construct up to 38 dwelling units. However, such a density cannot be achieved on this site given the requirements of stormwater management, forest conservation, green space and an appropriate unit lay-out compatible with the surrounding area.

All of the townhouse units will be located on the eastern (rectangular) portion of the site; the western portion of the property, containing the wetlands, will be reforested. An existing storm drain system will have to be relocated to permit the development. In doing so, its capacity will be increased, "which should have a positive benefit on . . . [the] upstream neighbors," according to Applicant's civil engineer.

Pursuant to Code § 59-H-2.52, the Applicant in this case has chosen to follow the "optional method" of application. The optional method requires submission of a schematic development plan that specifies which elements of the plan are illustrative and which are binding, *i.e.*, elements to which the Applicant consents to be legally bound. Those elements designated by the Applicant as binding must be set forth in a Declaration of Covenants to be filed in the County land records if rezoning is approved. The Applicant has filed the required Declaration of Covenants in the record of this case as Exhibit 60(e).

The legal effect of the covenants is to obligate any future owner of the property to comply with the binding elements specified on the SDP. Thus, the optional method allows an applicant to specify elements of its proposal that the community, reviewing agencies and the District Council can rely on as legally binding commitments. Illustrative elements of the SDP may be changed during site plan review, but the binding elements cannot be changed without a separate application to the District Council for a schematic development plan amendment.

The SDP shows six rows of townhouses. Rows of four units and six units face Georgia Avenue and have front yards of at least 25 feet to allow for a green corridor and pedestrian enlivenment along the street. A row of five units faces Evans Drive. Three rows (of three units, four units, and five units) are clustered around a rectangular homeowner association open space off Douglas Avenue. The open space is meant to function as a "village green" and hence is located away from Georgia Avenue and its noise and fumes. The MPDUs are located in the row of four units facing Douglas Avenue and the rectangular open space.

The illustrative Schematic Development Plan shows that the market-rate units will have two-car garages, and the 4 MPDUs will each have one-car garages, plus two parking spaces available in their

driveways. A pedestrian circulation system is provided, including a walkway through the development connecting Douglas Avenue to Georgia Avenue, and sidewalks along Georgia Avenue, Evans Drive and Douglas Avenue. The plan is to have tree panels separating the sidewalks from the streets. The existing sidewalk on Georgia Avenue has no tree panel, and Applicant will be dedicating a strip approximately six feet, seven inches wide along Georgia Avenue to provide additional room for the streetscaping.

Binding Elements

The SDP (Exhibit 60(d)) specifies, in its Development Standards Table, that the maximum density of 10.7 dwelling units per acre (up to 27 units), and the inclusion of 12.5% MPDUs are binding elements.

In addition, the following nine binding elements are embossed on the SDP:

1. Townhouse units that face on a public right-of-way shall have brick fronts, and the end units of each row of townhouses that face on a public right-of-way shall have brick sides as well.
2. All street trees installed within the public right-of-way around the perimeter of the site shall be a minimum of 3-1/2" caliper at installation.
3. Landscape buffer and or fencing shall be installed along the northern property line between Georgia Avenue and Douglas Avenue. Final design shall be determined at the time of site plan.
4. Construct a pedestrian connection from the end of Douglas Avenue to the existing sidewalk on the west side of Lillian Drive, with the width of the connection being determined at site plan.
5. At the time of record plat, dedicate or provide a 20-foot public use easement from end of Douglas Avenue to northern property line.
6. Use – townhouse.
7. Provide a pedestrian crosswalk across Georgia Avenue at Evans Drive, subject to DPW&T and SHA approval (if DPW&T and SHA do not approve the crosswalk, then no crosswalk is required). This crossing will include a pedestrian refuge island in the median, along with the appropriate curb depressions and ramps to comply with ADA requirements for the crossing, subject to DPW&T and SHA approval.
8. In accordance with 'Staff Guidelines for the Consideration of Transportation Noise Impacts in Land Use Planning and Development', building envelopes will be designed to allow the average interior DNL to be reduced to 45 dBA[L_{dn}] or lower, and projected exterior DNL for unit rear deck or patio spaces will be 65 dBA [L_{dn}] or below.
9. Applicant will allow public access to the forest conservation easement area to the

extent allowed by the Maryland-National Capital Park & Planning Commission staff, with such access being determined at site plan.

These binding elements address concerns raised by Technical Staff and the community, as well as those issues raised at the hearing.² On the northern edge of the site, Applicant proposes to construct a cul-de-sac as the termination of Douglas Avenue. Binding elements #4 and #5 promise a 20-foot wide, public use easement and construction of a pedestrian connection from the end of Douglas Avenue to the community on the north, with the width and location of the pedestrian path to be determined at site plan. The Planning Board has also approved a Preliminary Forest Conservation Plan to protect the wetland and tree area in the northwest corner of the site. At the hearing, Applicant agreed to a new Binding Element #9, making the forest conservation area available to the public (not just residents of the subject site), to the extent permitted by environmental controls to be determined at site plan.

Community concerns about pedestrian safety were addressed at the hearing by a new Binding Element # 7, which calls for a pedestrian crosswalk across Georgia Avenue at Evans Drive, including a pedestrian refuge island in the median, along with the appropriate curb depressions and ramps to comply with ADA requirements for the crossing, all subject to approval of the Department of Public Works and Transportation (DPW&T) and SHA.

A new Binding Element # 8 was also added at the hearing to assure that Applicant will take whatever steps are necessary to comply with County regulations controlling permissible indoor and outdoor noise levels. The issue of road noise and the appropriate steps to insure compliance with applicable noise standards will be reviewed by the Planning Board at Site Plan.

A total of 68 off-street parking spaces are shown on the illustrative Schematic Development Plan. The 23 market-rate units will provide 46 spaces in their two-car garages; the 4 MPDUs will provide 12

² As mentioned above, one of the proposed binding elements, regarding donation of the MPDU lots to Habitat for Humanity, was removed from the revised SDP at the suggestion of the Planning Board. The District Council understands that this proposal will be reviewed by the Planning Board at Site Plan, at which time the final configuration of the MPDUs will be decided.

spaces in their one-car garages and two-car driveways; and there will be 10 additional off-street spaces for visitors. There will be two vehicular access points to the site, both from Douglas Avenue. Unlike the existing situation, there will be no access to the proposed development along Evans Drive, which is a safer arrangement according to the testimony. The two groups of townhouses that will front on Georgia Avenue would be accessed via a rear alley that connects to the Douglas Avenue cul-de-sac. There will be a group of townhouses that will front on Evans Drive, to create a residential street front along that roadway. Along Douglas Avenue, the three groups of townhouses surrounding a public open space will be served by the proposed internal circulation. There will be enhanced streetscaping along Georgia Avenue, Douglas Avenue and Evans Drive (*See Binding Element #2*), and there will also be a landscape buffer and/or fence along the northern property line between the subject property and the Plyers Mill Crossing Townhouses to the north (*See Binding Element #3*).

Standard for Review

A floating zone, such as the R-T 12.5 Zone, is a flexible device. Individual property owners may seek to have property reclassified to a floating zone by demonstrating to the Council that the proposed development will be consistent with the purpose and regulations of the proposed zone and compatible with the surrounding development, as required by the case law, *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1967), and that it will be consistent with a coordinated and systematic development of the regional district and in the public interest, as required by the *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110*.

Requirements and Purpose of the Zone

Under the “purpose clause” set forth in Zoning Code §59-C-1.721, the R-T Zone may be applied if a proposal meets any one of three alternative criteria: (1) it is in an area designated for R-T Zone densities (implying a master plan designation); (2) it is in an area that is appropriate for residential development at densities that are allowed in the R-T Zones; or (3) it is in an area where there is a need for buffer or

transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.

The *Kensington-Wheaton Master Plan* did not designate the subject site for the R-T Zone, and thus the Purpose Clause cannot be satisfied under that criterion. However, there are three alternative methods of satisfying the Purpose Clause, and an Applicant is required to satisfy only one of them. Accordingly, the Purpose Clause may also be satisfied by development in areas “*appropriate for residential development at densities allowed in the R-T Zones*” or in areas “*where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses.*”

The evidence in this case supports Applicant’s contention that the subject site satisfies both the “appropriateness” and the “transitional” criteria. As noted by Technical Staff, “the subject property is a suitable location . . . for townhouses with densities allowed in the R-T 12.5 Zone, specifically at densities of up to 10.7 dwelling units per acre, as proposed.” Exhibit 38, p. 10. The Planning Board, in recommending approval of the rezoning, expressly adopted Technical Staff’s rationale, and found the site to be appropriate for the subject development. Exhibit 40, p. 2. The proposed densities also are appropriate because of the close proximity of two Metro stations.

The District Council also finds that the proposed development is appropriate because it is unlikely to cause any adverse impact upon its neighbors; it is a good fit in this mixed residential neighborhood; it will provide more parking than required; and it would not generate enough peak-hour trips to create traffic problems for the neighbors.

The District Council finds that the proposed development meets the “transitional” criterion because it would provide a better transition to the single-family residences located to the west in the Carroll Knolls Subdivision and to the townhouses located immediately to the north, than does the existing institutional use. The existing and proposed townhouses would also provide a suitable transition in density from the

more intense commercial densities to the north in Wheaton Plaza and the large tracts of single-family housing to the south, west, and east.

The District Council also finds that the proposed development will meet, and in some instances exceed, the applicable development standards for the R-T 12.5 Zone. For example, maximum density is set at 15.25 units per acre (because MPDUs are being provided), but Applicant's proposal calls for a density of only 10.7 units per acre. Maximum building coverage is specified as 40%, but Applicant has committed to a maximum coverage of 30%. Minimum green space in the zone is specified as 45%, but Applicant will have at least 50% green space. Although only 54 parking spaces are required by statute, Applicant plans on 68 spaces. Applicant's proposal also meets the special row design requirements for townhomes in the R-T 12.5 Zone.

Compatibility

An application for a floating zone reclassification must be evaluated for compatibility with land uses in the surrounding area. The District Council finds that the proposal for the townhouse development is compatible with the nearby single-family residential uses (both detached and townhouse) in height, scale and massing. It is very similar in scale to the townhouse subdivision to the north, and the internal setbacks will be the same or greater. Technical Staff observed that the proposed townhouses are a compatible form of development with the surrounding area – “townhouses are residential, they create a residential street wall along Georgia Avenue and reinforce its residential character, and they act as a buffer between adverse impacts of a major highway and single-family homes.” Exhibit 38, p. 10. The Planning Board also found that the application is compatible with the surrounding area. Exhibit 40, p. 2.

In addition, a landscape buffer or fence will be provided, per Binding Element #3, to buffer the townhouses to the north, and there is pedestrian circulation through the site that accommodates the walking patterns and needs of neighbors in the area. It should be added that Applicant also committed, in Binding Element #1, to brick fronts and sides that face public rights-of-way to aide in compatibility with nearby

townhouses. The District Council finds that, through the nine binding elements agreed to by Applicant, the concerns raised by the community have been appropriately addressed.

Public Interest

The Applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and important policy goals such as the provision of affordable housing.

The MCAD site is located in the area subject to the *Master Plan for the Communities of Kensington-Wheaton* (May 1989, as amended April 1990). The Master Plan does not specifically recommend the zoning change sought by Applicant, but the District Council finds that the requested rezoning is consistent with its objectives and general language. Compliance with Master Plan recommendations is not mandatory in this case because the R-T Zone does not require it; rather, the courts have held that the Master Plan should be treated only as a guide in rezoning cases like this one. See *Richmarr Holly Hills, Inc. v. American PCS, L. P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997).

The subject site is shown as “quasi public” on the Master Plan’s Land Use Plan because MCAD is located on it. The Master Plan, in general, recommends low-to-medium density residential use for the area around the subject site. The goals and objectives of the Master Plan include protecting and stabilizing the extent, location and character of existing residential and commercial land uses. The objective is to maintain the well-established, low and medium density residential character, which prevails over most of the planning area, and preserve the identity of residential areas along major highway corridors, to soften the impact of major highways on adjacent homes. The District Council finds that Applicant’s proposal will do so. It will provide a buffer and transition from east to west for the Carroll Knolls Subdivision, creating a

buffer from the activity and noise along Georgia Avenue for the houses further west in the Carroll Knolls Subdivision. It will also provide additional transition between the R-60 developments of the Carroll Knolls Subdivision and higher density developments to the north.

The Master Plan recommends that residential areas along major highways should be reinforced and protected by a land use and landscaping approach called "green corridors." The proposed development will reinforce the residential, architectural edge along Georgia Avenue, provide green streetscaping, soften the impacts of the highway and create a higher quality pedestrian network. It will be replacing the existing institutional use with a residential use to fortify this residential edge, and will be doing the same along Evans Drive. It will also create additional pedestrian and biker access by including sidewalks and linkage between Douglas Avenue and Lillian Drive to the north. The multiuse path will also allow visual access to the natural wetland area preserved on the site. Applicant is also proposing striped crosswalks across both Georgia Avenue and Evans Drive, with a pedestrian refuge in the Georgia Avenue median island to facilitate safer crossing for pedestrians, as specified in new Binding Element #7.

The Master Plan seeks to protect water quality of the streams and the conservation of selected areas in their natural undeveloped state, with active recreation uses in some instances. Again, Applicant is proposing to protect this environmentally sensitive area and to create recreational opportunities, within the bounds of protecting that environmental area.

Technical Staff concluded, as does the District Council, that the return of the college property to residential use conforms to the Plan's objective of redevelopment that stabilizes and maintains the residential character of this portion of Georgia Avenue. The Planning Board and its Technical Staff support the proposed rezoning, believing that the development will be compatible with surrounding uses and compliant with the purposes and standards of the R-T 12.5 Zone. The District Council agrees.

The evidence also indicates that the proposed development will not have an adverse impact on public facilities or the environment. Although the local elementary school experiences some overcrowding,

another elementary school will be opening to serve the Albert Einstein cluster in the same general time frame that the proposed development would be completed. Moreover, the current Growth Policy schools test finds capacity adequate in the Albert Einstein (DCC) cluster.

The impact on local traffic from this development would be minimal and will clearly meet LATR standards. In fact, the amount of traffic produced would be less than is currently generated by the school use on the site. No evidence was presented to suggest that the proposed development would have any adverse effect on utilities or other public services. The evidence is that the proposed development will not worsen any existing sewage backup problem, and by adding greater capacity for stormwater drainage, may actually improve any flooding problems previously experienced by the neighbors.

The site is not in a special protection area; there are no known rare, threatened or endangered species on the property; and there are no specimen or champion trees on site. A stormwater management concept plan has been approved by Department of Permitting Services, and a preliminary forest conservation plan has been approved by the Planning Board. A forest conservation easement will be established on the western side of the site, which contains some wetlands, and Applicant will provide afforestation in the area. Neither Technical Staff nor the Planning Board noted any adverse effect on the environment, nor is there any other such evidence of record.

Finally, because the development will include four MPDUs, the proposal will advance the important policy goal of providing additional affordable housing in the County.

For all of these reasons, as more fully discussed in the Hearing Examiner's report, the District Council concludes, based on the preponderance of the evidence, that the proposed reclassification and development would have no adverse effects on public facilities or the environment, and that approval of the requested zoning reclassification would be in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the application satisfies the requirements of the R-T 12.5 Zone and its purpose clause; that the application proposes a form of development that would be compatible with land uses in the surrounding area; and that the requested reclassification to the R-T 12.5 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

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, Maryland approves the following resolution:

Zoning Application No. G-858, requesting reclassification from the R-60 Zone to the R-T 12.5 Zone of 2.53 acres of land, comprised of Lots 1 - 9 in Block C, Lot 18 in Block H-H, and portions of adjacent rights-of-way to be abandoned by the State and County, in the Carroll Knolls Subdivision, and located at 10500 Georgia Avenue in Silver Spring, on the site of the Montgomery College of Art and Design, is hereby **approved** in the amount requested and subject to the specifications and requirements of the final Schematic Development Plan, Ex. 60(d); provided that the Applicant submits to the Hearing Examiner, for certification, a reproducible original and three copies of the Schematic Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance and files a fully executed copy of the Declaration of Covenants (Exhibit 60(e)) in the land records of Montgomery County, Maryland, within 20 days of approval, in accordance with §59-H-2.54(d) of the Zoning Ordinance.

By rezoning the property, the District Council is not passing upon the question of whether the site is appropriate to be designated as Legacy Open Space. That question will be addressed in the first instance by Legacy Open Space Program officials, as well as the Planning Board and its Technical Staff, after due consideration of the pending request by some community residents that it be so considered.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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Resolution No.:
Introduced: July 24, 2007
Adopted:

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

By: District Council

Subject: Extension of Time For Council Action on Local Map Amendment G-858

Background

1. Under Section 59-H-8.1 of the Zoning Ordinance, the District Council is required to remand, approve, deny or dismiss any application for a map amendment within sixty days of the hearing or transmittal of the Hearing Examiner's report, whichever occurs later, unless such time is extended by the District Council.
2. The time for Council action on LMA G-858 expires on September 7, 2007.
3. The Council granted a request for oral argument on July 24, 2007.

Action

For this reason, 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 resolution:

The period for Council action on Local Map Amendment No. G-858 is extended to the close of business on *(to be determined by Council)*.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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AGENDA ITEM #4
July 24, 2007

Action

Addendum

MEMORANDUM

July 23, 2006

TO: County Council

FROM: Jeffrey L. Zyontz,  Legislative Attorney

SUBJECT: Action – G-858

On July 23, 2007 Council staff received an additional request for oral argument and an updated disclosure statement related to Local Zoning Map Amendment G-858. The documents received are attached to this memorandum.

f:\zyontz\g-858 supplemental

Jeff.Zyontz@montgomerycountymd.gov
cc: stacy.silber@hklaw.com

July 23, 2007

Dear Mr. Zyontz,

I respectfully request to present oral arguments to the County Council regarding the rezoning application G-858, for a proposed townhouse development at the site of the Montgomery College of Art and Design, at the corner of Georgia Avenue and Evans Drive.

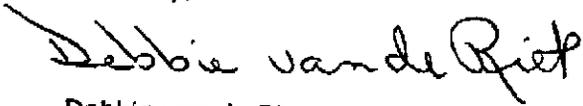
I make this request as both a party of record and an aggrieved person. The issues that have not been adequately addressed include:

Traffic

Transportation

I am aware that these topics are included in the Applicant's proposal, and in the Hearing Examiner's summary. I expect that my comments would be brief, perhaps 5 minutes. I think that these are very important concerns that the Council should hear and consider before deciding on the Applicant's request for rezoning, and materially affect myself and others neighboring the area.

Sincerely,



Debbie van de Riet
10502 Pennydog Lane
Silver Spring, MD 20902

301-649-6572

Holland Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center, Suite 800
Bethesda, MD 20814-6337
www.hklaw.com

July 23, 2007

Stacy P. Silber
301 664 7621
stacy_silber@hklaw.com

VIA FACSIMILE

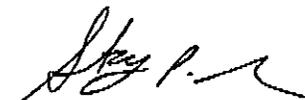
Mr. Martin Grossman
Office of Zoning and Administrative Hearings
100 Maryland Avenue
Rockville, MD 20850

Dear Mr. Grossman:

On behalf of the Applicant Kaz Development, LLC, I am transmitting an updated Local Map Amendment Application Disclosure Statement reflecting contributions made since the original Disclosure Statement, which was signed in April of 2006. Please contact me should you have any questions.

Sincerely,

Holland & Knight LLP


Stacy P. Silber

cc: Jeffrey Zyontz, Esq. (via Fax)
Martin Klauber, Esq. (via Fax)
Mr. Russell Belcher (via e-mail)

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(2)

**LOCAL MAP AMENDMENT APPLICATION
DISCLOSURE STATEMENT
(Effective January 1, 2003)**

State law requires that each and any Applicant for a local zoning map amendment, or Party of Record, who has made a contribution to a candidate for County Executive or County Council of \$500.00 or more, calculated cumulatively for the four-year election cycle either before the filing of the application or during the four-year cycle within which the application is pendent, must disclose the name of the candidate to whose treasurer, political committee, or slate the contribution was made, the amount and the date of the contribution. For your information, the 4-year election cycle is defined as the period that begins on the January 1 that follows a gubernatorial election and continues until the December 31 that is 4 years later, according to Md. Ann. Code, Election Law, Sec. 1-101(w).

A Disclosure Statement must be filed when the application is filed or within two weeks after entering the proceeding by a Party of Record and be updated within 5 business days of any contribution made after the filing of the initial disclosure and before final disposition of the application by the District Council. If more than one contribution is made, please specify in the space provided below each contribution and to whom it was made. If more than one applicant is involved in a single application, each applicant must file this statement.

Subject to the penalties of perjury, I, KAZ DEVELOPMENTS, LLC
(NAME OF APPLICANT FOR LOCAL MAP AMENDMENT
OR PARTY OF RECORD)

HEREBY AFFIRM that the contents of this statement are true to the best of my

knowledge, information and belief, and that: (SELECT EITHER 1 OR 2 BELOW AND CHECK
APPROPRIATE STATEMENT)

1. I HAVE made a contribution of see attached
(FILL IN AMOUNT OF CONTRIBUTION IF \$500
OR MORE, OR STATE N/A IF NOT APPLICABLE)

on _____
(FILL IN DATE (MONTH, DAY AND YEAR) OF CONTRIBUTIONS),

to the following candidate's treasurer, political committee, or slate:

(FILL IN NAME OR NAMES OF CANDIDATE, OR STATE N/A IF INAPPLICABLE)
(If more space is required, use the back of this form.)

2. I HAVE NOT made a contribution requiring disclosure.

[Signature]
SIGNATURE OF DECLARANT

This Statement is filed in compliance with Public Ethics Requirements, Art. 33, Md. Ann. Code, Sec. 26-9(f-1) and Md. Ann. Code, State Government Article, Sec. 15-838 through 15-841. Any violations of these provisions is a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000.

For convenience, several definitions in State law are contained on the reverse side.
Subscribed and sworn to me, a Notary Public for Montgomery County, Maryland, this 23rd

day of July, 2007.

[Signature]
NOTARY PUBLIC
My Commission Expires:

JAMES J. DeMARCO
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires March 15, 2008

LOCAL MAP AMENDMENT APPLICATION
DISCLOSURE STATEMENT
ATTACHMENT 1

Kaz Development, LLC and its subsidiaries made the following contributions to Montgomery County candidates during the period of April 2006 through July 22, 2007.

VALERIE ERVIN 11.3.06
\$ 500⁰⁰

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