

Resolution No. 15-1353  
Introduced: March 7, 2006  
Adopted: March 7, 2006

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

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By: County Council

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**SUBJECT:** APPLICATION NO. G-836 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Scott Wallace, Attorney for Owner Vedanta Center of Greater Washington D.C., Inc. and Contract Purchaser J. Kirby Development, L.L.C., OPINION AND RESOLUTION ON APPLICATION

Tax Account Nos. 13-00982556, 13-00966534, 13-00961315

**OPINION**

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, LLC and Vedanta Center of Greater Washington, D.C., Inc., requests reclassification from the RE-2 Zone (residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development, two dwelling units per acre) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. 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. Pursuant to Code § 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.

The Hearing Examiner found that the proposed Development Plan is not in substantial compliance with the applicable master plan, does not fully comply with the purposes, standards and regulations of the PD-2 Zone, does not provide for a form of development that will be compatible with adjacent development, and does not provide sufficient certainty to fully evaluate the adequacy and safety of external access points. Finding, further, that these deficiencies can all be remedied by changes to the Development Plan, the Hearing Examiner recommended a remand of the application to

provide the Applicants with the opportunity to rectify the deficiencies identified in the Hearing Examiner's report, and to propose a form of development that will be compatible with existing land uses in the surrounding area, including those uses confronting the subject site on the west side of Homecrest Road. Following the issuance of the Hearing Examiner's report, the Applicants submitted a written request to the Council for a remand of the application to allow the Applicants to submit a revised Development Plan for the Hearing Examiner's review.

The Montgomery County Planning Board (the "Planning Board") and its Technical Staff both recommended approval of the subject application, finding that the proposed development would be compatible with the surrounding area, would be consistent with the purposes and standards of the zone, would be consistent with the recommendations of the applicable Master Plan and would serve the public interest. The District Council notes that the Planning Board and its staff were not privy to certain changes that were made to the Development Plan subsequent to the public hearing, which might have affected some of their conclusions.

The District Council agrees with the Hearing Examiner's conclusions and incorporates her report and recommendation herein.

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue (to the west) and Layhill Road (to the east). The three lots comprising the subject property form a nearly square tract of land, with approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the property of the Wheaton

Moose Lodge, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Racquet and Tennis Club (the "Racquet Club"), a large complex of indoor and outdoor sports facilities with very large buildings and extensive parking lots.

Lot 3, at the east end of the site, is mostly wooded and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is developed with the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and as a home for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, is mostly grassy, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains, but a small stream known as Bel Pre Creek flows through the northeast part of the property. As a result, a substantial portion of the combined property is undevelopable stream valley buffer.

The surrounding area for this application consists, roughly, of the Bel Pre Road Area described in the *1994 Approved and Adopted Aspen Hill Master Plan* (which extends from Bel Pre Road to the south to Homecrest Road to the west, the property line of Argyle Country Club to the north and the Bel Pre Square Townhouses to the east, located across from North Gate Drive), plus properties that are either adjacent or directly or diagonally confronting.

The surrounding area contains a mix of uses including three- and four-story apartment buildings, senior housing including assisted living, townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. The zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning, the product of multiple individual rezonings that occurred mostly between 1965 and 1980.

The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text

amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

Lots 3 and 5 of the subject property are each developed with a single-family home, while lot 5 has been the site of the Vedanta Center for eight and a half years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere.

The Applicant proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six new single-family attached units to be marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms.

The existing Vedanta Center worship building, measuring approximately 4,300 square feet and located roughly in the middle of the site, would be retained. In addition, a new, 6,500-square foot structure would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a larger worship space and a cellar to serve refreshments, which is lacking in the current facility. The Center plans to use the existing auditorium as a multi-function meeting space. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height, excluding cupolas and domes, would be 24 feet. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from view from Bel Pre Road by the existing Vedanta Center buildings.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan shows 12 duplex units. Testimony indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. Each duplex unit is shown with a one-car garage and one driveway space. The plan shows a sidewalk winding from Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center facility, and from there to a path leading along the stream valley buffer to a proposed recreation area on the west side of the site.

To the south, the duplex units would be buffered from the adjacent Bel Pre Road by a stand of trees ranging in depth from about 25 feet to about 40 feet. To the west, as noted above, the duplex units are shown abutting the Vedanta Center parking lot, with a setback of about 65 feet. To the east, the duplex units would abut the property of the Wheaton Moose Lodge. The lodge structure is located directly across the property line from the location proposed for some of the duplex units; at its closest point, the lodge is shown approximately 62 feet from the two closest duplex units and 70 feet from four others. The duplex units would be buffered from the noise and activity of the Moose Lodge by a wooded area about 30 to 35 feet deep.

The Vedanta Center and its 12 duplex units would occupy roughly a third of the site, in the central and southeast portion of the site. Roughly another third of the site, in the central and northeast portion of the site, would be occupied by non-developable stream valley buffer and a provision for future dedication of a 50-foot road right-of-way along the northern border. The Development Plan shows the western third of the property as the main residential area, with 20 single-family, detached homes and six MPDU townhouses. The Development Plan shows most of the single-family homes facing each other across an internal roadway ("Road B"), each with a two-car garage and two driveway parking spaces. The MPDUs are shown clustered in two groups of three townhouses, which would be designed to have the appearance of large single-family homes. They would have their

own stub access road, and each would have a one-car garage and one driveway parking space. All of the streets would be connected by sidewalks. The Development Plan also shows a 2,500-square-foot open recreation area along the main internal roadway, with benches along the adjacent path.

The Development Plan shows one point of access on Bel Pre Road, aligned with the Vedanta Center's existing entrance and its parking lot, which would serve the Vedanta Center and the duplex units. It shows two points of access on Homecrest Road, "Road A" near the southeast corner of the site, not far from the intersection of Bel Pre and Homecrest Roads, and "Road C" at the very northern end of the site. Road C is proposed in an effort to satisfy a transportation objective stated in the Master Plan, which called for a road along the northern boundary of the subject site to provide internal circulation routes for future development in the area. As candidly stated by the Applicants' traffic planner, Road C would be convenient for the homes at the northern end of the development, but is not necessary for safe, adequate and efficient circulation. The Development Plan shows Road C stopping at the end of the last home, with a 50-foot right-of-way dedication along the remainder of the frontage so the road can be extended if future development warrants it.<sup>1</sup> The testimony indicated that Applicants intend to provide a small dedication of land along the site's Homecrest Road frontage, but this dedication is not clearly shown on the Development Plan. The intent is to provide 35 feet from the property line to the center of the roadway, consistent with a master plan recommendation that Homecrest Road should have a 70-foot right-of-way.

An additional element of the on-site circulation plan is a feature located where Road B would otherwise connect with the Vedanta Center parking lot, described as a "friendly connection." This connection would be paved, but would not have the appearance of a normal road. The specifics have not yet been determined, although the Applicants' land planner indicated that the connection would be available to pedestrians and emergency vehicles, but not to normal traffic.

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<sup>1</sup> Testimony indicated that Applicant J. Kirby Development expects to be obligated during site plan review to pay for construction of the road to the eastern property line at some future point, if needed for proposed development of properties to the east.

With regard to phasing, the Development Plan specifies that all development steps may occur in any order or simultaneously, provided that "construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit." Ex. 60(a).

The Development Plan in the present case shows access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, some intended right-of-way dedications, and areas intended for common use but not public ownership (the small recreation area on Road B and the stream valley). In its current form, the binding nature of the Development Plan is subject to the following limitations:

1. The Development Plan specifies that "Lot sizes and shapes and building locations are for illustration only and may be further revised at subsequent Preliminary and Site Plan proceedings."

2. Green area shown covers approximately 46 percent of the site, but the text of the Development Plan states that green area may be reduced, provided that the statutory requirement of a minimum of 30 percent green area is met.

3. A textual binding element specifies that the development will have a single access point on Bel Pre Road, and *no more than two* access points on Homecrest Road. This suggests that one of the two Homecrest Road access points shown on the Development Plan could be eliminated at a later stage of review.

The District Council finds that these limitations reduce the Development Plan to a document so lacking in specifics that it is impossible to fully and fairly evaluate compatibility with surrounding uses, compliance with the purpose clause for the zone or master plan consistency. The Development Plan states, without limitation, that "building locations are for illustration only." A broad, general statement of this kind leaves open the possibility that if the rezoning were approved, the Applicants (or successors in interest) might present a site plan to the Planning Board and its staff with a totally different site layout than what is currently shown. Similarly, the Development Plan provides for a possible reduction of green area by more than a third, from 46 percent of the site to 30 percent; it is

impossible to anticipate what the Development Plan would look like with such a dramatic reduction in green area.

Finally, the Development Plan leaves open the possibility that one of the two access points shown on Homecrest Road could be eliminated. This makes it impossible to evaluate consistency with the Master Plan, which proposed as one of its main objectives for the area an internal roadway that would begin in the northwest corner of this property. The promise of that roadway appears to have played a significant role in Technical Staff's evaluation of master plan compliance, so the potential for its elimination undercuts Staff's support for the application as well as that of the Planning Board, which relied on the Staff Report. The possible elimination of one of the Homecrest Road access points could also have impacts on the safety, adequacy and efficiency of vehicular circulation that have not been specified and, therefore, cannot be fully assessed.

The Applicants appear to labor under a fundamental misapprehension of the District Council's role in this case. The Montgomery County Zoning Ordinance specifies that in certain zones (mostly planned development and transit station zones), development is permitted "only in accordance with a plan approved by the district council at the time the land is classified" in one of these zones. Code § 59-D-1.1. The zones that require a development plan generally do not include the type of strict development parameters that are imposed in other zones, for example maximum building heights and minimum building setbacks. They do, however, require the submission of a development plan, which "must clearly indicate how the proposed development meets the standards and purposes of the applicable zone." Code § 59-D-1.3. The Zoning Ordinance specifies that a development plan must show general locations of points of access, the locations and uses of all buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, the location of parking areas and number of spaces, the location of land to be dedicated to public use, and the location of land intended for common or quasi-public use but not proposed for public ownership. Code § 59-D-1.3(a) – (c). These submission requirements ensure that the Council has enough information about the proposed development to fully assess its compatibility and compliance with applicable requirements.

At a minimum, the Council must have the information specifically required in a development plan, such as the locations proposed for buildings and points of access. In recognition of the need for some measure of flexibility at site plan to respond to field conditions, the Council has, in the past, approved development plans that stated that exact building locations or the exact location of an access point were illustrative. Approximate locations, or building envelopes, can provide a sufficient basis for evaluation of a proposed development at the zoning stage. In the present case, however, the application lacks even that level of detail. The submitted Development Plan leaves open the potential for a complete site re-design, a reduction of green area by as much as one third and the elimination of one of two access points shown on Homecrest Road. This is unacceptable.

In addition to the major flaws described above, the Development Plan contains a number of more minor deficiencies that must be addressed if this plan moves forward. These deficiencies are described in detail below.

1. Textual binding element No. 1 states that the number of units will not exceed 39, including the existing Vedanta Center guest house. The General Notes are written in more exact terms: 21 single-family detached units, 12 duplex units and six townhouses. During the hearing, Applicants' counsel indicated an intention to revise the General Notes to provide for "up to" the number of each unit type specified; the failure to make that change may have been a simple oversight. If the Applicants' intention is to leave the Planning Board the discretion to reduce the number of units, if necessary, during subdivision or site plan review, the General Notes must be changed to allow for that possibility.

2. Textual binding element No. 3 states that the addition to the Vedanta Center will not exceed 6,500 square feet of gross floor area. The graphic portion of the Development Plan depicts the proposed worship space addition with an approximate size of "6,000± SF." The "Development Program" (phasing) description describes the Vedanta Center expansion as "6,500± SF." These inconsistencies between text and graphics must be rectified to avoid confusion.

3. Textual binding element No. 4 states that fencing and landscaping "as shown on the Development Plan along Homecrest Road (within 10 feet of lot lines) shall be maintained by the Homeowners Association." This is consistent with testimony during the hearing, which indicated that the HOA would ensure uniform fencing and landscaping between the rear yards of the new homes and Homecrest Road. The Hearing Examiner, however, could not find any indications on the submitted Development Plan of fencing or landscaping along Homecrest Road. The graphic portion of the Development Plan and the textual binding elements must be consistent.

4. The Development Plan submitted here shows very clearly the intended road right-of-way dedications for Roads A, B and C, including the possible future extension of Road C along the full length of the northern boundary. It does not clearly show, however, the intended right-of-way dedication along Homecrest Road that was described during testimony. This omission must be rectified.

5. As discussed in more detail in Part III.F.2. below, the 50-foot right-of-way dedication shown for Road C may not be sufficient to build the access road that the Master Plan envisioned at this location. A finding of Master Plan compliance cannot be made without sufficient right-of-way dedication to ensure enough land to carry out this important Master Plan objective.

An additional flaw on a separate document relates to the NRI/FSD, Exhibit 23(d). The Zoning Ordinance specifies that a development plan must include "a natural resources inventory prepared in accordance with a technical manual adopted by the Planning Board. . . ." Code § 59-D-1.3(a). The submitted NRI/FSD does not show MNCPPC approval, although a memorandum from Environmental Planning Staff at the MNCPPC (attached to the Staff Report, Ex. 28) states that it was approved on June 6, 2005. A copy of the approved document should be submitted into the record on remand.

The District Council finds that the Development Plan submitted with this application does not satisfy all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The proposed development would be consistent with many of the goals set forth in the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"), including its broad goals related to housing diversity, environmental protection, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley, and some of the significant trees outside the stream valley might be preserved, as well. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would create a well-planned community, with an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout would better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than clumped together in a corner, with a separate (and narrower) access road. However, the District Council nonetheless finds that the Development Plan *substantially* complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific Master Plan recommendations for the Western Bel Pre Road Area, which includes the subject site: PD-2 zoning for consolidations of ten acres or more; protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

The only unresolved question concerning Master Plan compliance is the roadway along the northern boundary line, which is central to the Master Plan's vision for the development of the subject property and nearby parcels. The Master Plan calls for a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized

intersection. The Master Plan specifically recommended, both pictorially and in the text, an internal roadway along the northern edge of the subject property, with access from Homecrest Road. The road is specified as a secondary roadway, and the Master Plan suggests consolidating access drives with the adjacent Racquet Club if the proximity of the two entrances is considered a safety hazard. The submitted Development Plan provides for a 50-foot right-of-way dedication in the appropriate location, along the northern boundary of the site. It also states, however, in a textual binding element, that there will be "no more than two" access points on Homecrest Road. This suggests that one of the two access points shown on the Development Plan may be eliminated. Thus, the fulfillment of one of the Master Plan's key objectives is uncertain.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or with the capital improvement program, and would further county housing policy by creating diverse housing options, including affordable housing. The evidence demonstrates that the proposed development would satisfy the requirements of Local Area Transportation Review, would have minimal impact on public school capacity and, as consequence, would not be inconsistent with the county Growth Policy.

**§59-D-1.61(b): purposes of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.**

#### **1. The Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, some of which are satisfied by this application and some of which are not. The District Council's findings as to each paragraph of the purpose clause are set forth below.

**First paragraph: Master Plan implementation.** As discussed under (a) above, the proposed development would be in substantial compliance with most of the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and storm water management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities. The evidence is

inconclusive, however, as to whether the proposed development would implement the Master Plan's key internal roadway objectives for this site. Accordingly, this element of the purpose clause is not satisfied.

Second paragraph: social and community interaction, distinctive visual character, balanced mixture of uses. The proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center with unusual architecture would occupy a prominent central location, and because much of the site would consist of open stream valley buffer. A network of pedestrian sidewalks and trails would connect each of the residential areas with each other, the Vedanta Center, the recreation area on Road B, a path along part of the stream buffer, and adjoining public sidewalks, facilitating social and community interaction. Most of the homes would face other homes, further encouraging social interaction and a sense of community. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors.

The unified sense of community that the purpose clause suggests might be attained to a higher degree if the duplex units were adjacent to the single-family homes, rather than separated from them by the Vedanta Center parking lot, as suggested by some community members. On the other hand, the worship center would be less integrated into the development if the location of the duplex units did not require paths that would lead duplex residents to walk the grounds of the Vedanta Center to reach the stream valley trail and the community recreation area. Moreover, the area shown for the Vedanta Center parking lot appears to be significantly smaller than the area shown for the duplex units, making the "switch" suggested during the hearing impractical.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff

indicates that commercial uses would not be appropriate for a development of this size, and the District Council agrees. Based on the preponderance of the evidence, the District Council concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, which is currently dominated by residential uses other than single family detached homes.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve 4.2 acres of existing forest, mostly in the stream valley. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation area on Road B. The stream valley is not readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time, or on Road B. In addition, the preserved stream valley on the subject property would continue to form part of the larger stream valley that runs through the area and serves as a valuable amenity for all area residents. The District Council agrees with Technical Staff that the open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation area on Road B, the partial stream valley trail and the nearby public sidewalks.

The subject site is located with one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on the automobile.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility pole by a few feet. At the access point to Road C, ensuring a safe condition might require redesigning the size and location of the access point. As discussed earlier, the uncertainty surrounding this element of the project impedes full compliance with the purpose clause for the zone.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from three to two. The proposed pathways, partial stream valley trail and recreation area represent amenities that would be available to residents of the development, and to any residents of the larger community who care to enter the development to view the stream valley.

Eighth paragraph, second part: compatibility. The District Council is not persuaded that the proposed development as a whole would be compatible with existing uses in the surrounding area,

although some elements of the development would be compatible with their surroundings. The duplex units would be within 60 feet of the Moose Lodge building, but would be buffered by a 30- to 35-foot deep wooded area, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre propose for the subject site overall. The townhouses and two single-family detached homes backing onto Bel Pre Road, in the southwest corner of the site, would confront townhouses built at five d.u./acre and multi-family units at a density of approximately 22 d.u./acre. All of the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial.

The problematic issue in terms of compatibility is the number and size of the units proposed along Homecrest Road. These units are the most visible, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. Across Homecrest Road from the site are three single-family homes and a residential community for seniors and special needs care. Both sides of the street would have single-family detached dwellings with the proposed development in place, but there the similarities end. The three existing homes are located on large, wooded lots, with substantial space on all sides of each house. The Development Plan shows ten single-family detached homes backing onto Homecrest Road, each with a maximum height of 40 feet and ten to 15 feet between houses. Community members expressed a legitimate concern that these dwellings would have the appearance of a density closer to townhouses than to the typical density of single-family homes in the area. The new houses would be set back about 45 feet from the sidewalk, with some of the setback presumably occupied by landscaping and fencing to be maintained by the homeowner's association. Beyond the setback, the new homes would be separated from the existing residential lots by the 20-foot width of Homecrest Road, plus sidewalks. With a street that narrow and the houses so close together, the existing homes could feel hemmed in, with a vista that goes no farther than the uniform line of fences and houses

facing them. Moreover, the new development would not have the effect some community members hope for, of breaking up the high density concentrated at this intersection.

The overall density of the proposed development is 2.4 d.u./acre. This is based on the standard PD-2 density of two units per acre, plus a 22 percent density bonus for 15 percent MPDUs (six units out of 39). Breaking that down to examine the visual impact of the homes shown along Homecrest Road, the Hearing Examiner estimated that the principal residential area shown on the Development Plan occupies roughly the western third of the site, an area of about 5.3 acres. Within that acreage, the Development Plan shows 26 units – a density of 4.9 d.u./acre. This represents a nearly tenfold increase over the two-acres-per-lot density permitted under the current RE-2 zoning. It also represents a density considerably higher than the prevailing densities in the single-family portions of the surrounding area, zoned R-150 and R-200, both of which provide for standard densities of 2.2 d.u./acre.

As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to provide benefits such as efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection. Thus, higher density than the current zoning is expected and appropriate. The question is one of degree. Higher density should be accommodated in a manner that preserves compatibility with the surrounding area. The closeness of homes on the interior streets is an appropriate way to achieve higher density, as the off-site impacts would be minimal. Along a roadway frontage confronting single-family homes on large lots, however, site design requires more sensitivity to visual compatibility.

The Applicants are apparently frustrated by Technical Staff's refusal to permit units in the northeast corner of the site, a decision that expanded the already substantial environmental constraints on the property. However, the Applicants have the responsibility to work within the site constraints and present an application that is compatible with the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that present application is not proper for the comprehensive and systematic development of the County due to a lack of compatibility; is not in compliance with or capable of accomplishing all of the purposes of the zone; and is not in substantial compliance with the Master Plan.

## **2. Standards and Regulations of the Zone**

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy many, but not all of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres of land. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross

area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD Zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. A representative of the Moose Lodge confirmed this, stating that the Lodge rejected a request for negotiations. The adjacent property to the north is fully developed and used by the Racquet Club, and the other two boundaries of the property abut roadways. If the compatibility problems and other deficiencies noted in this report can be corrected, the evidence indicates that development of the subject property with less than 50 units would be in the public interest. Accordingly, the District Council finds that this requirement is satisfied.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse units, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation area on Road B and the trail along part of the stream valley are permitted in the PD Zone. The PD Zone also permits any nonresidential, noncommercial use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and the District Council considers it compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a

quiet neighbor. As discussed below, the specific requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density category is appropriate for the site. As discussed above, the actual dwelling unit density and its distribution on the site create compatibility problems, but these are not related to the density category.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed above, the District Council finds that the proposed development would not be compatible with existing development in the surrounding area. The application does, however, satisfy the specific setback and building height provisions.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from land adjacent to the north that is recommended in the Master Plan for single-family detached zoning. Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the adjacent property to the north. Adjacent

property to the east is recommended in the Master Plan for PD-2 zoning, so these limitations do not apply.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The proposed Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site. However, a textual binding element states that green space may be reduced by as much as a third, to the 30 percent minimum. This would continue to satisfy Section 59-C-7.16.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. As noted earlier, the Development Plan fails to clearly show the small dedication (described by Technical Staff as about six feet deep) required for the right-of-way of Homecrest Road. Accordingly, this requirement is not satisfied.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to avoid the traffic light. It would, however, provide pedestrian connections, separate from roadways, among the residential areas, the worship center, the partial stream valley trail and nearby sidewalks.

Due to the uncertainty concerning where access would be provided on Homecrest Road, the evidence does not support a finding that points of external access would be safe, adequate and efficient. It appears that safe entrances can be provided as shown on the Development Plan, if the utility pole is moved and vegetation is cut back at the Bel Pre Road entrance, and if the size and location of the Road C access point is carefully designed to address both the Master Plan and safety. This cannot be assessed, however, without a Development Plan that adequately accounts for contingencies.

**§59-D-1.61(d): preservation of natural features.** The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received DPS approval at the time of the hearing. However, the evidence indicates that the current plan contains only minor differences from the original plan, which was approved by DPS, and that no waivers are likely to be needed.

**§59-D-1.61(e): common area maintenance.** The Applicant has provided draft documents that adequately provide for perpetual maintenance of common and quasi-public areas by a homeowners' association.

In addition to the five development plan findings, the District Council also must consider the relationship of the present application to the public interest. When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. As discussed earlier, the recommendations from the Planning Board and its Staff appear to have been based on an impression that the road along the northern boundary of the site, which was a key Master Plan objective, was certain to be built. Based on the current Development Plan, that outcome is uncertain.

Accordingly, the District Council concludes that the subject application is not consistent with the applicable Master Plan.

The evidence of record indicates that the proposed development would have no adverse effects on traffic congestion, schools or public utilities. Given the uncertainty surrounding the access point or points proposed for Homecrest Road, it is not possible to fully evaluate impacts on traffic safety.

The Master Plan plays a central role in the purpose clause for the PD Zones, so in this context its recommendations and objectives are entitled to particular deference. Having found that the proposed development, as depicted on the submitted Development Plan, would not be consistent with the Master Plan, the District Council concludes that approval of the application in its current form would not be in the public interest. The District Council finds, however, that reclassification of the subject property to the PD-2 Zone with an appropriate development plan would be in the public interest. With the right development plan, such a project could provide housing diversity, a compatible form of development, environmental protection and the expansion of a religious institution that is open to the public and provides a spiritual home for its members.

For these reasons, the application will be remanded to the Hearing Examiner in the manner set forth below.

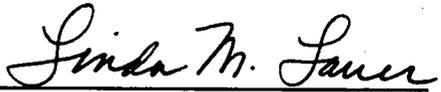
#### **ACTION**

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-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13<sup>th</sup> Election District, is hereby remanded to the Hearing Examiner with instructions to reopen the record, to provide the Applicants with the opportunity to (i) rectify the deficiencies on the Development Plan that are identified in this Resolution and in the Hearing Examiner's Report and Recommendation

dated February 6, 2006, and (ii) propose a form of development that will be compatible with existing land uses in the surrounding area, including those confronting the subject site on the west side of Homecrest Road.

This is a correct copy of Council action.

A handwritten signature in cursive script that reads "Linda M. Lauer". The signature is written in black ink and is positioned above a horizontal line.

Linda M. Lauer, Clerk of the Council