

Resolution No.: 15-1632  
Introduced: October 10, 2006  
Adopted: October 10, 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-850 FOR AMENDMENT TO THE ZONING ORDINANCE  
MAP, C. Robert Dalrymple, Esquire and Ann C. Martin, Esquire, Attorneys for Applicant,  
Lot 31 Associates, LLC, OPINION AND RESOLUTION ON APPLICATION**

Tax Account No. 07-00430190.

**OPINION**

Application No. G-850, filed on March 7, 2006 by Lot 31 Associates, LLC, requests reclassification of approximately 3.3 acres of County-owned land in downtown Bethesda from the R-60 and CBD-1 Zones to the TS-M Zone (Transit Station-Mixed). Applicant seeks to rezone lots 138, 139 and parts of lots 18 through 24, Block B of the Miller's Addition Subdivision, a site which is located on both the southwest and southeast quadrants of the intersection of Bethesda and Woodmont Avenues. The portion west of Woodmont Avenue is currently occupied by Parking Lot 31, and it is in the Arlington Road District of the 1994 Bethesda CBD Sector Plan. The portion east of Woodmont Avenue is currently occupied by Parking Lot 31-A, and it is in the Wisconsin South Corridor of the Sector Plan. The site will be developed with an underground garage containing approximately 1138 public and 342 private spaces (*i.e.*, totaling 1480 parking spaces), and a mixed-use residential/retail project above. The two buildings will have up to 250 dwelling units and 40,000 square feet of retail floor space.

Applicant, Lot 31 Associates, is the developer selected by the County in a competitive solicitation for proposals to develop the subject property. The County entered into an agreement with Applicant to

have Lot 31 Associates, LLC, serve as the County's agent for purpose of applying for and obtaining zoning and development approvals.

In addition to the subject rezoning application, this project is dependent upon two other administrative processes, a "mandatory referral" to the Montgomery County Planning Board for approval of the proposed public parking garage (#06806-DPWT-1), and an "abandonment" of a portion of Woodmont Avenue (#AB 684), which will allow that thoroughfare to be realigned to accommodate the development. The Planning Board approved the mandatory referral on June 28, 2006, and the Council conditionally approved the Abandonment Petition on August 1, 2006, in Council Resolution 15-1584.

The building planned for Lot 31 (*i.e.*, west of Woodmont) would be three to five stories tall, with retail space on the first floor and on two mezzanine levels above the first floor. The building planned for Lot 31A (*i.e.*, east of Woodmont) would be six to nine stories tall (up to 90 feet) and would also have retail space on the first floor and on two mezzanine levels above the first floor. The buildings would house 12.5% moderately priced dwelling units (MPDUs), and up to 35 "workforce housing units" (WFDUs). Because this development called for a height above the 75 feet recommended in the Sector Plan for this CBD area, Zoning Ordinance §59-D-1.61(a) required review by an Alternative Review Committee (ARC) to determine whether the inclusion of MPDUs made the additional height necessary, for the project to be financially feasible. The ARC reviewed the matter, and on June 12, 2006, issued a finding that the additional height was needed to make the project financially feasible.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), and in a report dated June 7, 2006, Staff recommended approval of the application. The Montgomery County Planning Board (Planning Board), considered the application on June 22, 2006 and, by a vote of 5 to 0, also recommended approval, as stated in a memorandum dated June 23, 2006.

The proposed development was strongly supported by the Coalition for the Capital Crescent Trail, the Sacks Neighborhood Association and Federal Realty Investment Trust, which has significant interest in the nearby Bethesda Row. A public hearing was noticed for June 27, 2006, and it proceeded as scheduled. In addition to Applicant's seven witnesses, two County officials, William Siebert III, Chief of the Parking Operations Section, Division of Operations, Department of Public Works and Transportation (DPW&T), and Elizabeth Bradford Davison, Director of the Department of Housing and Community Affairs (DHCA), appeared at the public hearing and testified in support of the project. Martin Klauber, the People's Counsel, participated in the hearing, and stated his support for the proposal. There was no opposition testimony at the hearing; however, a representative of the Ourisman Honda dealership which is adjacent to Parking Lot 30, testified to express the concern of that business that it be given adequate space to off-load its cars. In addition, an attorney for the Seasons, LLC, which owns a building adjacent to Parking Lot 31A, appeared and represented that his client, which had opposed the project, had reached an agreement with the Applicant, reflected in the final binding elements, and it no longer opposed the development.

The hearing in this case concluded on June 27, 2006, and the Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the TS-M Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-M Zone has been shown to be in the public interest.

To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated September 7, 2006, is incorporated herein by reference. 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 subject property is comprised of two tracts currently being used as public parking lots (Parking Lots 31 and 31A), with 279 surface parking spaces, and the portion of Woodmont Avenue between them.

Parking Lot 31, which is west of Woodmont Avenue, is located adjacent to, and north of the Sacks Subdivision, with the Capital Crescent Trail to the west, Woodmont Avenue to the east and Bethesda Avenue to the north. It consists of recorded lots 138 and 139, and parts of lots 18, 19, 20, 21, 22, 23 and 24. Parking Lot 31A, which is east of Woodmont Avenue, is located adjacent to, and west of, the Seasons high-rise apartment building. It consists of parts of lots 18 and 19, and is bordered on the north by Bethesda Avenue and on the south and west by Woodmont Avenue.

The property is approximately 1,500 feet south of the Bethesda Metro Station. The combined property is trapezoidal in shape, and the gross tract area, including dedicated public right-of-way, is approximately 3.3 acres (143,819 square feet). The net lot area (contemplating the abandonment of existing Woodmont Avenue right-of-way and re-establishment of the relocated Woodmont Avenue right-of-way by grant of easement) is approximately 3.07 acres (133,738 square feet).

The property is zoned R-60 (Residential, one-family) to the west of Woodmont Avenue, and CBD-1 (Central Business District-1) to the east of Woodmont Avenue. There are no historic structures or sites situated on the property, and the site contains no wetlands, streams, stream valley buffers, or one-hundred year floodplains. Site soils are considered suitable for development.

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 recommends describing the "surrounding area" as bounded by Elm Street to the north; Arlington Road to the west; and Bradley Boulevard, Strathmore Avenue, Woodmont Avenue, Leland Street and Wisconsin Avenue to the south and east, including properties on Miller Avenue. The District Council accepts this definition of the "surrounding area."

Land use in the surrounding area is mixed, and there are several zoning classifications, including C-2 and CBD-1. The Sacks Subdivision, located south of the subject property, is comprised of single-family detached residential units in the R-60 Zone. A three-story automotive retail building (Ourisman Honda), on C-2 zoned land, is located to the west of the subject site, just across the Capital Crescent Trail. A three-story retail building, a one-story retail building and a restaurant in the C-2 Zone, as well as an 8-story office building with a restaurant in the CBD-1 Zone, are located to the north of the property, across Bethesda Avenue. A 15-story residential apartment and retail building (the "Seasons") is located to the east of the subject property. It is 143 feet tall and is set back 13 feet from the eastern property line. This building is closer to the proposed buildings than any others in the surrounding area. Other nearby land uses include high-rise residential buildings, townhouses, condominiums, and retail and office uses.

Technical Staff recounted the zoning history of the area. The R-60 Zone was enacted and mapped, including Lot 31, in the 1954 Regional District Zoning. The R-60 Zone was subsequently confirmed and reconfirmed in the 1958 County-wide Comprehensive Zoning; SMA F-736, adopted August 15, 1972; SMA G-20, adopted December 6, 1977; SMA G-665, adopted June 26, 1990; SMA G-666, adopted June 26, 1990; and SMA G-711, adopted October 11, 1994. Parking Lot 31A's reclassification to the CBD-1 Zone dates back to SMA G-20, adopted on December 6, 1977, and it was confirmed in SMA G-666, adopted on June 26, 1990; and in SMA G-711, adopted on October 11, 1994

The components of the proposed project, as described by Technical Staff, are:

- **Residential Building Located West of Woodmont Avenue** - This building is located on the west side of Woodmont Avenue. It will be from three to five stories tall stepping up towards Bethesda Avenue from the southern portion of the property line. A service area for this building is located along the west side of Woodmont Avenue. Retail space will be on the first floor of this building and in two mezzanine levels above the first floor. The retail space will be located along a portion of the Capital Crescent Trail with direct access to Bethesda Avenue and Woodmont Avenue. The main entrance lobby for the residential portion of this building will be located on Bethesda Avenue.
- **Residential Building Located East of Woodmont Avenue** - This building is located on the east side of Woodmont Avenue. It will range from six to nine stories tall (90 feet), stepping

up from Woodmont Avenue to the east towards the existing adjacent 15-story residential building (the Seasons). The service area is located along Bethesda Avenue adjacent to the Seasons high-rise residential building. Retail space will also be on the first floor of this building and in two mezzanine levels above the first floor. The retail space will have direct access from Bethesda Avenue and Woodmont Avenue. The main entrance lobby for this residential building will also be located on Bethesda Avenue.

- **Public and Private Parking Garage** - Each building has access to the same underground, 342-space private parking garage associated with the private residential and retail space. The project also includes a 1,138-space public parking garage (County Parking Lot District). The combined public and private parking garage is located below grade under both buildings and Woodmont Avenue. Access to the combined garage is located along the east side of Woodmont Avenue and along Bethesda Avenue near the Seasons high-rise residential building.
- **Re-Alignment of Woodmont Avenue** - The Development Plan includes a re-alignment of Woodmont Avenue. This street will be closed during the construction of the below grade garage. Woodmont Avenue will be reconstructed with a small realignment.
- **Improvements to the Intersection of Woodmont Avenue and Bethesda Avenue** - The applicant proposes to neck-down two quadrants of the intersection of Bethesda. These proposed improvements coincide with current improvements by the Department of Public Works and Transportation (DPWT) to improve the intersection of Woodmont Avenue and Bethesda Avenue. These combined improvements are intended to improve pedestrian and bicycle safety, and circulation at the intersection of Woodmont Avenue and Bethesda Avenue. These improvements were recommended in the 1994 Bethesda CBD Sector Plan.
- **Streetscape, Public Use Space, and Active and Passive Recreation Space** - The applicant proposes street level retail and streetscape amenities to enhance the pedestrian experience along Bethesda Avenue and Woodmont Avenue.

The proposal is intended to be compatible with adjacent development and provide a transition from the Central Business District to the adjacent, single-family-detached neighborhood to the south. In addition, Bethesda Row would be improved by:

- Providing street-level retail and streetscape;
- Adding public seating (in non-restaurant areas) for those strolling or biking and wanting to rest and “people watch;”
- Constructing a “bike depot” at the southern intersection of the Trail and Bethesda Avenue;

- Establishing an on-site vehicular drop-off for bicycle and pedestrian access to the Trail on the west side of Woodmont Avenue, away from the main intersection; and
- Activating links to the [Crescent] Trail not only with appealing landscape architecture but also with two-story townhouse-style condominium lining the southern and western edges of the site and fronting on the Trail connection.

Pursuant to Zoning Ordinance §59-D-1.1, development in the TS-M Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-M Zone. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The binding elements, which are printed on the Development Plan (Exhibit 66(a)), are as follows:

1. Maximum FAR [floor area ratio] of 2.59 as reflected on development plan.
2. Maximum of 250 total dwelling units (final number of units and unit mix to be determined at site plan).
3. Maximum of 342 private parking spaces (total number of parking spaces based on unit mix to be determined at site plan).
4. Building setback from south property line, west of realigned Woodmont Avenue, to be 50 feet.
5. Building setback from east property line, east of realigned Woodmont Avenue, shall be 5 feet for the entire building line. Beginning at and above the second floor the building shall be setback from the east property line as shown on the plan entitled "Building Setback Plan At and Above Second Floor Adjacent to Seasons Building" entered into the public hearing record for this zoning application as Exhibit No 56 and which plan is also shown on the face of the development plan. [Exhibit 56 shows that, beginning on the second floor and above, the setback expands on the eastern side (*i.e.*, adjacent to the Seasons building) to 10 feet for a distance of 27 feet along the eastern property line, and then to 15 feet for the remainder of the eastern property line.]
6. The mechanical penthouse on the rooftop of the building located east of Woodmont Avenue will:
  - (1) be setback 40 feet from the shared property line with the adjacent Seasons Apartments to the east ("Seasons");

- (2) not have any primary vertical components of any cooling towers located closer than 75 feet from the shared property line with the Seasons (by example, pipes along the rooftop that are ancillary to a cooling tower would be allowed); and
- (3) have a maximum height of 14 feet above the roofline.
7. Measured from the measuring points shown on the development plan (identified on development plan as elevation 334.9 feet above sea level – the “Measuring Points”), maximum building heights (not including mechanical penthouse) are as follows:
- East of Woodmont Avenue: Building height not to exceed 90 feet as measured from the Measuring Points (elevation 424.9 feet above sea level), with step down to building height not to exceed 65 feet as measured from the Measuring Points (elevation 399.9 feet above sea level) at intersection of Bethesda Avenue and Woodmont Avenue.
  - West of Woodmont Avenue: Building height not to exceed 54 feet as measured from the Measuring Points (elevation 388 feet above sea level) for building west of Woodmont Avenue, with maximum building height of 14 feet as measured from the Measuring Points (elevation 348 feet above sea level) between 50 and 60 feet setback along southern property line (for town home style condominium units adjacent to single family Sack’s neighborhood to south).
8. Provision on-site of 12.5% MPDUs per County law and provision of up to 35 workforce housing units per DHCA Agreement, to be finally reflected at site plan.
9. Minimum 35% open space (active and passive recreational space/public use space), with final area to be determined at site plan.
10. Developer to construct realignment of Woodmont Avenue and improvements to Woodmont Avenue/Bethesda Avenue intersection per the Development Plan and future DPWT approvals, with final design and operation of the intersection for pedestrians, bicyclists and vehicles to be determined at site plan.
11. Loading docks serving buildings shall be enclosed within building area.
12. All residential units will be multi-family condominium units.
13. Dwelling units along the southern building edge of the building west of realigned Woodmont Avenue shall be townhome style condominium units.
14. The underground public garage shall exhaust through the roof of the on-site buildings west of Woodmont Avenue (and away from adjacent residential uses), this also being known as the existing Lot 31 property, and there shall be no exhaust from the underground public garage through any buildings (through the roof or otherwise) east of Woodmont Avenue, this also being known as the existing Lot 31A property.
15. A bicycle and pedestrian connection from Woodmont Avenue to the Capital Crescent Trail shall be provided along the southern property line within the 50-foot setback area, and the

final design and operations of the bike drop off area adjacent to Woodmont Avenue to be finalized with DPWT and M-NCPPC at site plan.

16. At time of site plan review, Applicant to provide appropriate hardscape/landscape in setback area along eastern property line. With the cooperation and authorization of the adjacent property owner to the east, coordinated hardscape/landscape amenities within the setback area located on the adjacent property to the east will be included as part of the amenity package for the redevelopment of Lot 31/31A by the Applicant.
17. Detailed information regarding the ultimate location, operation, and alignment of Woodmont Avenue between Bethesda Avenue and Leland Street shall be provided for DPWT and M-NCPPC review and approval at time of preliminary plan and site plan. New right-of-way for realigned Woodmont Avenue shall be established with DPWT at the time of preliminary plan and reflected on the record plat.
18. LATR study for the subject project to be provided by Applicant at time of preliminary plan reflecting approved public garage access points. The Applicant will further analyze capacity, design and operations of local road network.
19. The Applicant will request DPWT approval of a right-in/right-out limitation on ingress and egress to the public garage access along Bethesda Avenue.
20. Documentation of agreement between Applicant and DPWT allowing for private access beneath Woodmont Avenue to be provided at time of site plan, including documentation of future ownership of the public and private property.

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the TS-M Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

**§59-D-1.61(a): Consistency with Master Plan and other County Policies.**

The first required finding is consistency with County plans and policies. The subject site is located within the area analyzed by the *Bethesda Central Business District (CBD) Sector Plan*, approved and adopted in July, 1994. More specifically, Lot 31 is within the Arlington Road District and Lot 31A is in the Wisconsin South Corridor. This distinction accounts for the different zoning recommendations contained in the Sector Plan with regard to the subject site. Lot 31 is recommended for the TS-M Zone that

is sought by Applicant, but Lot 31A is recommended for its current CBD-1 classification, with its use anticipated as public parking. *Sector Plan, p. 125, Figure 4.34.*

Nevertheless, it is evident that the Sector Plan did not envision that the Lot 31A portion of the subject site would be combined with Lot 31 as a single development project, with the Public Parking Garage expanding beneath the entire site. Both the ARC and the Planning Board recommended approval of the additional height requested for the Lot 31A building, and the zoning recommendation has been superceded by the language of Zoning Ordinance §59-C-8.21(a), which permits the TS-M Zone within the CBD when an adjacent lot, or one separated only by a public right-of-way, is eligible for classification to the TS-M Zone. That is precisely the case here.

As such, the Sector Plan should be interpreted to give effect to its underlying intent for the area, and not strictly in accordance with its height recommendation or its CBD-1 recommendation for Lot 31A. A master plan is only a guide where, as here, the Zoning Ordinance does not make it mandatory. *See Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md. App. 607, 635-636, 701 A.2d 879, 893, n.22 (1997). In this case, the additional 15 feet of height sought by Applicant for the Lot 31A building (*i.e.*, permitting it to be 90 feet high) will actually make it more compatible with the adjacent Seasons building, which exceeds 140 feet in height, and with the confronting Artery building, which is almost as high. Reclassification of the entire site to a single zone, the TS-M Zone, is permitted by the current Zoning Ordinance and is reasonable in this instance.

The District Council finds that Applicant's proposal is fully consistent with the recommendations and urban design guidelines specified for Lot 31, and though not consistent with the zoning and height recommendations for Lot 31A, those recommendations have been superceded by subsequent development in the area and recent changes in the Zoning Ordinance. The District Council finds that the proposed development is consistent with the goals and objectives of the Bethesda CBD Sector Plan, and is thus in substantial compliance with the Sector Plan.

Another County policy which must be considered is the Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)). While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is also relevant to the District Council’s determination in a rezoning case. Under the 2003-05 AGP Policy Element (p.14), which remained unchanged in FY 2006, “[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” There is no such evidence in this case. We therefore turn to the remaining three public facilities, transportation, schools and water and sewer service.

#### 1. Transportation

Under the 2003-05 AGP Policy Element, subdivision applications are subject to Local Area Transportation Review (“LATR”) requirements. LATR generally involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion during the peak hour of the morning and evening peak periods. Congestion is defined by the County in terms of “critical lane volume” (CLV) above specified limits. The CLV standard specified for the relevant intersections is 1800.

It is clear from the LATR traffic study in this case that the proposed project and the garage will meet current County CLV standards; however, the “Synchro/Sim” traffic analysis (the third part of the LATR traffic study) demonstrates that “The programmed and planned pedestrian/bicycle improvements would result in longer motorist delays and vehicle queues,” and that there is a “trade-off between (1) pedestrian and bicycle safety and convenience and (2) vehicle delays and queues.” Exhibit 38(g), p. 66. Various traffic mitigation measures are being considered, including restricted turning movements, additional turn lanes, changes in traffic signal timing, and revising the proposed “neck downs” of the traffic lanes. Technical Staff Report, Exhibit 43, p. 17. The District Council finds that these issues cannot be resolved at the rezoning stage of this development, and that the planners will have to resolve these trade-offs at subdivision and site plan review.

The District Council finds that Applicant's proposal complies with the LATR standards and other transportation requirements. Based on the evidence of record, the District Council finds that transportation facilities will be adequate for this project.

### 2. School Capacity:

This property is located within the Bethesda Elementary School, Westland Middle School and Bethesda-Chevy Chase High School service areas. Bruce H. Crispell, Director of the Division of Long-range Planning, Montgomery County Public School's (MCPS), estimated that the impact of this project would be approximately twenty (20) elementary, ten (10) middle and eleven (11) high school students. Attachment 4 to Exhibit 43. According to Mr. Crispell and Technical Staff, the current Growth Policy schools test finds capacity adequate in the Bethesda/Chevy Chase cluster. The District Council concludes that the increased demand projected from the subject development is within the capacity of MCPS.

### 3. Water and Sewer Service:

Under the FY 2003-05 AGP Policy Element, p.14, "applications must be considered adequately served by water and sewerage if the subdivision is located in an area in which water and sewer service is presently available (*i.e.*, Category I). The subject site is served by public water and sewer systems, and is currently in Water Service Category W-1 and Sewer Service Category S-1. As stated by Technical Staff, "The public facilities are adequate to serve the proposed development . . ." Exhibit 43, p. 6. The District Council so finds.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with "applicable County plans and policies."

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

The second required finding is:

*That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

The requirements for the TS-M Zone are found in Code §59-C-8. The TS-M Zone is a “floating zone,” intended to be used in transit station development areas and within the CBD when an adjacent lot, or one separated only by a public right-of-way, is eligible for classification to the TS-M Zone. Section 59-C-8.21(c) also specifies that the TS-M Zone is intended for locations where substantial commercial or office uses already exist or where such uses are recommended by an approved and adopted master plan. That is the case here.

Section 59-C-8.21(d) provides:

*In order to facilitate and encourage innovative and creative design and the development of the most compatible and desirable pattern of land uses, some of the specific restrictions which regulate, in some other zoning categories, the height, bulk and arrangement of buildings and the location of the various land uses are eliminated and the requirement substituted that all development be in accordance with a plan of development meeting the requirements of this division.*

The District Council finds that Applicant’s development plan is consistent with the requirements of the Zoning Ordinance.

The purposes of the TS-M Zone are set forth in Code §59-C-8.23:

- (a) To promote the optimum use of the transit facilities by assuring the orderly development of land in transit station development areas and access, both vehicular and pedestrian, to metro stations;*
- (b) To provide for the needs of the workers and residents of transit station development areas;*
- (c) To provide for the incidental shopping needs of the transit facility riders at metro stations having parking facilities for large numbers of riders;*
- (d) To minimize the necessity for automobile transportation by providing, in largely residential transit station areas, the retail commercial uses and professional services that contribute to the self-sufficiency of the community;*
- (e) To obtain amenities for the residents and workers in transit station areas not ordinarily obtainable in conventional zoning classifications; and*
- (f) To prevent detrimental effects to the use or development of adjacent properties of the neighborhood and to promote the health, safety, morals and welfare of the present and future inhabitants of the district and the county as a whole.*

The proposed development meets the first purpose by providing for a public parking garage and connectivity to the Bethesda Metro Station, which is only 1500 feet away, and to the other transit facilities located in this district that will help optimize the use of transit for the residents and visitors to this portion of Bethesda. The development would fulfill the second purpose by the inclusion of mixed income and mixed height of residential uses, and by the creation of the street retail and an improved pedestrian circulation environment.

The main street retail that is proposed here, completing Bethesda Row, will accomplish the third purpose of providing for incidental shopping needs of transit facility riders. The fourth purpose is to *minimize the necessity of the automobile*. Mixed-use developments such as the subject one require less reliance on the automobile for services and amenities. Easy access to the Bethesda Metro will also help meet that purpose.

The fifth purpose is to obtain amenities not available in conventional zoning. Conventional zoning does not allow the flexibility that is required to provide the amenities that are being proposed here, such as the enhancements to the Capital Crescent Trail, the additional landscaping, the bicycle drop-off for the users of the trail, and streetscape amenities. The proposed development would satisfy the final purpose of preventing detrimental affects upon the adjacent properties by providing a transition from the more intensely developed portions of Bethesda to the less intensely developed areas to the south, such as the Sacks neighborhood.

The proposed development will put 250 residential units within easy walking distance of a Metro station, and will include MPDUs as well as workforce housing. It will provide 40,000 square feet of retail space and improvements to the sidewalks and crosswalks to encourage walking and the use of the transit by future employees and residents. Streetscape, bikeway improvements and adjacent retail space will reduce the dependence on the automobile in the area. Based on the ample evidence in the record, the District

Council finds, as did the Hearing Examiner, Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-M Zone.

Zoning Ordinance §59-C-8.23 specifies the uses permitted in the TS-M Zone. All of the uses proposed for the Mixed-Use Project (residential and retail) are permitted in the TS-M zone.

Zoning Ordinance §59-C-8.24 provides that the TS-M Zone is “permitted only in a Transit Station Development Area defined in section 59-A-2.1 and in accordance with an approved and adopted master plan or sector plan, except in areas within and adjacent to a Central Business District in accordance with Section 59-C-8.21(a).” Lot 31 is within a Transit Station Development Area as defined in Section 59-A-2.1, while Lot 31A is within the Central Business District, and is permitted pursuant to Section 59-C-8.21(a), as described above.

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-M Zone conform to “the facilities and amenities” of the Sector Plan, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use.

The proposed development would provide a realignment of Woodmont Avenue to permit optimal use of Lot 31A and to improve pedestrian circulation. It also will provide a bicycle drop-off area, connected to the Capital Crescent Trail by a new bike path and sidewalk, a variety of streetscape improvements and a total of at least 35% open space, including a minimum of 10% public use space and 25% active and passive recreational space. The realignment of Woodmont would result in dedication of the new right-of-way to the County, once its precise contours have been established.

In addition to meeting the purposes and intent of the TS-M Zone, a development must meet all the applicable development standards set forth in Code Section 59-C-8.4. The District Council finds that Applicant’s development plans are in accordance with all of the standards and regulations of the TS-M Zone, as set forth in Article 59-C of the Code.

The next part of "Finding (b)" required by Section 59-D-1.61 is a determination that the proposed development would provide the "maximum safety, convenience, and amenity of the residents." This issue has been discussed above in conjunction with the requirements for the TS-M Zone. The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

The final required determination under "Finding (b)" is that the proposed development be compatible with adjacent development. Because there is a mix of uses completely surrounding the subject property, Applicant decided to make this project a "four sided building," which attempts to face each use in its appropriate way for the purpose of compatibility. The bike drop-off, which is to the south and east of the property, links to the Capital Crescent Trail and provides the needed buffer to help protect the single-family homes to the south. The south and west corner of the site employs a townhouse style construction intended to bring the massing down to a more human scale, more compatible with the single-family homes in the Sacks community immediately to the south. These two-story townhouse style condominiums also turn towards the Capital Crescent Trail to make that a more pleasant experience for those utilizing the trail.

There is also a courtyard in the center of the building to break up the townhouse row along that south perimeter, and to open it up light and air. The bicycle drop-off area, which is at the southeastern corner of the site, links to the bicycle trail that is in front of the townhouses. On the east side of Woodmont, new setbacks from the Seasons building were agreed to in order to make the buildings more compatible. The 90 foot tall building, which is proposed, with a step down to 65 feet on the western side, would be more compatible with the existing structures to the east and north, and with the building planned for Lot 31 across Woodmont Avenue. Applicant's efforts were to vary the view of each side of the proposed buildings to be compatible with surroundings, and yet relate to each other.

Technical Staff and the Hearing Examiner found the proposed development to be compatible with the surrounding development. Staff noted that the Lot 31 building will be limited to three to five stories

(65 feet maximum), and that the town-house style multi-family units are located along the southern property line adjacent to the existing single-family dwelling units. In addition, a setback of 50 feet will be provided, and a large green space extending into the project will be provided adjacent to the existing development. These features all help to make the development compatible with the nearby residences.

As to the Lot 31A building, Technical Staff noted that its planned 90 foot height would be compatible with the adjacent high-rise residential building (the Seasons), which is approximately 143 feet in height. Moreover, the step down from 90 feet for the east side of the proposed Lot 31A building to 65 feet on the Woodmont Avenue side of the building will make it compatible with the Lot 31 building to be located west of Woodmont Avenue. The increased setbacks for the Lot 31A building from its neighbor to the east, as specified in the Binding Elements, will also increase compatibility by allowing more space between the two buildings and avoiding a “canyon effect.”

For all these reasons, the District Council finds Applicant’s Development Plan to be compatible with adjacent development.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.**

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.” As discussed above, the balance between vehicular and pedestrian circulation systems for this project is a work in progress which will not be completed until the final alignment and configuration of Woodmont Avenue is decided upon at subdivision and site plan. Reaching the correct balance is critical to the public interest, but it is not something that can be decided at the rezoning stage. Transportation Planning Staff made it clear in its report (Exhibit 43, Attachment 1, pp. 4-6) that it continues to review the matter and the possibility of various traffic mitigation measures.

Applicant’s transportation expert, Martin Wells, testified (Tr. 188-218) that the access points to the proposed project will, in fact, be safe, adequate and efficient. The proposed driveway entries to the garage

are located as far as practicable from the Woodmont-Bethesda intersection. With regard to safety of that intersection, Mr. Wells opined that the geometric changes that are proposed will make existing conditions safer by reducing the pedestrian crossing distances and by reducing the steep crossing angle at the Woodmont-Bethesda intersection to make it more like an ordinary intersection.

Mr. Wells also testified that the internal design of the garage is adequate and efficient, in that the single point of revenue control has an advantage for “way-finding” and directional signage. There will be adequate stacking and queuing capacity inside the garage, and the placement of the garage driveways, and the modifications to Woodmont Avenue at Leland Street and Miller Avenue, will minimize any adverse traffic impacts on the surrounding community.

Based on the entire record, the District Council finds that external access and internal circulation will be safe, adequate and efficient for both vehicular and pedestrian traffic.

**§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources**

No environmental issues were raised in this case. The site is not located in a Special Protection Area or Primary Management Area. It has no steep slopes or erodible soils, and there are no wetlands or streams on the site. One-half acre of afforestation will be needed to meet the requirements of the Forest Conservation Law. Technical Staff indicates that a combination of street trees in the public right-of-way and additional landscaping in the setback area from the existing neighborhood will meet the requirement.

An approved stormwater management plan is required at the time of the approval of the Preliminary Plan. Currently there are no storm water management facilities on either Lot 31 or 31A. Applicant proposes to provide a hydrodynamic facility along Woodmont Avenue, and within the first level of the garage there will be two storm filter facilities that will use a cartridge filtration system to clean the water and discharge it back into the receiving or existing storm drain lines.

Applicant is requesting a waiver of channel protection volume controls based on the fact that the project will actually reduce the amount of imperviousness. The existing site is approximately 95 to 100

percent impervious right now. Applicant plans to reduce that by about 30 percent, to a level of approximately 70 percent imperviousness. This reduction in imperviousness will reduce the flow off the property to less than exists today, and the water quality facilities will produce cleaner water runoff.

According to Applicant's engineer, sediment control takes care of itself on this type of project since a large hole is being created which will hold the sediment. There will also be some perimeter measures around the edge, to protect the rights-of-way and the Sacks subdivision. There will be very little grading because the builders will be creating a hole for the garage and developing up from the garage to the residential component.

In sum, the District Council finds that Applicant has demonstrated the environmental controls required by "Finding (d)."

**§59-D-1.61(e): common area maintenance.**

The fifth required finding is "[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient."

Applicant, Lot 31 Associates, is the developer selected by the County in a competitive solicitation for proposals to develop the subject property, which is owned by the County. The County entered into an agreement with Applicant to have Lot 31 Associates serve as the County's agent for purpose of applying for and obtaining zoning and development approvals. That agreement is in the record as Exhibit 4.

Applicant's commitment to perpetual maintenance of all recreational and other common or quasi-public areas is established by General Note 19 on the Development Plan (Exhibit 66(a)); by Applicant's Statement in Support of the Application (Exhibit 15, Part V, p. 17), by the testimony of Douglas Firstenberg (Tr. 105-106), a representative of Lot 31 Associates, and by the July 5, 2006 letter to the Hearing Examiner from Applicant's attorney (Exhibit 62(b)). General Note 19 provides that "Land intended for public use but to remain in private ownership will be maintained in perpetuity for public use

pursuant to agreement with the County.” The Applicant’s Statement, the Firstenberg testimony and the attorney’s letter indicate that maintenance of the recreational and other common or quasi-public areas will be managed by a combination of the County, which is responsible for the public garage, rights-of-way and sidewalks, and the condominium entity which will be created as part of the overall land-and-building condominium structure. Condominium documents will specifically set forth perpetual maintenance requirements, and the County and the condominium entity may contract with the “Bethesda Urban Partnership” to physically conduct this maintenance.

The District Council finds that Applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

#### ***The Public Interest***

The applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

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

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. As outlined above, Applicant’s proposal is fully consistent with the recommendations and urban design guidelines specified for Lot 31, and though not consistent with the zoning and height recommendations for Lot 31A, those recommendations should not be dispositive in this case. The District

Council finds that the proposed development is consistent with the goals and objectives of the Bethesda CBD Sector Plan, and is thus in substantial compliance with the Sector Plan.

As already mentioned, the Hearing Examiner, the Planning Board and the Technical Staff all recommended approval of the proposed rezoning. The impact on public facilities was also discussed above. The evidence indicates that, in general, transportation, schools and water and sewer services would not be adversely affected by the proposed development. However, there is a caveat – vehicular traffic will likely be slowed at the crucial intersection of Bethesda and Woodmont Avenue because of the efforts to make it more pedestrian friendly, and it will clearly be slowed during two years of construction because Woodmont Avenue south of Bethesda Avenue will be closed to vehicular traffic.

These are very important public interest concerns, but they cannot be resolved as part of this rezoning application. The proper balance between pedestrian and vehicular traffic, will have to be resolved at subdivision and site plan. In any event, the record demonstrates that Technical Staff, the Planning Board and DPW&T are all acutely aware of the problem and will be working on it. We do know that the project will bring approximately 1138 new public parking spaces to an area that sorely needs them, and will provide additional retail space and affordable housing to the downtown Bethesda area, all of which is in the public interest.

There has been much public support for, and virtually no opposition to, this project, as reflected in input from public interest groups and government officials. The District Council concludes that the proposed development would be in the public interest.

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 proposed development satisfies the intent, purpose and standards of the TS-M Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the TS-

M Zone has been shown to be in the public interest. 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-850, requesting reclassification from the R-60 and CBD-1 Zones to the TS-M Zone of approximately 3.3 acres of County-owned land on the southwest and southeast quadrants of the intersection of Bethesda and Woodmont Avenues (Lots 138, 139 and parts of Lots 18 – 24, Block B of the Miller's Addition Subdivision) in Bethesda, in the 7<sup>th</sup> Election District, be *approved* in the amount requested and subject to the specifications and requirements of the final Development Plan, Exhibit 66(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, in accordance with §59-D-1.64 of the Zoning Ordinance. The reproducible original and copies of the Development Plan should be corrected by removing any reference to the incorrect Tax Account No. 07-00430361. The correct Tax Account No. 07-00430190 should remain on the Development Plan.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council