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March 19, 2025

Via Email

Ms. Kate Stewart, President
And Members of the County Council
Montgomery County Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Montgomery County Council Public Hearing Record for Expedited Bill 2-25, PILOT for Commercial to Residential Reconstruction and Zoning Text Amendment 25-03, Expedited Approvals for Commercial to Residential Reconstruction; Selzer Gurvitch Land Use Practice Group's Written Comments

Dear Council President Stewart and Councilmembers:

On behalf of the Land Use/Zoning Practice Group at Selzer Gurvitch, we offer these written comments in support of Zoning Text Amendment 25-03 (the "ZTA") and Expedited Bill 2-25 (the "PILOT Bill") because these policies will enhance the viability of reconstructing underutilized and declining commercial buildings into much needed housing throughout the County. The ZTA will help to make the land use regulatory approval process more efficient for Commercial to Residential Reconstruction projects. More importantly, the PILOT Bill represents a meaningful economic development policy that is necessary if the County desires to compete for the investment from capital markets needed to reposition struggling commercial buildings with declining real estate taxes into active and income tax generating residential uses.

In addition to the foregoing, we also offer one technical amendment to the PILOT Bill that is aimed at furthering the goals of the legislative package.

Economic Competitiveness

It is critical that the Council consider the ZTA and PILOT Bill in the context of similar economic development policies adopted by neighboring jurisdictions because that is the lens through which capital markets will view opportunities in Montgomery County relative to other opportunities

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competing for such investment. By way of example, the District of Columbia's Tax Abatement for Housing in Downtown program requires that 10% of the residential units constructed be affordable to families earning 60% of Area Median Income ("AMI") in exchange for a 20-year tax abatement period. In this respect, the Council should recognize that the PILOT Bill already requires an additional 5% regulated affordable housing as compared to DC. Thus, it is critical that the policy also provide an additional period of tax abatement (i.e., 25 years is necessary) to ensure that the County remains competitive economically in the region.

From a broader perspective, the ZTA and PILOT Bill will facilitate the removal of obsolete office and retail spaces that will in turn strengthen remaining commercial buildings that are responsive to market demands and capable of being maintained and operated over the longer term. Additionally, the creation of housing in the place of underutilized office buildings is critical to providing for a greater supply of housing (including a diversity of housing types) throughout the County so that employers can attract talent and grow within the County. It is also important that the Council acknowledge that the replacement of struggling office buildings with residential is good policy from an infrastructure perspective because these projects are responsible for development impact taxes and there is already transportation and water/sewer infrastructure in place and capable of being enhanced for future residents.

Absent the Council moving forward with the PILOT Bill, the cost of construction and market conditions will not support multi-family housing (rental and for-sale) in most instances. If the County desires to see more types of housing (including affordable rental units) in addition to for-sale townhouse units which are being produced by the market, the PILOT Bill represents the bare minimum policy to have capital markets consider Montgomery County for multi-family development versus neighboring jurisdictions.

Technical Amendment to Expedited Bill 2-25

In addition to the foregoing comments, it is imperative that the Council recognize that while the expedited plan approval process is a good tool, there are many instances where it is unnecessary for a property owner to use the expedited plan approval process to implement a Commercial to Residential Reconstruction as defined by the ZTA. This may be due to the fact that a project has already been approved (or started the process) under the traditional regulatory approval processes (e.g., sketch, preliminary plan and/or site plan) but is unable to move forward with the Commercial to Residential Reconstruction due to financing or market conditions. Alternatively, there are scenarios where an existing office building can accommodate a Commercial to Residential Reconstruction through amendments to prior regulatory approvals or building permit alone in a more efficient manner the expedited plan approval process proposed.

In order to ensure there is support for all types of projects that meet the definition of Commercial to Residential Reconstruction, the PILOT Bill should be modified to include Commercial to Residential Reconstruction projects that can be implemented in a timely fashion without the need for the expedited plan approval process proposed by the ZTA. In the event that such a Commercial to Residential Reconstruction use is implemented through the traditional regulatory review or

building permit process, as a condition to the granting of the tax abatement, the County can require that the applicant apply for building permit and commence construction within two (2) years of executing the PILOT agreement. Such a provision will ensure that these projects move quickly as contemplated for Commercial to Residential Reconstruction projects that use the expedited plan approval process. Under subsection (c)(4)(A) of the PILOT Bill, it is already contemplated that DPS can verify that a project meets the definition of Commercial to Residential Reconstruction at building permit (i.e., 50% or more vacancy), which provides an avenue for property owners to use the PILOT without obtaining an expedited plan approval. As a result, we respectfully request that the following minor revisions to (c)(4)(B) of the PILOT Bill be made (changes in bold and underline):

(c) When authorized by state law, the Director must offer a payment in lieu of taxes for a qualifying housing development:

(4) owned or controlled by a person engaged in constructing or operating housing structures or projects if:

(A) the property receiving the payment in lieu of taxes is converted to residential use from a commercial use with at least a 50 percent vacancy rate at the date of application to either the Department of Permitting Services or Planning Department pursuant to Section 3.3.2.B of Chapter 59;

(B) the property's development meets (i) all the requirements of an expedited approval plan under Section 7.3.5 of Chapter 59, (ii) all applicable requirements for plan approval under Division 7.3 of Chapter 59 or building permit under Chapter 8 and commits to obtaining a building permit for the principal building and commencement of construction within 2 years of entering into the payment in lieu of taxes agreement with the County. If the property owner qualifies under subsection (ii) of the proceeding sentence and fails to meet the deadline, the payment in lieu of taxes agreement automatically terminates.

(C) at least 15 percent of the dwelling units located on the property are built under a government regulation or binding agreement with the County limiting the rent charged for the unit for at least 25 years to make the unit affordable to households earning 60 percent or less of the area median income.

The offer must exempt 100 percent of the real property tax that would otherwise be levied for a period of at least 25 years beginning in the year a use and occupancy permit is issued for the qualifying development, but no more than the number of years that rents charged for 15 percent of the dwelling units must remain restricted to households earning 60 percent or less of the area median income.

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We thank you for your time and consideration reviewing these written comments to the ZTA and PILOT Bill. While we are encouraged that these legislative policies are a step in the right direction toward mitigating the economic challenges associated with struggling office buildings, it is critical that the PILOT Bill not be made more onerous if the County desires to compete for capital investment with neighboring jurisdictions. Additionally, it is important that the PILOT Bill provide greater flexibility for projects that meet the definition of the Commercial to Residential Reconstruction, but that can be implemented without the aid of the new expedited plan approval process.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

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By: _____
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cc: Mr. Jim Ogorzalek
Ms. Livhu Ndou
Ms. Cindy Gibson
Mr. Tommy Heyboer