

Resolution No.: 15-1617  
Introduced: September 26, 2006  
Adopted: September 26, 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 Nos. G-842 and DPA 06-2 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Pat Harris, Esquire, Attorney for Applicant, Hampden Lane Associates, LLC, OPINION AND RESOLUTION ON APPLICATION Tax Account Nos. 07-00486167, 07-00491005, 07-00990353, 07-00490978, 07-00485733

**OPINION**

Application No. G-842, filed on November 1, 2005 by Applicant, Hampden Lane Associates, LLC (HLA), requests reclassification of approximately half an acre of land on Hampden Lane in Bethesda (Lots 5,4, 2 and Part of 1, of Edgemoor Subdivision, Block 24D, located at 4913, 4915, 4919 and 4921 Hampden Lane) from the R-60 Zone to the TS-R Zone in order to construct a 60-unit multi-family dwelling.<sup>1</sup> DPA 06-2, also filed on November 1, 2005, by Applicant seeks to amend the development plans in LMA's G-721, G-755 and G-769 and DPA's 98-1, 98-2 and 00-2, to allow relocation of the planned Housing Opportunity Commission (HOC) transitional housing from its currently approved location at 4917 Hampden Lane (Lot 3 of Block 24D, Edgemoor) to 4913 Hampden Lane (Lot 5 of Block 24D, Edgemoor). This relocation is made possible by a land swap agreed to by the County and the Applicant in a "Development Agreement" entered into on June 9, 2005. This land swap consists of Applicant trading its Lot 5 to the County in exchange for Lot 3.

The land exchange would allow Applicant to assemble contiguous Lots 1 through 4 of Block 24D (4921, 4919, 4917 and 4915 Hampden Lane) into a single development tract large enough to satisfy the

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<sup>1</sup> Lot 3 (4917 Hampden Lane) is included in the Development Plan, but not the rezoning request because it is already in the TS-R Zone.

TS-R Zone's minimum area requirements. Lot 3, which is in the middle of the tract, had already been rezoned to TS-R in 1998, by LMA G-769, as part of a different development plan by another developer (24 West, Inc.). Lot 3 (also known as "Edgemoor IV")<sup>2</sup> was conveyed by a successor to 24 West, Inc. (HSNK, LLC) to the County in April of 2004 to provide a location for HOC's transitional housing, purportedly in satisfaction of HSNK's MPDU requirements for Edgemoor I, II and III. Lot 5, which would be the new location for the transitional housing under the current plan, is still in the R-60 Zone (as are Lots 4, 2 and 1), so the re-zoning sought in LMA G-842 must occur in order for the development plan amendment sought in DPA 06-2 to proceed.

The building planned by Applicant for Lots 1 through 4 would step up from a height of 33 feet along Arlington Road to 71 feet (not including a 15 foot mechanical penthouse), in the middle of Hampden Lane, and it would include 9 moderately priced dwelling units (MPDUs) in its total of 60 units. As stated above, the HOC building now planned for Lot 5 had been slated to be located on Lot 3. Its design was modified in February of 2000 by DPA 00-2 (DPA Exhibit 45), which changed the proposed use from three townhouses to twelve transitional housing units and modified the proposed structure to a 38 foot tall, brick building. The design plans would remain substantially unchanged.

Both the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Planning Board ("Planning Board") recommended approval of LMA G-842 and DPA 06-2. The Planning Board also recommended amending DPA 00-2 by modifying note # 2 on that amended development plan "to indicate that recreation for the 12-unit transitional housing will not be provided in the Edgemoor high-rise building" and by "removing note #3 regarding off-site parking." The Planning Board made these recommendations with the express understanding that it would consider parking and recreation needs for the transitional housing development at site plan review.

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<sup>2</sup> Edgemoor I, II and III are located on Montgomery Lane. Edgemoor I and II (on the south side of Montgomery Lane) became the "CityHomes of Edgemoor" townhouse development, and Edgemoor III (on the north side of Montgomery Lane) became the "Edgemoor Condominium" high-rise.

A public hearing was noticed for March 17, 2006, and it proceeded as scheduled. When Applicant put on its case, the Hearing Examiner noted that the proposed development plan had not been reviewed by the "Alternative Review Committee" (ARC), as is required by Zoning Ordinance §59-D-1.61(a) where, as here, a developer seeks approval of a height or density exceeding that recommended in an applicable Master Plan, to accommodate the inclusion of MPDUs. Therefore, after Applicant's witnesses testified, the hearing was suspended until April 18, 2006, to give the ARC an opportunity to make its findings and the Planning Board the opportunity to submit a revised recommendation based on those findings.

On April 18, 2006, a number of neighbors testified in opposition to the proposed development based on their assertion that Applicant had failed to follow the Bethesda CBD Sector Plan's recommendations and their concern that the new structure would block their air and sunlight. On April 27, 2006, Technical Staff filed a Supplemental Report (LMA Exhibit 52), advising the Planning Board that the ARC had made a finding that the bonus density and additional height were needed "to make the project profitable." Attached to the Technical Staff's Supplemental Report was a copy of the ARC's memorandum of April 12, 2006, recommending that the Planning Board approve the project with the additional height and density requested by Applicant. On May 11, 2006, the Planning Board reviewed the ARC's findings and voted unanimously to recommend approval of G-842 with a maximum height of 71 feet and a density of 3.05 FAR (*i.e.*, the additional height and density sought by the Applicant).

A revised Development Plan Amendment, DPA 06-2 (DPA Exhibit 57(c)), was submitted on May 16, 2006, in response to suggestions made by the Hearing Examiner. No objections to the revised form of the amended development plan in DPA 06-2 have been raised. The hearing in this case concluded on May 22, 2006, and the record closed on that date as required by Zoning Ordinance §59-D-1.7(d)(2).

The Hearing Examiner filed his report on June 12, 2006. He recommended remand of the application for further proceedings because of his conclusion that the proposed development would produce a building inconsistent with the vision of the Sector Plan and incompatible with its immediate neighbors.

The Hearing Examiner did not recommend outright denial because he concluded that the subject site would be appropriate for the TS-R Zone. The Applicant challenged the Hearing Examiner's conclusions regarding the proposed development plan and requested oral argument before the Council, which was granted. Oral argument was held on September 19, 2006, at which time the District Council heard argument by both Applicant and the opposition. Based on the entire record, the District Council thereafter voted, six to three, to approve the rezoning to TS-R, as well as the Development Plan in G-842 and the Development Plan Amendment in DPA 06-2.

The subject site (*i.e.*, the combined HLA Property and HOC Property) consists of five lots located on the north side of Hampden Lane, bordered by Arlington Road to the west, garden apartments and Woodmont Avenue to the east and developments on Montgomery Lane (the Edgemoor at Arlington and the CityHomes of Edgemoor) to the north. Combined, the lots have 66 feet of frontage along Arlington Road and about 350 ft. along Hampden Lane. All are within the Transit Station Residential District described in the Bethesda CBD Sector Plan (p. 81).

The HLA Property is comprised of four lots – Part of Lot 1 located at the northeast corner of Hampden Lane and Arlington Road, and moving in an easterly direction, Lot 2, Part of Lot 3 and Lot 4, except for a five-foot wide portion of Lot 4 (running along the entire easterly property line), which will be included in the HOC Property. The HLA Property is essentially a long, narrow rectangle, with a gross tract area of 32,107 square feet. The HOC Property consists of Lot 5 and the five-foot wide portion of Lot 4, for a gross tract area of 5,694 square feet. Lot 5 has 65 feet of frontage along Hampden Lane. The HLA Property slopes gradually upward 12 feet from Arlington Road toward the east, while the HOC Property is generally flat. There are no historic structures or sites located on any of the properties, and each of the five lots is improved with a single family detached residential building, currently being used as non-residential professional offices. The subject site is located about 1,300 feet from the Bethesda Metro Station.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. It is that area bounded by Edgemoor Lane on the north; Woodmont Avenue, including the properties fronting thereon, on the east; Elm Street on the south; and Arlington Road, including properties fronting thereon, on the west.

The HLA Property and the HOC Property are located in the southern portion of the Transit Station Residential District as delineated by the Sector Plan. In general, the Transit Station Residential District is composed of either multi-family or townhouse structures developed after the adoption of the Sector Plan, garden apartments or preexisting single-family homes, many of which are used for commercial purposes.

Immediately to the north of the HOC Property and most of the HLA Property is the CityHomes townhouse development (LMA G-721 and G-755 and DPA 98-1 and 98-2), consisting of a total of 29 townhouses, developed in five rows of brick structures, facing perpendicular to Montgomery Lane. The townhouses are approximately 55 feet in height (to roof peak) and are built on the common HLA property line and HOC property line. The distance between each row of townhouses is approximately 30 to 40 feet.

The western end of the HLA Property is also bounded to the north, along Arlington Road, by the Edgemoor at Arlington (LMA G-778). The Edgemoor project is a brick structure and is 46 feet high (as measured from the top of the terrace, which varies in height from zero feet up to seven feet). It is a 36,700 square-foot building and it provides 12 dwelling units. Arlington Road borders the Property directly to the west, with the low-rise Bethesda Public Library located directly on the other side of Arlington Road.

Across Hampden Lane to the south of the HLA Property and the HOC Property is the low-rise Shoppes of Bethesda shopping center. The shopping center employs a traditional shopping center style, with the front portion of the site devoted to surface parking and the "L" shaped row of shops located back beyond the parking lot. The shopping center is zoned C-2 and located within the Arlington Road District, as designated by the Sector Plan.

Directly to the east of the HOC Property are two, three-story, brick, garden apartment buildings. Adjacent to these apartment buildings, and located at the northwest corner of Hampden Lane and Woodmont Avenue, is another similarly styled apartment building, with ground floor retail. The garden apartments are currently located on property zoned R-10, but are recommended for the TS-R Zone in the Sector Plan.

The subject site was classified in the R-60 Zone by the 1954 Regional District Zoning and confirmed in the 1958 County-wide Comprehensive Zoning. The R-60 Zone was confirmed again in SMA G-20 (adopted 10/10/1978) and SMA G-711 (adopted 10/11/1994). Lot 3 was rezoned to TS-R in LMA G-769 (adopted October 20, 1998). The development plan associated with that rezoning was amended in DPA 00-2, on February 1, 2000. At that time, the development plan covering Lot 3 of the subject site was amended to allow the 38-foot tall, 12-unit, transitional HOC housing still envisioned today. The present applications seek to move the proposed location of that same building to the east, from Lot 3 to Lot 5 on Hampden Lane. They also seek to rezone the remainder of the subject site on Hampden Lane from R-60 to TS-R.

Applicant HLA wishes to construct a multi-family condominium building on the north side of Hampden Lane, in the Transit Station Residential District delineated by the Bethesda CBD Sector Plan. The Gross Tract Area of the HLA property is 32,107 square feet. The building planned by Applicant would be 97,853 square feet and would occupy Lots 1 through 4 of Block 24D (4915, 4917, 4919 and 4921 Hampden Lane), in the Edgemoor Subdivision. Applicant's conceptual plans call for a glass and masonry structure, approximately 282 feet long, stepped up from a height of 33 feet along Arlington Road to a height of 71 feet (not including a 15 foot-tall mechanical penthouse) at the midpoint of the building on Hampton Lane. The proposed building would include 9 moderately priced dwelling units (MPDUs) in its total of 60 units (*i.e.*, 15% MPDUs), and it would have a floor area ratio (FAR) of 3.05.

According to Applicant's Project Description for the LMA , the HLA development would include ten percent public use space to be provided along a portion of Arlington Road and Hampden Lane. The

development would provide the required 20 percent passive and active recreational space, through a series of outdoor spaces, roof top terraces and inside recreational facilities. The proposed development would include 10 percent public use space to be interspersed along both the Hampden Lane frontage and the Arlington Road frontage of the HLA Property. On the north side of the project, the conceptual design extends the existing courtyard spaces of the CityHomes of Edgemoor townhouses into courtyards between sections of the proposed building, in an effort to avoid blocking the light and air into those spaces. The Applicant also proposes sidewalks along the entire frontage of both Arlington Road and Hampden Lane, in addition to the open space and active and passive recreation space promised by the Applicant. The proposed building would be constructed in a single phase and would not be dependent on any Capital Improvement Program.

According to Applicant's conceptual plans, the building would include a total of 89 parking spaces, to be located on two and one-half levels of below-grade parking. Vehicular access to the parking garage would be located on Hampden Lane along the eastern property line of the HLA Property. A 24-foot wide driveway would provide access to the parking garage, and a service entrance is in the same location with a 12-foot wide driveway, to be accessed directly from Hampden Lane. The building would have one centralized lobby located on Hampden Lane.

In addition to HLA's planned structure, the HOC transitional housing building, which had been planned for Lot 3 of Block 24D, would be moved to Lot 5 (4913 Hampden Lane). It's design would not be modified, and if approved, would consist of a 10,622 square foot, 38 foot tall, brick building, containing twelve transitional housing units (seven one-bedroom units, five studio apartments and a counselor's office on the ground floor). The Development Plan proposed for Lot 5 includes a 3-story building, with an amount of public use open space and active and passive recreational space comparable to the previous plan for its development on Lot 3. Consistent with the previously approved Site Plan for the transitional housing, the active and passive recreational space would be provided in the rear of the building and would include a

nicely landscaped outdoor area. Once all of the land use approvals are obtained, the development of the HOC building at 4913 Hampden Lane would proceed independently of the development of the remaining Hampden Lane properties. The development at 4913 Hampden Lane would occur in a single phase and will not be dependent on any Capital Improvement Program.

Pursuant to Code § 59-D-1.1, development in the TS-R 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-R 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 in this case are as follows:

1. The building will have a maximum height of 71 feet.
2. The development will have a maximum density of 3.05 FAR, including the MPDU bonus density.
3. The development will provide 15% MPDUs (9 units) on site.
4. The development will provide a minimum of 10% public use space.
5. The development will provide a minimum of 20% active and passive recreational space.

The binding elements are printed on the development plan's "Land Use Plan," LMA Exhibit 25(d). As specified in the "Site Area Analysis" on the Land Use Plan, Applicant has committed to dedicating 1,141 square feet to the public right-of-way along Arlington Road and Hampden Lane. Previously, 10,071 square feet of land had been dedicated to Arlington Road and Hampden Lane.

DPA 06-2 would amend DPA 00-2 and earlier development plans for Edgemoor I, II, III and IV, by showing the relocation of the proposed HOC transitional housing from Lot 3 (4917 Hampden Lane) to Lot 5 (4913 Hampden Lane). Another change had to be made to the Development Plan Amendment to reflect an

agreement by the developer of Edgemoor I, II and III on Montgomery Lane (HSNK, LLC) to transfer Lot 3 on Hampden Lane to the County (DPA Exhibit 39), purportedly in satisfaction of that developer's MPDU obligations. The District Council agrees with the Hearing Examiner's determination that this zoning review of LMA G-842/DPA 06-2 is not the appropriate forum for interpreting the contractual agreement between HSNK, LLC and the County regarding the development of Edgemoor I, II and III. As stated by the Hearing Examiner, accuracy of the development plan for this project can be restored by removing both notes 2 and 3 found in DPA 00-2, and replacing them with the following note in DPA 06-2: "Recreation and Parking for the HOC transitional housing to be located on Lot 5, Block 24D will be considered by the Planning Board at Site Plan Review." These changes are reflected in the revised DPA 06-2 (DPA Exhibit 57(c)).

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning, 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. *Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110.*

**§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, it is within the southern end of the Transit Station Residential District, as shown in Figure 4.13 from the Sector Plan (p. 81). The Sector Plan recommends (page 5) "creation of a high-density, low-rise 'urban village' that steps down in height from 6 floors along Woodmont Avenue to 3 floors along Arlington road, and provides from 45 up to about 100 dwelling units per acre. . . ." The Hearing Examiner concluded that the Applicant's concept of the proposed HLA building (LMA Exhibit 37) does not have the appearance of the "low-rise urban village" called for in the

Sector Plan. The District Council notes that strict compliance with the Sector Plan is not mandatory in this Zone, and finds that the proposed HLA building substantially complies with the use and density indicated by the Sector Plan, as required by Zoning Ordinance §59-D-1.61(a). However, the District Council expects the Planning Board, at Site Plan review, to carefully consider the appearance of the proposed HLA building in conjunction with the Sector Plan's Objectives, Recommendations and Urban Design Guidelines (Sector Plan, pp. 80-85) and with the appearance of the surrounding buildings.

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. In this case, the total number of projected trips (for both the HLA building and the HOC facility) is below the threshold (30 peak hour trips) necessary to require a full traffic study under local area transportation review (LATR) guidelines. Technical Staff concluded that "The hourly contribution to the peak hour traffic volumes is not considered significant or likely to cause additional congestion." Technical Staff also found that "Primary site access and service access is adequate and will not pose a threat to public safety." The District Council finds that Applicant's proposal complies

with the LATR standards and other transportation requirements.

## 2. School Capacity:

This property is located within the Bethesda Elementary School, Westland Middle School and Bethesda-Chevy Chase High School service areas. The Director of the Division of Long-range Planning, Montgomery County Public Schools, estimated that the impact of this project would be approximately five (5) elementary, three (3) middle and three (3) high school students. Since the current Growth Policy schools test finds capacity adequate in the Bethesda/Chevy Chase cluster, the District Council concludes that the public schools can meet the increased demand projected from the subject development.

## 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, is under construction, is designated by the County Council for extension of service within the first two years of a current approved Comprehensive Water Supply and Sewerage Systems Plan (*i.e.*, categories I, II, and III).” Sewer service and water lines rated as S-1 and W-1 are provided adjacent to the site, and based on the evidence, the District Council finds the facilities to be adequate.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with 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-R Zone are found in Code §59-C-8. The TS-R Zone is a “floating zone,” intended to be used in transit station development areas and in areas adjacent to central business districts, within 1,500 feet of a Metro transit station. Section 59-C-8.21(b) also specifies that TS-R Zones are intended for locations where multiple-family residential development already exists or where such development is recommended by an approved and adopted Master Plan. That is the case here.

The purposes of the TS-R Zone are set forth in Code §59-C-8.22. The evidence amply demonstrates that the proposed development would satisfy the purposes of the TS-R Zone. It would put 72 residential units within easy walking distance of a Metro station and would provide for much higher densities than presently exist on the site, but within the range approved by the ARC and the Planning Board. Moreover, the combination of nine moderately priced dwelling units in the HLA building and 12 transitional units the HOC building insure that housing will be provided for persons of different economic levels.

Zoning Code §59-C-8.25 requires that a proposed development in the TS-R 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 sidewalk along Hampden Lane, a minimum of 10% public use space and 20% active and passive recreational space, well landscaped seating areas, and a small pocket park on Hampden Lane. The Development Plan includes dedication along Hampden Lane, which will establish a public right of way of 60 feet, and 40 feet of dedication along Arlington Road, both of which will allow the establishment of new public facilities and sidewalks to promote safe and efficient circulation.

Applicant’s plans meet the development standards spelled out in Zoning Ordinance §59-C-8.4, after their adjustment to allow for MPDUs, as approved by the ARC and the Planning Board in accordance with County law.

Code §59-C-8.51 provides standards for the Planning Board to use in setting the maximum building height at site plan review. In approving height limits, the Planning Board is required “to take into consideration the size of the lot or parcel, the relationship of the building or buildings to surrounding uses, the need to preserve light and air for the residents of the development and residents of surrounding properties and any other factors relevant to height of the building.” The binding elements in this case limit height to a maximum of 71 feet. The Council approves that height as a maximum, but recognizes the Planning Board’s responsibility to consider the impact of the current plan for a 71 foot building, with a 15 foot penthouse, upon the adjacent buildings to the north, which are considerably shorter than the proposed building. This compatibility issue must, however, be considered in conjunction with the County’s policy of encouraging construction of moderately priced housing.

Code §59-C-8.52 specifies that parking shall be located so as to have “a minimal impact” on any adjoining residential properties. All HLA Development Plan parking (89 spaces planned, including 4 handicapped accessible) will be located under the building, within the parking garage, and will not impact adjoining properties. Access for parking is located along Hampden Lane and will have a minimal impact on the area. The Development Plan Amendment for the HOC transitional housing (DPA 06-2) leaves the question of parking to the Planning Board, which stated in its March 9, 2006, memorandum that it would consider parking and recreation needs for the transitional housing development at site plan review.

Code §59-C-8.53 is inapplicable because no private streets are called for either in the HLA Development Plan or in DPA 06-2. Section §59-C-8.54 is also inapplicable because there is no plan to include ancillary commercial uses in the development.

In sum, the District Council finds that Applicant’s plans are in accordance with all of the purposes, standards and regulations of the TS-R 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 for the “maximum safety, convenience, and amenity of the residents.” The proposed development would provide, as binding elements, a minimum of 10% public use space and 20% active and passive recreational space. Moreover, the conceptual plans call for well landscaped seating areas and a small pocket park on Hampden Lane. Based on the record, 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. To the north of the subject site are the 55 foot tall, CityHomes of Edgemoor development and the 46-foot high, Edgemoor at Arlington development; to the east will be the 38 foot tall, transitional housing and a couple of existing, three-story, garden apartments; to the west, across Arlington Road, is the low-rise, County library, and across Hampden Lane are low-rise commercial properties in the Shoppes of Bethesda shopping center. The District Council finds that, although the building proposed by HLA would be taller than the adjacent developments, it would be generally compatible with uses and structures in the surrounding area. Moreover, its height can be adjusted by the Planning Board at Site Plan review, if the Planning Board finds that the building, as presently planned, would unduly block the neighbors’ air and sunlight. The District Council expects the Planning Board to look carefully at this issue in the manner discussed above in connection with Code §59-C-8.51.

Compatibility of the proposed HOC transitional housing has already been established by the Council’s approval of DPA 00-2, which authorized the same development on Lot 3 that is now planned for Lot 5.

**§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.” Primary and service vehicular

access to the property is shown conceptually from Hampden Lane. According to Technical Staff, the pedestrian and vehicular entrances, as shown on the plans, are located in such a way that they will provide for the safe and adequate movement of pedestrians and vehicular traffic. Applicant will provide a sidewalk along the north side of Hampden Lane, and that provides connection to the area sidewalks and the Bethesda Metro Station. Technical Staff noted that the pedestrian facilities that are proposed as part of the HLA Development Plan will enhance the existing sidewalk network, and concluded that primary site access and service access is adequate and will not pose a threat to public safety. Applicant's transportation expert testified that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient. The District Council so finds.

**§59-D-1.61(d): preservation of natural features**

The fourth required finding is:

That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

No environmental issues were raised in this case. Applicant's engineer testified that the property contains no flood plains, protected soils, rock outcroppings, or other natural features that would impact development of the proposed project, and the subject site is not located in a special protection area. Technical Staff exempted the site from forest conservation plan requirements.

The current surface of the subject site is mostly impervious, and this project would be considered as a redevelopment. As such, the storm water management requirements for recharging the water runoff do not apply. Moreover, because the stormwater discharge from the proposed property is less than two cubic feet per second, the site is exempted from channel protection volume controls (*i.e.*, quantity control).

Quality control will be provided on site through an underground filtration system. Applicant will be required to submit a Stormwater Management Concept Plan at the time of Preliminary Plan of Subdivision.

During construction, Applicant will employ temporary sediment erosion control measures as required by Montgomery County and Maryland Department of the Environment. In addition, Applicant will stabilize construction entrances and silt beds protecting the perimeter of the property.

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." The ownership of the subject properties is set forth in the Development Agreement signed by the DHCA, HOC, HLA and all property owners. LMA Exhibit 32; DPA Exhibit 46. The HLA Property will ultimately be controlled by a homeowner's association (HOA), and Applicant provided a statement certifying that the HOA documents to be recorded in connection with the HLA property "shall provide for the private perpetual maintenance of all active and passive recreational spaces and public use spaces." LMA Exhibit 44(a). The HOC will be responsible for the ongoing maintenance of the HOC Property.

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 bears sufficient relationship to 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 has traditionally considered master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. The District Council finds that compliance with its policy of encouraging the availability of moderately priced housing is also a significant factor in determining the public interest. In this case, the proposed development of the HLA building will make available nine moderately priced dwelling units (MPDUs), in addition to the twelve transitional housing units that are slated for the HOC structure.

Zoning Ordinance §59-D-1.61(a) permits a project to exceed the height and density recommendations of a sector plan if an Alternative Review Committee finds that it is not “financially feasible” to meet those recommendations because of the inclusion of MPDUs in the project. In such a case, the Planning Board may recommend permitting a height and density greater than recommended in the sector plan. This public policy consideration weighed heavily in the District Council’s determination that a remand, as recommended by the Hearing Examiner, was not in the public interest because it would significantly delay the availability of affordable housing and transitional housing.

The impact on public facilities was discussed above. The evidence indicates that transportation, schools, and water and sewer services would not be adversely affected by the proposed development.

The Sector Plan expressly recommends the zoning change (to the TS-R Zone) sought by Applicant, and the District Council has found that the proposed HLA building substantially complies with the use and density indicated by the Sector Plan, as required by Zoning Ordinance §59-D-1.61(a). The District Council also finds that the HOC development plan amendment, DPA 06-2, is consistent with the Sector Plan and compatible with its surroundings.

The Hearing Examiner's report is incorporated herein by reference, and the District Council adopts the report's findings, except with regard to compatibility with adjacent development and consistency with the Sector Plan. As indicated above, the District Council finds that the proposed development is compatible with adjacent development and is not inconsistent with the Bethesda CBD Sector Plan.

Based on the foregoing analysis, and because approval of the instant rezoning application would aid in accomplishing a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the District Council concludes that the requested rezoning, the development plan in G-842 and the development plan amendment in DPA-06-2 should be approved.

### **ACTION**

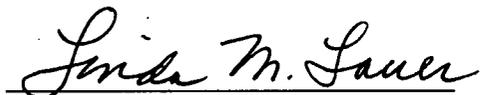
The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-842, requesting reclassification from the R-60 Zone to the TS-R Zone of approximately half an acre of land on Hampden Lane in Bethesda (Lots 5,4, 2 and Part of 1, of Edgemoor Subdivision, Block 24D, located at 4913, 4915, 4919 and 4921 Hampden Lane), in the 7<sup>th</sup> Election District, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, LMA Exhibit 25(d), 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, as required under Code §59-D-1.64.

DPA 06-2, seeking to amend the development plans in LMA's G-721, G-755, and G-769 and DPA's 98-1, 98-2 and 00-2, to allow relocation of the planned Housing Opportunity Commission (HOC) transitional housing from its currently approved location at 4917 Hampden Lane (Lot 3 of Block 24D, Edgemoor) to 4913 Hampden Lane (Lot 5 of Block 24D, Edgemoor), is hereby approved in the amount

requested and subject to the specifications and requirements of the revised Development Plan Amendment, DPA Exhibit 57(c), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan Amendment approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.

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

Linda M. Lauer, Clerk of the Council