


MEMORANDUM

July 8, 2014

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Worksession – District Map Amendment (DMA) G-956

On July 3, the Committee voted to recommend the following changes from the proposed DMA:

- 1) Revise C-1 translations as follows:

Location of C-1 Zoned Land	Proposed Translation
C-1 abuts R-150 or a lower density residential zone, or property is >5 acres or contiguous with 5 or more acres of C-1	NR 1.0 0.75 H 45
Property is in a <u>master plan designated historic district</u>	NR 1.0 0.75 H 45
Abuts R-90, R-60, or R-40 zone	CRT 0.5 0.75 , C 0.5 0.75 , R 0.25, H 35
Confronts R-90, R-60, or R-40 zone or abuts townhouse or more intense zone	CRT 0.75, C 0.5 0.75 , R 0.25, H 45 35
Abuts townhouse or more intense zone	CRT 1.0 0.75 , C 0.75, R 0.5 0.25 , H 45

(The Committee noted that this would resolve some of the specific property concerns of the Greater Colesville Civic Association.)

- 2) Revise C-2 translations as follows:

Location of C-2 Zoned Land	Proposed Translation
Abuts R-150 or a lower intensity residential zone, or is a regional shopping center	GR 1.5 H 45
Abuts R-90, R-60, or R-40 zone	CRT 1.5, C 1.5, R 0.75 0.5 , H 45
Confronts R-90, R-60, or R-40 zone	CRT 2.0 1.5 , C 1.5, R 0.75 0.5 , H 45
Abuts townhouse or more intense zone and is <300' from one-family detached zone	CRT 2.25, C 1.5, R 0.75, H 45
Abuts townhouse or more intense zone and is >300' from one-family detached zone	CRT 2.25, C 1.5, R 0.75, H 75

(The Committee noted this would address some concerns about the property on Oak Drive in Kensington.)

- 3) Revise the zoning in the Germantown area affected by a master plan recommendation for an average density. (The exact zoning recommended will be determined on July 10.)
- 4) Correct the already approved PD-3 zoning for 10400 Darnestown Road.
- 5) Reflect the approved site plan on the Chevy Chase Center and apply CR 0.75, C 0.75, R 0.25, H 55 T zoning.

The Committee considered but did **not** recommend changing the following:

- 6) The Planning staff's interpretation of binding height and density (3-0).
- 7) The proposed translation of I-1 zoning in the Westbard area to IM 2.5, H 50 (2-1; Councilmember Elrich would limit any IM zoning to 45 feet if it abuts a residential zone).
- 8) Making all the zoning of all land with existing building consistent with the height and density of the building (3-0).
- 9) The Zoning Rewrite's provisions for MPDUs (3-0).
- 10) The proposed zoning for the TOMX-2 and TOMX-2/TDR zone near Shady Grove Metro (3-0).
- 11) The proposed zoning for:
 - the Grove Site – as corrected June 3 - CR 0.75, C 0.75, R 0.25, H 80 T (3-0)
 - the C-4 property in Westbard (3-0)
 - 1315 Apple Avenue (3-0)
 - The Woodmoor shopping Center (2-1; Councilmember Elrich would recommend CRN or NR zoning)
 - RE-2 property in Darnestown (3-0)
 - Quiagen property in Germantown (3-0)
 - The Pleasants' properties (3-0)

Remaining Issues

1) Pooks Hill Marriott site

Planning staff and members of the Council have received inquiries about the proposed mapping for the Pooks Hill Marriott site. The property is currently zoned H-M (Hotel-Motel), with a maximum FAR of 1.0 and a maximum height of 15 stories.¹ The correspondence regarding this property has come from a representative of the property owner, as well as from a representative for the neighboring Promenade community.

In the initial DMA, the proposed translation for this property was CRT 1.0, C 1.0, R 0.75, H 150. In September, the residential FAR was lowered from 0.75 to 0.5 following discussions with the Committee regarding limitations on residential FAR for current commercial zones. Upon further review this spring, it was noted that the standard formula for converting stories into feet was not adhered to for this property. In general, to convert stories into feet, Staff assumed 10 feet for each story of a building and

¹ The H-M zoning did not allow any residential uses. The CR or CRT zone would allow 0.5 FAR for residential use under Planning staff's recommendation.

added 10 feet to accommodate the additional height necessary for ground floor retail.² To apply this rule to the Pooks Hill site meant changing the base zone from CRT to CR, as the maximum height allowed under the CRT zone is 150 feet. In April, Planning staff made a correction to the map, to CR 1.0, C 1.0, R 0.5, H 160.

The residents of the Promenade condominium are concerned about the potential loss of green area that would no longer be required under the CR zone. The same residents also expressed concern over the change in translation from CRT with a height of 150 feet to CR with a height of 160 feet.

Language in the adopted code ensures that binding elements for any property under a development plan or schematic development plan continue to apply until the property is rezoned through a sectional or local map amendment, or is amended through a major development plan amendment. To address the desire that the green area minimum required under the H-M zone be retained, staff recommends a new zoning code requirement for adherence to any green area requirement in effect on October 29, 2014. This requirement would be in addition to binding elements. This potential ZTA could retain the higher green area requirement of the MXN, MXPD, C-P, and I-3 zones until a sectional or local map amendment rezones the property, if the Council wishes to apply the concept more broadly.³

A representative of the Pooks Hill Marriott supported the change in translation from CRT with a height of 150 feet to CR with a height of 160 feet; however, they believe the residential FAR should be higher than 0.5 (see © 1-7.). (Comments from nearby residents are attached. See © 8-13.)

Staff expects additional material from concerned parties after the memorandum is completed.

2) Kaiser Foundation Health and the Symmetry at Cloverleaf sites in Germantown

In the zoning translation, the property with a master planned recommended average density of 1.0 FAR⁴ is proposed to convert to CR 1.0, C 0.75, R 0.5, H 145 T. On July 3, the Committee recommended retaining the maximum of 2.0 FAR of the property's current zoning.

Staff recommends applying the previously recommended zone of CR 2.0, C 1.5, R 0.75, H 145 T to implement the Committee's 2.0 FAR recommendation.

3) Woodmore Shopping Center – request to revisit

Councilmember Elrich asked for the Committee's consideration of additional information concerning the Woodmore Shopping Center (see © 12-14). Councilmember Elrich believes that the master plan did

² Several zones in the current code limit height based on stories and feet:

O-M zone	5 stories or 60'
C-O zone	3 stories or 42'
C-2 zone	3 stories or 42', or 5 stories or 60'
C-3 zone	7 stories or 84'
C-4 zone	3 stories or 40'

³ A table documenting the current green space/open space requirement for all floating zones can be found on © 38.

⁴ "Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of Crystal Rock Tributary (SM-1). To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include limited street level retail and a maximum of 30 percent residential uses. Street level retail must conform to the Plan's urban design guidance." [Page 67, first bullet]

not envision CRT zoning. He recommends CRN or NR zoning, which would limit uses in a manner more consistent with the text of the 1996 Four Corners Master Plan.

4) Wildwood Manor Shopping Center

A request to revert to the default conversion for O-M zoned property (EOF 1.5 H 75) was received at the deadline for this memorandum (see © 15-17). Staff will comment at the Committee's worksession.

5) Changes to the comprehensive table of zoning translations

Planning Staff has found instances where the comprehensive documentation of zoning translation did not match the zone they mapped and intend to apply. The document also needed to be updated with PHED approved changes to the zoning translation and approvals by SMA. The following list corrects the table which will be part of the legislative history of DMA G-956. The circle page numbers refer to the table in the Committee's July 3 packet:

ERRORS

- *FSHIP-03 (Circle Page 25):
The conversion is shown as being CR-3.0 C-2.75 R-0.25 H-145 T. However, this was a staff error in the DMA that has already been corrected. The R should be 3.0. So the actual conversion that should be shown is CR-3.0 C-2.75 R-3.0 H-145 T.*
- *GSSCR-05A (Circle Page 32):
The conversion is transposed with the next one. GSSCR-05A should have CRT-0.5 C-0.5 R-0.25 H-70 T. Recommendation to modify height in list of changes pending PHED approval.*
- *GSSCR-05B (Circle Page 32):
The conversion is transposed with the previous one. GSSCR-05B should have CRT-0.5 C-0.25 R-0.25 H-70 T. Recommendation to modify height in list of changes pending PHED approval.*
- *SDYGR-04 (Circle Page 12):
This is not a non-standard conversion. It is exactly the same as the standard conversion (listed directly above). This paragraph should be deleted.*
- *WFLNT-01 (Circle Page 13):
The H on this conversion should be H-220. The correct full conversion is CR-2.0 C-0.5 R-1.5 H-220 T.*

MISSING NON-STANDARD CONVERSIONS

- *BTHDA-41: Should convert from C-2 to CRT-2.25 C-1.5 R-0.75 H-60.*
- *BTHDA-42. It is C-2 being converted to CRT-1.5 C-1.5 R-0.5 H-45. The non-standard conversion will indicate that the height is the result of a request to match approvals for 42' under Building Permit 274090 (approved in 1992).*
- *NBETH-09: Should convert from RMX-3C to CR-2.0 C-0.5 R-1.5 H-220 T. (This is the same zoning polygon as WFLNT-01 above, but it is split between master plans. We should just make the entry for WFLNT-01 on Circle Page 13 say WFLNT-01/NBETH-09).*
- *NBETH-10: Should convert from I-3 to EOF-1.5 H-100 T.*
- *NBETH-11: Should convert from I-3 to EOF-1.0 H-100 T.*
- *NBETH-12: Should convert from I-3 to EOF-1.25 H-100 T.*
- *SLVSP-21: Should convert from CBD-2 to CR-5.0 C-4.0 R-4.75 H-200 T.*
- *TAKOM-16: Modified below based on PHED approved changeso TAKOM-17: Modified below based on PHED approved changeso TAKOM-18: Modified below based on PHED approved changes*

- WDMNT-13: Should convert from CBD-1 to CR-3.0 C-1.0 R-2.75 H-120 T.

UPDATES BASED ON PHED APPROVED CHANGES (These have an asterisk* in the comprehensive zone translation document. These changes will appear with the next update to the online zoning map on July11.)

- The C-1 and C-2 zones are revised per item #1 (C-1) and #2 (C-2) in this packet.
- BTHDA-18 – Changed because C-2 Res'l standard changed. Still non-standard due to Height. Will now be CRT-1.5 C-1.5 R-0.5 H-35.
- BTHDA-33 – Changed because C-2 standard changed. Still non-standard due to Height. Will now be CRT-1.5 C-1.5 R-0.5 H-35.
- BTHDA-34 – (renumber to BTHDA-34A) Changed because C-2 standard changed. Still non-standard due to Height. Will now be CRT-1.5 C-1.5 R-0.5 H-35.
- BTHDA-34B (new, split from BTHDA-34) Changed because C-2 standard changed. Also, Steve Robins asked for built height. Will now be CRT-1.5 C-1.5 R-0.5 H-40.
- CLRKG-04 – Changed because C-1 abutting/confronting RLD default changed. Non-standard because MP Height. Will now be NR-0.75 H-30.
- FSHIP-06 – Changed to reflect built height. Will now be CR-0.75 C-0.75 R-0.25 H-55 T.
- POTMC-06 – Changed to reflect new standard conversion for C-1 abutting/confronting RLD. Non-standard because MP Height. Will now be NR-0.75 H-35.
- POTMC-13 – (new) This is the CMA rolled into the DMA at Stonebridge. Is R-200, should be PD-3, which is happening because of the DMA.
- SANDY-01 – Changed to reflect new C-2 conversion, however, MP limits Comm'l to 0.75 FAR, height to 30'. Will now be CRT-1.25 C-0.75 R-0.5 H-35.
- SANDY-04 – Changed to reflect new C-1 in Historic Districts Rule. Height limited by Overlay/MP. Will now be NR-0.75 H-30.
- TAKOM-01 – Changed to reflect new C-2 alternate conversion. Height nonstandard by TP/ESS Overlay. Will now be CRT-1.5 C-1.5 R-0.5 H-50.
- TAKOM-02 – Changed to reflect C-1 in Historic Districts Rule. Height nonstandard by TP/ESS Overlay. Will now be NR-0.75 H-50.
- TAKOM-03 – Changed to reflect C-1 in Historic Districts Rule. Height nonstandard by TP/ESS Overlay. Will now be NR-0.75 H-50.
- TAKOM-04 – Changed to reflect C-1 in Historic Districts Rule. Height nonstandard by TP/ESS Overlay. Will now be NR-0.75 H-50.
- TAKOM-07 – Changed to reflect new C-2 alternate conversion. Height nonstandard by TP/ESS Overlay. Will now be CRT-1.5 C-1.5 R-0.5 H-50.
- TAKOM-08 – Changed to reflect new C-2 alternate conversion. Height nonstandard by TP/ESS Overlay. Will now be CRT-1.5 C-1.5 R-0.5 H-50.
- TAKOM-09 – Changed to reflect new C-2 alternate conversion. Height nonstandard by TP/ESS Overlay. Will now be CRT-1.5 C-1.5 R-0.5 H-50.
- TAKOM-10A – (renumbered from TAKOM-10) No change to zone.
- TAKOM-10B – (new, split from TAKOM-10) Split from TAKOM-10 because one C-2 parcel actually abuts R-60. Nonstandard because TP/ESS. Will now be CRT-1.5 C-1.5 R-0.5 H-50.
- TAKOM-16 – Changed because of the new Historic District Rule for C-1. Height 50 because of TP/ESS Overlay. Will now be NR-0.75 H-50.
- TAKOM-17 – Changed to reflect C-1 alternate conversion. Height because TP/ESS Overlay. Will now be CRT-0.75 C-0.75 R-0.25 H-50.
- TAKOM-18 – Changed to reflect C-1 alternate conversion. Height because TP/ESS Overlay. Will now be CRT-0.75 C-0.75 R-0.25 H-50.

- *TAKOM-19 (new) – This is being split from TAKOM-03W, which is within the Historic District. TAKOM-19 is not in the Historic District, and therefore should get the (new) default conversion for C-1 confronting/abutting, except with a 50' height for the TP/ESS Overlay. Convert to CRT-0.75 C-0.75 R-0.25 H-50*
- *WDMNT-12 (delete) – This is being merged with WDMNT-06, since it now has the same conversion to CR-5.0 C-1.0 R-4.75 H-145 T.*

CHANGES PENDING PHED APPROVAL ON 7/10/14 (These have an asterisk in the comprehensive zone translation document. These changes will appear with the next update to the online zoning map on July 11.)*

- *GRMTC-01- Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.75 R-1.0 H-145 T*
- *GRMTC-04 - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.75 R-0.5 H-125 T*
- *GRMTC-07 - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.25 R-1.0 H-145 T*
- *GRMTC-14 - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.5 R-1.5 H-100 T*
- *GRMTC-15A - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.75 R-0.75 H-100 T*
- *GRMTC-15B - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.75 R-0.75 H-100 T*
- *GRMTC-15C – Master plan only limits non-residential density to 1.0 FAR. Will be (if approved) CR-2.0 C-1.0 R-1.5 H-100 T*
- *GRMTC-20B - Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.5 R-1.5 H-40 T*
- *GRMTC-24 – Changed to no longer reflect the “average” language in the Sector Plan. Will be (if approved) CR-2.0 C-1.5 R-0.75 H-145 T.*
- *GSSCR-05A – Changed to reflect a request to map to 100' (allowed by the zone) since the LMA is silent. Will now be CRT-0.5 C-0.5 R-0.25 H-100 T.*
- *GSSCR-05B – Changed to reflect a request to map to 100' (allowed by the zone) since the LMA is silent. Will now be CRT-0.5 C-0.25 R-0.25 H-100 T.*

This packet includes

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October 24, 2013

Ms. Pam Dunn
M-NCPPC
8787 Georgia Avenue, 3rd Floor
Silver Spring, MD 20910

RE: District Map Amendment No. G-956;
Impact on Pooks Hill Marriott Hotel Property

Dear Pam:

Thank you for agreeing to meet with the owners of the Pooks Hill Marriott Hotel property, said meeting to occur on **Wednesday, October 30th, at 10:00 a.m.**, at your offices.

As promised, to provide you some background about the questions which our clients have, I enclose a package of material relating to the Pooks Hill property, addressing both the zoning proposed in DMA G-956 and the zoning that the client had hoped to achieve through a Minor Master Plan Amendment process that has been approved for processing but then deferred for a year.

We look forward to meeting with you on Wednesday, October 30th at 10:00 a.m. for a meeting of approximately 45 minutes duration.

Sincerely yours,

MILLER, MILLER & CANBY



Jody S. Kline

JSK/dlt

Enclosures

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September 6, 2013

Mr. Robert Kronenberg
Acting Chief
Area 1 Planning Team
M-NCPPC
8787 Georgia Avenue, Third Floor
Silver Spring, MD 20910

RE: Pooks Hill Marriott Property,
5151 Pooks Hill Road, Bethesda, MD

Dear Robert:

Thank you for agreeing to meet with representatives of the owner of the Pooks Hill Marriott property located at 5151 Pooks Hill Road, Bethesda. The property is outlined in red on the attached map (Attachment A). You are probably familiar with the property since it was approved for review in the M-NCPPC Work Program under the title the "Pooks Hill Minor Master Plan Amendment".

In the application for Minor Master Plan Amendment consideration, our client requested that the County place zoning of CR-1.5, C-0.5, R-1.0, H-200' on the property in order to facilitate redevelopment of under-utilized commercially zoned land for multi-family residential development (Attachment B).

We would like to meet and to discuss with you the fact that District Map Amendment G-956, implementing the new Zoning Ordinance, which recommends zoning of CRT-1.0, C-1.0, R-0.75, H-150' for the subject property, is an inappropriate zoning classification for this property. We base this conclusion on the following facts:

1. CRT zoning is the wrong classification for the Pooks Hill Marriott property given its geographical location, the context of surrounding development and the property's logical development potential.

District Map Amendment Application G-956 recommends the CRT zone for the subject property (see attached zoning maps from M-NCPPC records showing existing and proposed zoning for the site) – Attachment C&D, respectively. The purpose clause of the CRT zone (Section 2.1.6.B.3) of the May 2, 2013 Planning Board Draft of the Ordinance describes the CRT zone as “...intended for small, downtown, mixed-use, pedestrian oriented centers and edges of larger, more intense downtowns. Retail tenant ground floor footprints are limited in order to preserve the Town Center scale. Transit options may include light rail, metro, and bus.” (Attachment E)

This description of the CRT zone certainly does not fit the Pooks Hill Marriott property nor the Pooks Hill area. Development within the Pooks Hill area today is almost exclusively multi-family residential (with limited service retail options available in the Promenade cooperative) and with the existing Marriott Hotel as a free standing structure containing 267,000 SF of hotel, restaurant and assembly use.

Therefore, the CRT zone placed in this location bears no relation to the zone’s purpose clause and intent.

2. A CRT zoning classification for the subject property which recommends 1.0 FAR of commercial use and only 0.75 FAR of residential use is inconsistent with the development pattern in the surrounding area.

The Pooks Hill area is specifically addressed in the Bethesda-Chevy Chase Master Plan, April, 1990 (Attachment F). The plan encouraged retention of the character of Pooks Hill with “...relatively dense multi-family structures...” (Bethesda-Chevy Chase Master Plan, page 63, attached). In essence, the CRT zoning recommendation contained in District Map Amendment G-956 reverses the recommended form of development for the subject property in a manner that is neither in the public interest nor consistent with the goals of the B-CC Master Plan.

3. Encouragement of commercial development in the Pooks Hill area will have a negative traffic impact on the limited capacity of the intersection of Pooks Hill Road and Rockville Pike.

As mentioned above, the Pooks Hill Marriott Hotel presently contains 267,000 SF of hotel use, for an FAR of 0.34. FAR permitted in the current H-M zone is 1.0. Thus, the property can be developed with an additional 513,500 SF of hotel uses. A traffic study undertaken by the property owner has determined that the maximum development of the property under the existing H-M zoning cannot be accommodated at the nearest critical intersection at Pooks Hill Road and Rockville Pike where design solutions are limited. Therefore, one of the appealing features of the Pooks Hill Minor Master Plan Amendment was the conversion of the potential commercial (hotel) development to residential uses with a commensurate reduction in automobile trip generation.

The operators of the Pooks Hill Marriott Hotel have asked the property owner that, in conjunction with its Minor Master Plan Amendment Application, that the ability to expand the hotel by a certain amount of additional square footage (I’ll have the SF number by the time of our meeting) be reserved so that the hotel could provide, in the future, more hotel services. The remainder of the potential developable square footage would be converted to

residential use. Because of the lower trip generation rate for multi-family residential uses, as much as 780,500 square footage could be developed on the property in a residential format without having an adverse impact at the nearest critical intersection.

4. The recommended CRT zone imposes a lower height limit (150') than is appropriate given the location of the subject property and the nature of surrounding development.

The CRT zone recommended in District Map Amendment G-956 limits height to 150', the maximum height permitted in the CRT zone. (Section 2.1.6.A.4, Zoning Ordinance rewrite, p. 2-5.) Attachment E. Under normal techniques for construction of multi-family buildings, that height limit would result in buildings of 13 to 15 stories in height. Surrounding buildings include the existing Marriott Hotel (12 stories) and the Pooks Hill Condominium containing 10 stories. But the dominant feature in the Pooks Hill neighborhood is the Promenade Cooperative which is 18 stories tall and is probably in the range (given the construction techniques available when it was built) of 175' to 195' tall. (We are trying to get more accurate information on its height.) More importantly, the Promenade is located at the highest point in the "Pooks Hill" neighborhood. Accordingly, new multi-family buildings constructed on the Pooks Hill Marriott Hotel property, even up to 20 stories tall, would not be taller than the Promenade Towers.

In summary, the CRT zone, as recommended in DMA G-956, which limits building height to 150', is inappropriate for this site given the pattern of surrounding development and the recommendation in the Bethesda-Chevy Chase Master Plan to perpetuate the character of the neighborhood with "...relatively dense multi-family structures..." (Plan, page 63.) Attachment F.

We have enclosed a copy of our application for Minor Master Plan Amendment (Attachment B) which provides substantially more background information about the subject property and the benefits flowing from its redevelopment with multiple high rise multi-family buildings. The CRT-1.0, C-1.0, R-0.75, H-150' zoning recommendation contained in District Map Amendment G-956 is both inappropriate for this property due to the purpose clause of the CRT zone and, if imposed on the subject property, would direct development to uses not in conformance with the recommendations in the Bethesda-Chevy Chase Master Plan and would be inconsistent with development already located in the study area.

For the reasons set forth above, we would like to talk to you about how the recommended zoning for the Pooks Hill Marriott property could be changed and the zoning classification of CR-1.5, C-0.5, R-1.0, H-200' be placed on the property in order to achieve the public benefits anticipated by the redevelopment proposed in the Limited Master Plan Amendment that will be compatible with existing surrounding development.

Thank you for your consideration of these comments.

Sincerely yours,

MILLER, MILLER & CANBY

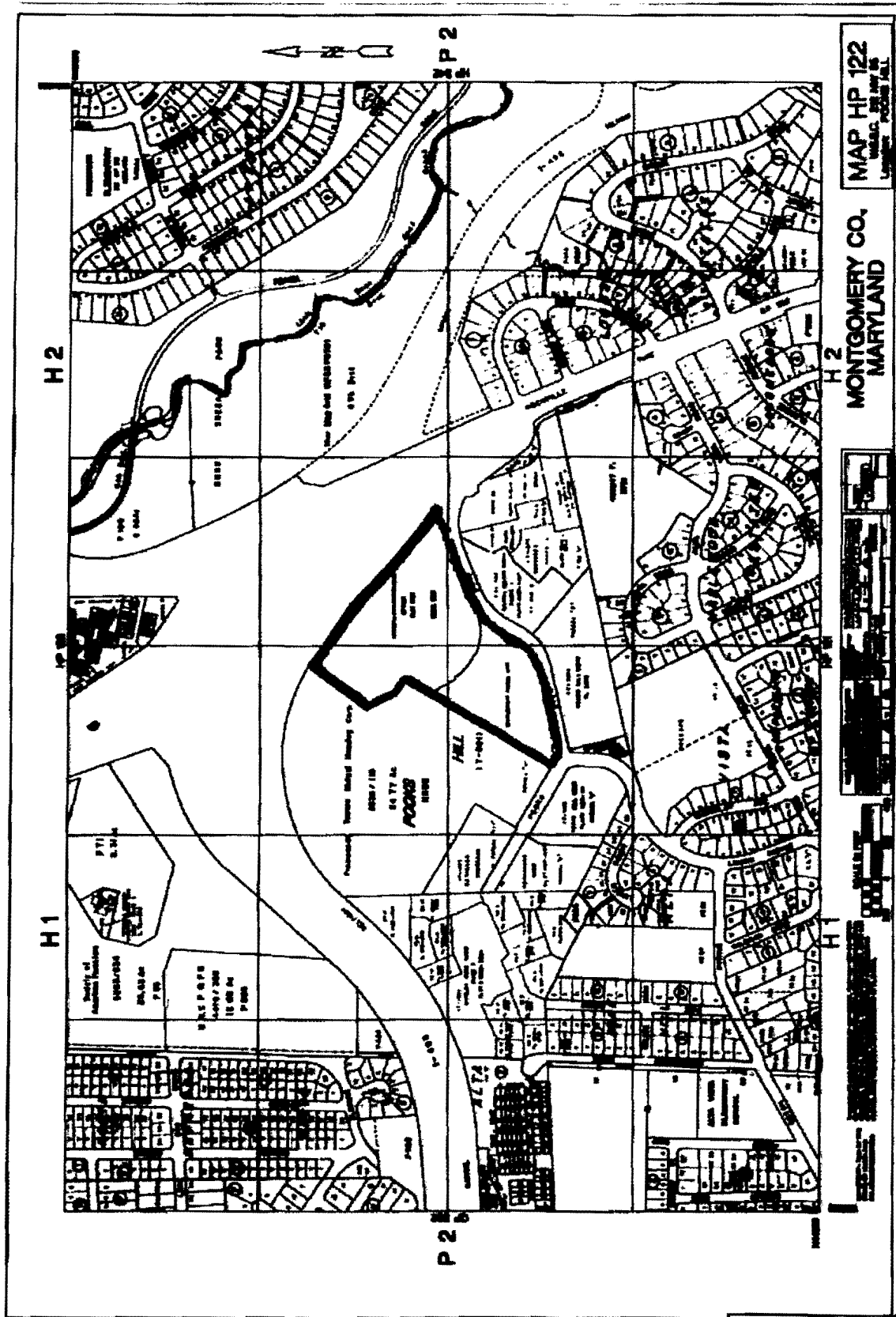


Jody S. Kline

JSK/dlt

Enclosures

cc: Rose Krasnow, MNCPPC
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June 5, 2014

Via Email

Nancy Floreen, Committee Chair
and Members of the Committee
PHED Committee
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: DMA G-956 – Pooks Hill Marriott Building Site

Dear Chair Floreen and Committee Members:

We write on behalf of The Promenade, 5225 Pooks Hill Road, Bethesda, Maryland, 20814 to express our client's position on DMA G-956 as it relates to The Promenade's neighbor, the Pooks Hill Marriott, which currently sits on an approximately 18-acre site zoned H-M (the "Property"). With the Council-approved Zoning Ordinance rewrite to go into effect at the end of October 2014, the H-M zone will cease to exist, necessitating placing the Property in a new zone.

The Property represents only one of many instances in DMA G-956 where, with specialized floating zones having been repealed, the zoning of such properties is to be replaced with a new Euclidean zone with allowed uses and development standards that differ from the zone being retired. It is our understanding that this zone conversion process is intended to result in no upzoning of properties, and that any upzoning should take place, if at all, through the sectional or local map amendment process, or via the amendment of an approved development plan. The intended goal is that significant change over approved use should not take place merely by virtue of action on DMA G-956, but rather via the traditional hearing and decision process, where the public has opportunity for input and the Council has the final say. The Promenade is concerned that this process is being undermined by DMA G-956's current recommendation for the Property.

Rezoning and Development History of the Property

Before discussing the Promenade's concerns about application of DMA G-956 to the Property, we will very briefly recount the history of its rezoning and development. Marriott persuaded the Council to rezone the Property to the H-M zone in 1973. Marriott emphasized that

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the desired hotel would favorably reduce the potential number of units, as compared to the then-existing R-H (high-rise) apartment zoning (815 units), thereby reducing impacts on public facilities. Marriott particularly stressed that with the rezoning,

what we have succeeded in doing was removing further undeveloped land from development under the R-H zoning classification and bringing it within the H-M zone for inclusion in the development of the hotel.... (Rezoning Hearing Transcript 53, 4/30/73).

Of particular concern in 1973 was the intersection of Pooks Hill Road and Wisconsin Avenue. The traffic study provided by Marriott showed that even back then, there was much concern about traffic congestion. Marriott stressed that the worst-case congestion at this intersection with hotel development would be level of service D, as compared to E or F with high-rise development, due to a projection of 45% less traffic from a hotel than from apartments. Further, the elimination of high-rise development on this site reduced the concern of adjacent single-family home neighborhoods to the south about increased cut-through traffic and congestion, effectively ending the previously vehement community opposition to proposed development of the Property. All of these considerations factored into the favorable recommendation of Hearing Examiner Stan Abrams and in the Council Resolution of Approval, No. 7-1321 (July 17, 1973).

Following the rezoning approval, Marriott obtained Site Plan approval from the Planning Board to build the Pooks Hill Marriott Hotel. Over the next several years Site Plan amendments were also approved that added additional wings to the Hotel, meeting spaces and parking. The end result, based on the last change in 1983, was a hotel that, with little or no extra space to spare, complied with the 45% green area requirement and provided Marriott the number of rooms and supporting facilities it desired and the surface parking that it deemed appropriate for this suburban location. This full build-out development of The Property as an established hotel with a sound future is an outcome that the residents of The Promenade, as well as all the other residents of Pooks Hill, have long accepted and reasonably expect to continue.

Rezoning of the Property Via DMA G-956: The Problem

The Property has been targeted for rezoning in DMA G-956 for either the CR or CRT Zone. Initially, the Planning Board Draft of the DMA showed the Property as CRT 1.0, C-1.0, R-0.5, H-150. This has since been changed to CR 1.0, C-1.0, R-0.5, H-160. Our understanding is that the allowed height was increased to 160' because the H-M zone height was 15 stories, and the Planning Board regards that as equivalent to 160', comprised of 15 10-foot stories, plus an extra 10' for the first floor. Further, because the CRT zone has a height limit of 150', to get the extra 10' as an allowed use, it was deemed necessary to shift from the CRT Zone (intended for

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“small downtown, mixed-use, pedestrian centers and transitional edges”) to the CR Zone (intended for “larger downtown, mixed-use, and pedestrian-oriented areas in close proximity to transit options such as Metro, light rail and bus”) where the height limit is much greater.¹

This was an inappropriate change for at least two obvious reasons. First, the Pooks Hill area is not within the scope of urban areas intended for use of the CR Zone as described above. Second, the Hotel is a viable, ongoing commercial operation of 15 stories, the H-M height limit, and the actual numerical height is approximately 137', or well within the CRT numerical height limit of 150'. We are unaware of any interest on the part of the operators of the Hotel to add any height to it, let alone up to 23,' or two additional stories. If the Hotel's 15 stories actually did measure in the 150'-160' range, that would be reason to adjust the new zoning to ensure that the Property was not non-conforming in the translation. But there is no necessity for that in this instance, and hence no reason to consider switching to the much less appropriate CR Zone.

The more fundamental problem with the translation from the H-M Zone is that any CR Zone substantially enlarges the categories of uses that are lawful for the Property, even as it reduces the open space requirement from 45% (green area in the H-M Zone) to 10% in either the CR or CRT Zone. Broadening the allowed uses would be contrary to the still-current 1990 Bethesda-Chevy Chase Master Plan, which specifies in highlighted form in Section 3.33 (page 63): **“This Plan recommends the reconfirmation and the containment of the existing zoning on Pooks Hill....”** As a practical matter, therefore, the Council's decision to eliminate certain specialized zones such as the H-M Zone means that any replacement of it with a zone that allows a broader range of uses will violate the B-CC Master Plan in this respect.

The DMA G-956 zoning translation process must be sensitive to existing Master Plan recommendations and ensure that the translation minimizes the alteration of the *status quo*, which is represented by current, Master Plan-consistent development. In this instance, the Property has been developed at a density of approximately .34 FAR, even though the H-M Zone allows a density of 1.0 FAR. With the simplistic FAR-to-FAR translation employed by the Planning Board in this case (to either CR 1.0 or CRT 1.0), it would mean that the Property could add development of $1.0 - .34 = .66$ FAR, and do so in any of the allowed CR/CRT uses other than hotel/motel, the only use currently allowable as H-M-zoned property. This has the potential to **triple the density** of the existing development, adding more than half a million square feet of commercial/residential use to the Property. Apart from whether it is lawful for DMA G-956 to serve as an “end run” around the Master Plan Amendment process in this fashion - a question with the potential for protracted litigation - it is plainly inconsistent with what the residents of

¹ The quotations are from summaries of the Intent of these Zones, as found on the Zoning Montgomery website.

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Montgomery County were told by Council members to expect as the ultimate fruit of the Zoning Ordinance Rewrite Project – a simplification of the Ordinance but no upzoning of properties.

Rezoning of the Property Via DMA G-956: The Solution

One suggestion that has emerged in discussions with Planning Board staff about the Property is to amend the new Zoning Ordinance to provide that the 45% green area requirement be continued in any future redevelopment of properties where it has been applied. Here, this would be a helpful first step toward preservation of the intent of the B-CC Master Plan recommendation. Nevertheless, it would be insufficient to obviate substantial additional development in the form of newly allowed uses on the Property such as high-rise apartments – the use whose elimination was the basis for placement of a hotel in this location in the first place.

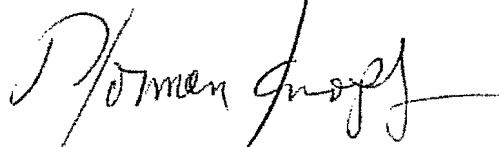
An optimal solution that both allows for conversion of the Property into a broader use zoning classification yet minimizes the extent of violation the B-CC' Master Plan's goal of maintaining the *status quo* on Pooks Hill would be to employ the CRT Zone with an overall FAR limitation that matched the existing development of the Property, i.e., an FAR of approximately .34. Unfortunately, the new Zoning Ordinance does not contemplate an overall FAR of less than .50. If this minimum were employed in this case, along with the restoration of the 45% green area requirement, and the CRT Zone restored, as it should be, it would mean that the Property would be developable with approximately an additional .16 FAR of new uses allowed in the CRT zone, with a height limit of 150'. Specifically, the DMA G-956 rezoning should be as follows: CRT – 0.5, C-0.5, R-0.5, H-150.

This resolution would mean DMA G-956 would potentially open up the Property to approximately 125,000 sq. ft. of additional development without further input from the Council. While hardly an ideal outcome, it is the least that should be done to pare back the huge potential increase in development on the Property currently proposed in DMA G-956. If, in the future, the overall .5 FAR constraint is ever deemed by the owners of the Property to be too limiting, they would be free to seek a rezoning to a higher level FAR. That would be decided in a public process where all stakeholders would have an opportunity to be heard in the context of a specific development plan. That process should not be foreclosed by superficial and insensitive application of a simplistic 1.0 FAR-to-1.0 FAR zone translation in DMA G-956 in the case of the Property.

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Thank you for taking these views into consideration as the Committee finalizes its recommendations on DMA G-956.

Respectfully submitted,



Norman G. Knopf




David W. Brown

cc: Jeff Zyontz (jeff.zyontz@montgomerycountymd.gov)

MEMORANDUM

July 7, 2014

TO: Nancy Floreen, George Leventhal

FROM: Marc Elrich 

SUBJECT: DMA G-956: Additional information on Woodmoor Shopping Center

During the July 3rd PHED Committee meeting on the zoning conversion for the Woodmoor Shopping Center, we discussed whether the conversion from the current C-4 zone to the CRT zone was appropriate. I am writing to ask that you consider additional information that I believe supports my minority view that either CRN or NR (Neighborhood Retail) zoning would be the right choice for this shopping center.

- Quoting from page 16 of Jeff Zyontz's packet, "Planning staff initially recommended that the C-4 zone translate to the CRN zone; however, the Planning Board changed the C-4 translation to the CRT zone upon review of the uses that would no longer be available to C-4 property owners under the CRN zone." The uses mentioned in the packet include structured parking, a funeral home, retail businesses over 15,000 SF, a car wash, and a filling station.
- The Woodmoor-Pinecrest Citizens Association requested that the zoning for the shopping center be changed to CRN or NR since the center abuts single-family homes and has entrances and exits to and from tertiary residential streets. They also state that more than 85 uses not currently permitted in the C-4 zone would be either permitted by right or as limited or conditional uses in the CRT zone. They believe that many of these additional uses are not appropriate for a neighborhood-serving retail center (i.e., drive-in restaurants, hotel/motel, conference center, indoor vehicle sales and rentals, truck and trailer rentals, boat sales, outdoor auto/ truck sales/rental and storage, automobile storage lot, major automobile repair, auto sales and service mall, manufacturing, and self-storage facilities).
- Planning Board Chair Carrier indicated that because the decision to rezone C-4 properties to CRT was recommended countywide in the DMA zone conversion, they did not look at individual characteristics of each C-4 property. Matt Johnson from Planning staff said that there wasn't language in the 1996 Four Corners Master Plan about Woodmoor that would justify making an exception to the C-4-to-CRT conversion rule.

I reviewed the 1996 Four Corners Master Plan to see whether it did or did not provide any specific recommendations on Woodmoor that would warrant an exception to the rule that was established to convert all C-4 properties to CRT. I found a rather extensive discussion of the shopping center, including the following (with page citations, and emphasis added in **bold**):

Page 29:

The Woodmoor Shopping Center . . . is the largest commercial use in the Four Corners business area. Most of the Woodmoor Shopping Center is [now] in the C-2 (general commercial) zone, with a small portion of C-T (commercial transitional) zoning. . . . **Within this one center, many of the community's retail service needs can be met by the local serving nature of the stores . . . The center's appearance, access, and parking need improvement, but most residents feel that such improvements should not come at the expense of the adjacent residential neighborhood.**

Page 30:

Security and visibility of the parking areas, vehicular access to the center, and increased traffic congestion, including cut-through, on residential streets are also concerns. This Plan recognizes the need for improvements to the Woodmoor Shopping Center. However, upgrading the shopping center does not necessarily require expansion . . .

Two independent automotive businesses are located in front of the Woodmoor Shopping Center . . . a gas station and . . . an automotive repair shop. The State Highway Administration has indicated that it plans to acquire the gas station as part of the intersection improvement . . . **This Plan recommends acquisition of both the gas station and the automotive repair business by the State Highway Administration. Automotive uses at this location, with their associated curb cuts, exacerbate traffic circulation and access problems at the corner. These uses also reduce visibility from the roadway of businesses in the shopping center. If the State does not acquire these businesses, this Plan recommends that in any redevelopment of the Woodmoor Shopping Center, these automotive uses be removed and replaced with landscaping and perhaps a limited amount of additional parking.**

This Plan supports a limited expansion of the Woodmoor Shopping Center that does not involve the houses on Pierce Drive, which should remain in the R-60 zone. **The Plan recommends the C-4 Zone (limited commercial) . . . [which] is more in keeping with Woodmoor's function as a low-density neighborhood shopping center.**

The 1996 master plan rezoned an existing C-2 shopping center to C-4 so that it would be more in keeping with low-intensity uses here. It contains specific language in support of neighborhood serving uses and cites several site and access constraints. In my view, this may make this property different from other C-4 zones in the County. At the very least, some of the uses allowed in the CRT zone are undesirable at this location. While I understand Planning Board and Council staff's concern about the loss of the owners' rights for certain uses if C-4 properties are zoned CRN (or NR), two of the specific uses mentioned in the packet (a filling station and a car wash) would reintroduce the kind of automotive uses at this location that were recommended for removal in the 1996 Plan.

Based on this additional information, I ask that the PHED Committee change its recommendation for the Woodmoor Shopping Center property to CRN or NR, based on the language of the 1996 Four Corners Master Plan.

Cc: Jeff Zyontz
Francoise Carrier
Gwen Wright
Harriet Quinn

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July 8, 2014

Planning, Housing & Economic Development Committee
of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

RE: District Map Amendment DMA G-956;
10401 Old Georgetown Road, Bethesda
Parcel B, Wildwood Manor Shopping Center

Dear Ms. Floreen and Messrs. Elrich and Leventhal,

On behalf of the owner of the above referenced property, Mr. Alvin Aubinoe, we are writing to request consideration of an alternate 'custom' zoning classification (i.e., **CRT-1.25 C-0.5 R-0.75 H-50**) rather than the current 'default' zone conversion (i.e., EOF-1.5 H-75) specified for our client's property in DMA G-956.

The following is the rationale for this request:

1. The subject property, containing 3.4971 acres of land is now zoned (Zoning Application No. G-851) in the O-M (Office, moderate) zoning classification approved by the District Council in November, 2007.
2. On November 21, 2012, the Montgomery County Board of Appeals approved a special exception request to allow construction (under the County's Productivity Housing Program) of 58 dwelling units in a building to be constructed on the property (subject to amendment of the Schematic Development Plan approved by the District Council when the property was rezoned to the O-M classification in 2007).

(15)

3. In January 2013, the District Council amended the O-M zoning Schematic Development Plan (SDPA 12-01) authorizing Mr. Aubinoe to construct an apartment building containing 58 apartment units previously approved in Special Exception Case No. S-2830.
4. The 'default' zone conversion for a typical O-M zone is EOF-1.5 H-75. In September 2013 when first proposed, the EOF zone included a limitation on residential use of 30% of approved FAR on the property. If the EOF zone was placed on the Aubinoe property, the designation would have resulted in a loss of 11,776 square feet of residential density from what was approved under SDPA 12-01.
5. For that reason, at the time of publication of the first comprehensive rezoning recommendations, M-NCPPC staff offered to the property owner an alternative 'custom' zone conversion of **CRT-1.25 C-0.5 R-0.75 H-50**, to better match the residential development approved under SDPA 12-01.
6. Since the M-NCPPC staff's alternative would not have accommodated the addition of ground floor retail (because of the height limitation of "H-50"), Mr. Aubinoe opted to stay with the 'default' conversion with the thought that since the EOF zone recommended for up to 75 feet in height, that zone at least provided the option of seeking additional building height to integrate ground floor retail into the project (albeit with less overall residential density allowed by the EOF zone).
7. Two changes, one in the text of the new Zoning Ordinance and one in the "zoning conversion" policies, have caused Mr. Aubinoe to reconsider his original decision to accept EOF zoning. Those changed circumstances are:
 - a. A change in the text of the EOF zone that states that residential use is limited to 30% of FAR actually built on the property (which was introduced in the Zoning Ordinance Rewrite subsequent to discussions with M-NCPPC Staff); and
 - b. A decision to incorporate development plan binding elements (50 feet in the case of Mr. Aubinoe's rezoning application) into future site plan approvals thus undermining Mr. Aubinoe's ability to seek more building height.

The combination of these factors eliminated the attractiveness of the EOF zone and made the Staff alternative the much more logical and appropriate zone for the property.

One theory about how Mr. Aubinoe could work with CRT zoning and still be able to achieve more building height than the 50 feet limited in SDPA 12-01 would be to apply the technique used by Staff of assuming a twenty (20) feet first floor height in a mixed use building in order to create additional ceiling height and volume for retail space. SDPA 12-01 / Special Exception No. S-2830 approved a five (5) story building within a fifty (50) foot height limit. The CRT zone requested for the property would install a ground floor of retail surmounted by multiple floors of residential floor space. In order to maximize the amount of residential building area, the requested CRT zone could be expanded to allow for a 60 foot tall building

which would allow for a single floor of retail use (20 feet in height) and up to four floors of residential uses, each 10 feet in height. If the Committee wanted to extend a principle applied in other cases to this property, the zoning to be bestowed by DMA G-956 would be CRT-1.25, C-0.5, R-0.75, **H-60**.

In any event, Mr. Aubinoe requests that the Council approve an alternative 'custom' CRT zoning classification as previously offered by M-NCPPC staff (preferably at a height of 60 feet but no less than 50 feet) as being the most comparable to 'existing development approvals on the property'. We are sorry to bring this matter to your attention at this late moment but it was the recent debate about incorporating binding elements into future site plan reviews that caused Mr. Aubinoe to reconsider his original decision to accept EOF zoning for his property.

Thank you for your consideration of this matter.

Sincerely yours,

MILLER, MILLER & CANBY

Jody Kline

Jody S. Kline

Soo Lee-Cho
Soo Lee-Cho

cc: Jeff Zyontz
Pamela Dunn
Alvin Aubinoe