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February 26, 2025

The Honorable Kate Stewart, President
And Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Bethesda Minor Master Plan Amendment

Dear President Stewart and Members of the County Council:

Our firm represents the owner of the properties located at 7411, 7415 and 7425 Arlington Road and 4905 Montgomery Lane in Bethesda, Maryland (collectively, the “Property”). The Property has a combined net lot area of approximately 28,443 square feet and is zoned CR 2.0, C-0.25, R-2.0, H-60’ and located in the Bethesda Overlay Zone (“BOZ”). The Property is currently underutilized and improved with several two-story commercial uses and associated surface parking. The Property is uniquely situated for residential infill redevelopment given the Property’s transit-oriented location, only 0.3 miles from the Bethesda Metro Station. However, there is no real incentive to provide additional Moderately Priced Dwelling Units (“MPDUs”) (above the 15% required), given the Property’s location outside of the Height Incentive Area. We support the Planning Board’s recommendation to address this by expanding the Height Incentive Area along Arlington Road, in an effort to “encourage these underutilized sites to redevelop and provide more much-needed affordable housing.” (See Planning Board Draft, page 24)

I. Affordable Housing

Affordable Housing is one of the four overarching goals of the 2017 Approved and Adopted Bethesda Sector Plan (the “Sector Plan”). (See page 6). Specifically, the Sector Plan seeks to increase “the provision of Moderately Priced Dwelling Units in exchange for development incentives.” (See Id.). However, the current Height Incentive Area map, as discussed below, discourages additional affordable housing from being provided on this Property and those immediately surrounding it.

The Sector Plan was one of the first to establish a new minimum requirement of 15% MPDUs. However, unlike the other areas of the County that now also require 15% MPDUs, in Bethesda, to qualify for MPDU bonus height a project must exceed 17.5% MPDUs.¹ The Sector

¹ In other areas of the County where 15% MPDUs are required, either by the Sector Plan or by virtue of being located in a high-income planning area, projects are still entitled to MPDUs bonus height for exceeding 12.5% or 15% MPDUs. (See Zoning Ordinance Section 4.5.2.C.7, which allows CR zoned properties to obtain MPDU bonus

Plan itself does not determine whether projects should be awarded additional height for providing more than 15% MPDUs. Rather, the Sector Plan defers to the BOZ to make this determination. (See Sector Plan page 151). The BOZ requires that projects must (1) exceed 17.5% MPDUs and (2) be located in the Height Incentive Area (established by the BOZ) to qualify for additional MPDU bonus height. The Height Incentive Area map is too restrictive along the Arlington Road corridor and unnecessarily carves out certain properties in the Arlington North district, which are naturally buffered from the surrounding residential communities by large public institutions. This carve out disincentivizes the provision of additional MPDUs on these transit-oriented properties in Downtown Bethesda, which is precisely where the County should be encouraging additional affordable housing. We support the Planning Board's recommendation to address this implementation element of the Sector Plan through this Minor Master Plan Amendment.

The proposed expansion of the Height Incentive Area (shown on page 24 of the Planning Board Draft) (the "Expanded Boundaries") will not have any negative impact on the surrounding properties. The Expanded Boundaries are naturally buffered from the surrounding residential community by publicly owned land, including Arlington Road, the Bethesda Library and Bethesda Elementary School. In fact, the edge of the closest single-family residential property (as measured to the back of the rear yard) is more than half the length of a football field away (*i.e.* approximately 190 feet). The Planning Board Draft limits the MPDU bonus height in the Expanded Boundary to 24 feet or two-stories, which will further ensure that the modest additional height allowed will have very limited perceived impact on any of the surrounding properties, either located within or outside the Central Business District. This is in part because the Bethesda Design Guidelines provide adequate design controls, such as tower step-backs, that will minimize any impact from this modest additional height on neighboring properties. Additionally, there is already a diversity of building heights in this district, including, but not limited to, the 72' tall Edgemont building and recently constructed 150' tall Edgemont II building, both located along the north side of Edgemoor Lane. Therefore, the modest additional height proposed on the few remaining development sites in the Expanded Boundaries will not be out of character with the surrounding area. However, importantly, the allowance of MPDU Bonus Height in the Expanded Boundaries will help to incentivize the production of additional affordable housing in this transit accessible, Downtown location.

II. Park Impact Payment ("PIP")

As the Council is aware, a confluence of factors, including persistently high interest rates, high construction costs, and constrained access to capital, have slowed new development in the region. There are a number of projects in Downtown Bethesda that are unable to move forward due to these economic constraints. Increasing the PIP adds another layer of cost that only further challenges the financial feasibility of new development. It is one of the many costs that developers must pay, which directly benefits public infrastructure. Notably, the PIP has raised over 15 million dollars for new parks in Bethesda. The PIP has already been increased by almost 25% to-date. With the Planning Board's recommended increase to correct for prior rate adjustments, the rate will have gone up by over 50% since it was first established. So we encourage the Council to be mindful of any increase to the PIP, as there is a tipping point, which could have unintended

height for exceeding 12.5% MPDUs and Section 4.9.8.C.3.b, which requires projects only to exceed 15% MPDUs in the Downtown Silver Spring Overlay Zone to obtain MPDU bonus height).


consequence of realizing even less money for parks, due to less projects moving forward. However, we are supportive of the Planning Board's proposed modification to the timing of PIP payments, with the first half due at building permit and the second half due at the first use and occupancy permit. This change recognizes the extra financial burden these up-front costs have on new developments.

III. Density Cap and "Use or Lose"

We support the Planning Board's recommendation to eliminate the density cap in Bethesda. It is important that developers and property owners have certainty in the process. A density cap under which a project cannot vest its right to density until Site Plan is contrary to this. This uncertainty adds a risk that can deter investment in Bethesda, especially in tight markets like we are experiencing today. We also support the elimination of the "use or lose" requirement, which is especially burdensome in challenging economic times, where developers are forced to pay significant building permit fees, without having secured construction financing, just to avoid losing their entitlements and having to re-start the process. As such, the elimination of the cap will help to provide needed certainty to ensure that desirable, additional development continues in Bethesda.

Thank you for your consideration of these comments.

Very truly yours,



Elizabeth C. Rogers