

Resolution No.: 16-98

Introduced: April 24, 2007

Adopted: April 24, 2007

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

By: County Council

SUBJECT: APPLICATION DPA 06-1 FOR DEVELOPMENT PLAN AMENDMENT OF G-808, Previously Approved by the Council on March 30, 2004; Stephen Z. Kaufman, Esquire, Heather Dlhopsky, Esquire, and Debra S. Borden, Esquire, Attorneys for the Applicants, Laurence Lipnick and Battery Lane, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 03379057 and 03379068.

OPINION

Applicants Laurence Lipnick and Battery Lane, LLC (a/k/a "Woodmont View"), filed Development Plan Amendment 06-1, on July 20, 2005, seeking to amend the development plan approved by the Council on March 30, 2004 in LMA G-808. That Council Resolution (No. 15-563) reclassified 21,101 square feet of land located at 4811 Battery Lane, Bethesda to the PD-75 (Planned Development) Zone and accepted Applicants' former plan to develop the property with 10 townhomes and an existing single-family, detached home. Applicants' present plan (*i.e.*, DPA 06-1) would instead develop the subject site with an eight-story (79 feet, 4 inches in height), 46 unit, mixed-use condominium, including eight moderately priced dwelling units (MPDUs) and a restaurant. The existing single-family, detached home on the northern end of the property (Mr. Lipnick's residence) would also be retained, but the existing four-story office building on the southern extreme of the property would be demolished.

The subject property (designated the "Trunnell property" in the *1994 Bethesda CBD Sector Plan*) is part of Lot 48, Block 2, Northwest Park, Plat No. 134, and is bounded by Woodmont Avenue to the east,

Battery Lane to the south, the "Aldon" property¹ (Lot 22, Block 2) to the west, and the National Institutes of Health to the north.

The application for the development plan amendment was reviewed by the Alternative Review Committee (ARC), pursuant to Zoning Ordinance §59-D-1.61(a), and the ARC found that it was not financially feasible to develop the property with eight MPDUs on site, unless bonus height and density were permitted, as requested by Applicants. Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Planning Board ("Planning Board") considered the application and both recommended approval, including the bonus height and density sought by Applicants. Because the changes to the development plan sought by Applicants were substantial, the Planning Board forwarded the matter to the Office of Zoning and Administrative Hearings (OZAH) for a public hearing.

That hearing was held on January 29, February 23 and March 9, 2007. The only opposition was presented by Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation (MCCF). The primary basis for MCCF's opposition was the request for height 14.3 feet above the 65 foot height limit recommended in the *1994 Bethesda CBD Sector Plan* for the Battery Lane District. On April 6, 2007, the Hearing Examiner filed his Report and Recommendation, recommending approval of the development plan amendment. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, 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 development plan amendment, for the reasons set forth by the Hearing Examiner.

The subject site has approximately 60 feet of frontage with Battery Lane and 340 feet of frontage along Woodmont Avenue. The site has a gross tract area of 22,618 square feet (52% of an Acre) because Applicants acquired 1,517 square feet of excess Woodmont Avenue right-of-way (ROW) from the County

¹ The Aldon property is called that because it is run by Aldon Management, but it is referred to as "Site 1" in the 1994 Sector Plan and occasionally as the "Brown" property, because that is the surname of the current owners.

on September 13, 2004, *i.e.*, prior to this application. Applicants dedicated 596 square feet of Battery Lane ROW to the County on July 24, 2002. The site is rectangular in shape, and the topography slopes down from east to west. There are no natural resources (wetlands, streams, flood plains or forest) on the property. The public utilities (water and sewer) serving the property have adequate capacity to handle the proposed development. There is also an existing public storm drain on the adjoining property, which has adequate capacity to take storm water runoff away.

In the 1954 Regional District zoning, this area was zoned R-60. In 1958, the R-60 Zone was reaffirmed as part of the countywide comprehensive zoning. On December 6, 1977, SMA G-20 reaffirmed the R-60 Zone. On December 12, 1989, Local Map Amendment G-636 changed the R-60 Zone to the C-T Zone. That change was reaffirmed on October 11, 1994, in SMA G-711. On March 30, 2004, Local Map Amendment G-808 reclassified the subject site to the PD-75 (Planned Development) Zone in Council Resolution No. 15-563.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" takes into account those areas that would be most directly affected by the proposed development. In the present case, the Hearing Examiner appropriately adopted the definition of the surrounding area accepted by the Council in LMA G-808:

extend[ing] out from the intersection of Battery Lane and Woodmont Avenue to the Battery Lane Urban Park to the west, Norfolk Avenue and Cheltenham Drive to the south, Wisconsin Avenue to the east and the National Library of Medicine on the National Institutes of Health (NIH) campus to the north.

Surrounding the subject site are properties zoned R-60, R-10, R-10/TDR and CBD. The land use and zoning pattern for the area reflects a mix of residential, commercial and institutional land uses. North of the subject property is R-60 zoned land surrounding the Library of Medicine on the grounds of NIH. Confronting to the east and southeast are uses in the CBD-1 Zone, including a hotel on the site of a proposed 200 unit condominium building, known as 8400 Wisconsin Avenue (owned by "Crimson 8400 Bethesda,

LLC”). Confronting to the south and adjoining to the west are multi-family residential buildings in the R-10 and R-10/TDR Zones. These buildings range in height from three to five stories. Further to the west is the Battery Lane Urban Park operated by M-NCPPC. There is also a parking garage south of Battery Lane, within this area.

Pursuant to Code § 59-D-1.11, development in the PD-75 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-75 Zone or upon approval of an amendment to that development plan pursuant to Code §-D-1.7. The land use plan (Exhibit 78(b)) is a required part of the development plan, and it is entitled “Alternative Amendment To Development Plan” in this case. It shows the proposed locations of all structures, as well as additional information regarding the planned development, both in diagram and textual form. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicants 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 (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for an additional development plan amendment.

Binding Elements{ TC "B. Development Plan & Binding Elements" \f C \l "2" }

The textual binding elements here include the following:

1. The maximum number of dwelling units will be 47, including 17% MPDUs (or 8 MPDUs).
2. The building height is proposed for 79 feet 4 inches measured from the adjoining curb grade along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables) with final height measurement subject to review and adjustment by the Planning Board at site plan approval.
3. The minimum setbacks will be 0 feet for the front yards on Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from the existing building at the north property line.
4. The minimum green space will be 30% of the gross tract area.

5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to all residents of the condominium building.
6. The maximum building coverage will be 60% of the site area.
7. The minimum number of parking spaces for the residential units will be 54, and the number of parking spaces required for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a Common Driveway Agreement recorded at Liber 26425, Folio 122 among the Land Records of Montgomery County. The Common Driveway Agreement sets forth the agreement between the applicant and the adjacent property owner to share certain portions of their respective properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised Stormwater Management Concept Plan to be approved prior to site plan.
10. The Street commercial space in the planned building will be occupied by a "Quality Restaurant" as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (*i.e.* one producing more peak hour traffic).

The District Council finds that the development plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with master plan and other County policies.

There are two applicable Master Plan documents, the *July 1994 Bethesda CBD Sector Plan*, and the *March 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. As observed by M-NCPPC's Community-Based Planning Division (Exhibit 25, Attachment 4):

... The current proposal meets several of the objections and recommendations of the 1994 Sector Plan in that it increases the amount of housing near Metro and helps provide a northern gateway to the Woodmont Triangle. Together with the proposed development across Woodmont Avenue, the 8400 Wisconsin project, two high-rise residential developments would frame the northern entrance to Bethesda along Woodmont Avenue. The proposal provides eight moderately priced dwelling units on site, adding to the 25 proffered by the 8400 Wisconsin Avenue project, and furthering one of the main goals of the Woodmont Triangle Amendment to the 1994 Sector Plan.

Technical Staff notes that the proposal also conforms to many of the urban design guidelines in the Sector Plan (pp. 92-94), including streetscape development, building orientation towards both Woodmont Avenue and Battery Lane, vehicular access and off-street parking, hidden underground. The proposal offers attractive architectural features, including rooflines that are compatible with adjacent development and the existing dwelling on the property. Exhibit 25, p. 6.

The Land Use Maps on page 27 of the 2006 Amendment propose a land use of "High-rise or Garden Apartments" for the subject site, evidencing the fact that the Sector Plan Amendment did not intend to preclude an eight-story residential building on the site, as long as it qualifies for the bonus height by the inclusion of on-site MPDUs. Code §59-C-7.14(c)(3) requires projects in the PD Zones with a residential density of more than 28 dwelling units per acre to have a minimum of 12.5% MPDUs, and Section 59-C-7.14(c) permits a development in the PD Zone to exceed the density specified for the PD density category (in this case PD-75) "to accommodate the construction of Moderately Priced Dwelling Units."

Although a 65 foot height limit is recommended for the area of the subject site by the Sector Plan and its 2006 Amendment, the 2006 Amendment also expressly recognizes that recommended height limits may be exceeded to allow the inclusion of MPDUs. As stated on page 10 of the 2006 Amendment,

Mixed-use projects with moderately priced dwelling units (MPDUs) on-site can achieve the greater height and density allowed in the respective zones as specified in this Amendment, but at a FAR no greater than the maximum allowed in the Zoning Ordinance.

The almost identical statement can be found on page 21 of the 2006 amendment:

Mixed-use projects with MPDUs on-site may achieve a greater height and density than allowed in the 1994 Sector Plan as specified in this Amendment, but no greater than the maximum in the Zoning Ordinance.

The Zoning Ordinance also expressly permits additional height and density in proportion to the MPDUs provided on site, as long as the ARC determines, as it has here, that the addition of MPDUs would not be financially feasible within the base limits prescribed by the Zoning Ordinance. Code §59-D-1.61(a).

Since Applicants are providing 17% MPDUs, they are permitted by Code §25A-5(c)(3) to obtain a bonus density and height of 22%. Applying that bonus percentage to the height and density limits, yields a permitted height of 79.3 feet and a permitted density of 47 dwelling units, exactly what Applicants seek in the subject case. The District Council therefore finds that the 65 foot height limit contained in both the 1994 Sector Plan and its 2006 Amendment for the subject site does not prohibit the 79.3 foot structure proposed here.

The 2006 Woodmont Triangle Amendment also encourages the location of first-floor retail in the Woodmont Triangle area. This sentiment is reiterated explicitly in one of the "Urban Design Guidelines" on page 15 of the Plan Amendment, which recommends that developments:

- Provide street-oriented retail, restaurants, and other street animating uses on the first floor of buildings located along streets such as Norfolk Avenue and Cordell Avenue.

Thus, the inclusion of a street-level restaurant, as planned for the eight-story building in this case, is perfectly consistent with the amended Sector Plan.

The County's Annual Growth Policy (AGP) and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The evidence is that the subject site will be supplied by ample water and sewer service; that there is adequate school capacity under the AGP schools test; and that the development comports with Local Area Transportation Review standards.

The District Council concludes that the proposed development plan will be in substantial compliance with the use and density indicated in the Master Plan and will not conflict with any other applicable county plan or policy.

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

The requirements for the PD-75 Zone are found in Code §59-C-7.1. PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings, all of which must be spelled out on a development plan.

The lengthy purpose clause for the PD-75 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. Generally, it is the purpose of the Zone to implement the general and master plans by permitting “unified development consistent with densities proposed by the master plans.” Development in the PD Zones should be “so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development.” It is intended to produce a “coordinated mixture of residential and convenience commercial uses and encourage a broad range of housing types....” It is also a purpose of the PD Zones to take advantage of open space and trees, enabling them to function “as places for relaxation, recreation and social activity.” The purpose clause also encourages large scale developments and creation of “pedestrian circulation networks, separated from vehicular roadways . . . [which will] minimize reliance upon the automobile as a means of transportation.” Finally, it is the purpose of the PD Zones “to achieve a maximum of safety, convenience and amenity for both the residents ... [and their neighbors], and to assure compatibility and coordination of each development with existing and proposed surrounding land uses.”

As discussed above, the proposed development will be in substantial compliance with the *Bethesda CBD Sector Plan, as Amended*. Accordingly, the application will comply with the first element of the

purpose clause by allowing implementation of applicable Master Plan objectives. However, the small size of the intended development makes it virtually impossible for the builder to satisfy each element of the purpose clause unless one evaluates this development as part of the larger neighborhood.

Typically, developments in the PD Zone are, as mentioned in the “purpose clause,” large in scale, a characteristic which enables the developer to employ the kinds of pedestrian circulation networks, open spaces and recreational areas which are goals of the Zone. The small size of this project limits the use of extensive common areas and pedestrian circulation networks. Nevertheless, Zoning Code §59-C-7.122 does recognize that a PD Zone may be applied to small developments, and this project’s location near the heart of Bethesda allows it to achieve the PD Zone’s social interaction goals in the context of the surrounding area. The development will be close enough for people to walk to nearby restaurants, shops and entertainment.

Moreover, the new development plan calls for a much larger project than originally planned (*i.e.* the original plan called for 10 townhouses, while the plan amendment would allow a 46 unit building to be added to the site). The additional size allows Applicants to supply additional amenities, such as a restaurant and roof-top common areas. Thus, the present application is more in keeping with the purposes of the PD-75 Zone than the original proposal approved by the Council in LMA G-808. More importantly, it will provide a diversity of housing types, called for in the “purpose” clause, but not provided under the G-808 townhouse plan.

Visually, the planned structure will be an improvement over the present office building and gravel parking lot. As noted by the Technical Staff, the new building will front on both Woodmont Avenue and Battery Lane to activate the streetscape. The architecture was designed to blend well with the existing single-family home on the site, and it will provide an interesting gateway to Woodmont Triangle from the north.

In addition, the proposed development would provide the “maximum of safety, convenience and amenity” for both the residents and their neighbors, another stated purpose of the PD Zone. The eight-story structure will have safe vehicular access via the recessed drop-off area on Woodmont Avenue and the existing single driveway on Battery Lane. Parking will be in a two-level underground garage, except for the service court parking and the existing two-car garage attached to the Lipnick residence. The uncontradicted record in this case establishes that vehicular and pedestrian access and circulation will be safe and efficient. Moreover, living within easy walking distance of a Metro station and having the numerous Bethesda retail establishments as well as the Battery Lane Local Park in the neighborhood will be great conveniences. Residents and the public will also benefit from the 30% green area proposed for this project, although the roof-top green space will not be available to the general public.

The goal of visual compatibility will be achieved by designing the proposed building to mesh architecturally with the existing detached, single-family home, and by the similarity of the proposed eight-story building to other structures existing and planned in the surrounding area. In fact, the new development plan calls for a structure that is more in keeping with its surrounding area than the townhouse proposal approved in G-808. Land use compatibility is provided by the fact that the proposed residential use fits in well both with the nearby residential uses and with the variety of local amenities available in Bethesda within walking distance. It is also consistent with the Land Use Plan provided on page 27 of the 2006 Woodmont Triangle Amendment.

Technical Staff correctly observes that “the building height provided will be compatible with adjacent development and will integrate mutually compatible uses,” because “[t]he proposed height is higher than adjacent mid-rise residential development to the west, but it is lower than adjacent residential development at 8400 Wisconsin Avenue, which is 100 feet.” Also, “[t]he residential use is consistent with existing and planned land use in the surrounding area ... [and t]he commercial use . . . [will] fit into the fabric of the urban environment of the Bethesda CBD.” Exhibit 25, p.6. It should also be noted that the

Amended Sector Plan allows heights up to 110 feet directly across Battery Lane to the south (Diagram on Page 12 of the Sector Plan Amendment); and the property to the north is NIH, an institutional use with large buildings.

The proposed use of the subject site as a mixed-use, multi-family dwelling is also consistent with the planned use across Woodmont Avenue and with the other existing uses on Battery Lane, almost all of which are multi-family structures. Finally, the proposed building is compatible with the more urban style of development that is planned for the Woodmont Triangle area under the Sector Plan Amendment. The District Council finds that the new proposal for a mixed-use, eight-story condominium, would be more compatible with the surrounding area than the initial plan of ten townhouses for the subject site.

In sum, the proposed development is consistent with the intent and purposes of the PD-75 Zone. We next look to the “standards and regulations” of the PD-75 Zone, which are spelled out in Zoning Ordinance §§59-C-7.12 through 7.18.

Code Sections 59-C-7.121 and 59-C-7.122 are inapplicable because this application does not seek a reclassification of the zone, but only a development plan amendment.

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-75 Zone except detached, single-family homes. The existing detached, single-family house on the site is permitted to remain because it predated the rezoning, approved by the Council in G-808. The Council determined at that time that it is a nonconforming use subject to the restrictions contained in Division 59-G-4 of the Zoning Ordinance.

Code Section 59-C-7.132(b) permits commercial uses in the PD-75 Zone under specified circumstances. Applicants seek to include a small amount of restaurant commercial space (3200 square feet of gross floor area) on the first floor of their proposed eight-story building. The District Council finds that such commercial space is permitted under Section 59-C-7.132(b) because the *Bethesda CBD Sector*

Plan endorses such uses for the area. This application also satisfies the alternative prong of this section because a restaurant use would achieve the purpose of the zone by adding an additional and compatible amenity.

Section 59-C-7.14 determines the appropriate density category for the zone when reclassification is sought. That is not the case here, so this section is inapplicable.

Code Section 59-C-7.15, addresses compatibility, a subject which has already been discussed in the context of the Zone's purpose clause. Based on the preponderance of the evidence, the District Council concludes that the development proposed on the subject property would be compatible with and would not adversely affect the character of adjacent development.

Section 59-C-7.16 requires 30% green area for the PD-75 Zone. Textual Binding Element #4 of the Amended Development Plan calls for a minimum of 30% green area, thus meeting the 30% green-area requirement under the PD-75 density category.

Section 59-C-7.17, discusses dedication of land for public use. Applicants previously dedicated of 596 square feet of right-of-way along Battery Lane. No additional dedication is planned.

Section 59-C-7.18 specifies that off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. In this case, eighty-eight (88) parking spaces are required for the site, including both the residential requirements (54 spaces)² and commercial requirements (34 spaces). Applicants will provide the required 88 spaces on site in a two-level underground garage (75 spaces); in the service court (11 spaces); and in the exiting garage attached to the Lipnick single-family home (2 spaces).

² The number of residential parking spaces required in this case is reduced by 17% (from 65 to 54) pursuant to Zoning Ordinance §59-E-3.33(b)(3) because Applicants will be providing 17% of their dwelling units as MPDUs.

In sum, the District Council finds that Applicants have complied with all of the purposes, standards and regulations of the PD-75 Zone, as set forth in Article 59-C of the Zoning Ordinance.

The next finding 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.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-75 Zone, it has been discussed in that context, above. As noted there, Applicants have provided the maximum in safety, convenience and amenities for the future residents of this development.

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

The development plan provides an improved pedestrian circulation network with wider sidewalks and better access for residents and the public traveling through the area. As noted previously, the project is designed to provide safe, adequate, and efficient access for vehicles and pedestrians. Vehicular points of access will be provided on both Woodmont Avenue and Battery Lane. The Applicants have negotiated a common driveway agreement with the owner of the adjacent multi-family development to accommodate a shared driveway. The overwhelming evidence is that the site will provide safe, adequate and efficient pedestrian and vehicular access. Accordingly, the District Council finds that the proposed circulation systems and site access would be safe, adequate and efficient.

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

There are no forests, specimen trees or natural features existing on the site. The site, which is mostly impervious at present, was significantly graded to construct the existing office building and parking lot. Applicants submitted a Natural Resources Inventory and Forest Stand Delineation (NRI/FSD), and received an exemption from the M-NCPPC as to forest conservation requirements in connection with LMA G-808. That exemption is still in effect. A Preliminary Storm Water Management Concept and Sediment Control Plan was also approved by the Department of Permitting Services in conjunction with LMA G-808;

however, Technical Staff determined that an amended plan must be filed prior to site plan review in the current case. Applicants agreed to add a textual binding element stipulating that a revised stormwater management concept plan will be submitted and must be approved prior to site plan. It is now Textual Binding Element #9.

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

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

The property is owned by Co-Applicant, Laurence Lipnick, as demonstrated by the deed to the property filed as Exhibit 75. According to Applicants' counsel, Applicants will form a condominium association, which will be responsible for maintenance of common and quasi-public areas. He submitted a sample "Declaration of Condominium" of the kind which will be used for this development (Exhibit 76). It includes a provision (Article 2, Section 2.1(b)) for maintenance of common elements by the "Council of Unit Owners."

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

The Public Interest

The final finding which is required under Maryland law is that the proposed Development Plan Amendment will be in the public interest. The proposed development will promote the "health, safety, morals, comfort, and welfare of the inhabitants of the regional district" (i.e., the public interest) by providing the kind of residential development called for in the 1994 Bethesda CBD Sector Plan, and the affordable housing which is a goal of the 2006 Woodmont Triangle Amendment, without any adverse effect on public facilities. It will offer an attractive transition from the north into the denser portions of

Bethesda and will bring more residents within walking distance of Metro and a variety of convenience retail establishments in Bethesda. In sum, the District Council finds that the proposed Development Plan Amendment is 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 PD-75 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 development plan amendment has been shown to be in the public interest. The District Council also finds that the legal issues raised by the People's Counsel and MCCF were appropriately decided by the Hearing Examiner, as detailed in his report. For these reasons and because approval of the instant application for a development plan amendment 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.

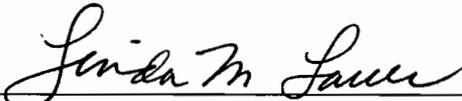
ACTION

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, approves the following resolution.

Development Plan Amendment (DPA) 06-1, requesting amendment of the Development Plan approved by the Council on March 30, 2004, in Local Map Amendment (LMA) # G-808, regarding the property located on part of Lot 48, Block 2, Northwest Park Subdivision, Plat No. 134, in the Seventh Election District, at 4811 Battery Lane, in the northwest quadrant of Woodmont Avenue and Battery Lane, in Bethesda, is approved subject to the specifications and requirements of the Development Plan

Amendment, Exhibit 78(b), provided that the Applicants submit to the Hearing Examiner, for certification, a reproducible original and three copies of the approved Development Plan Amendment within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council