

October 24, 2025

Via Electronic Mail

President Kate Stewart and Members of the
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Re: University Boulevard (UB) Overlay Zone (Zoning Text Amendment
No. 25-12) (Public Hearing: October 28, 2025)

Dear President Stewart and Members of the Council:

On behalf of Montgomery 1936 Land Company, LLC (“MLC” or the “Company”), the owner of several properties located in the Four Corners area, shown as Areas 1, 2, and 3 on Attachment I (collectively, the “Property”), we present these written comments as our client’s testimony on Zoning Text Amendment No. 25-12 (the “ZTA”).

The ZTA implements the recommendations in the Draft University Boulevard Corridor Plan (the “Draft Plan”) to prohibit certain uses, specifically gas stations and drive-throughs, in the areas to be covered by the proposed Overlay Zone. As an owner of properties improved with a gas station in one case, and a restaurant with drive-through in another, our client has significant concerns about the impact of the ZTA on the ongoing operations of these businesses and the ability to maintain, upgrade, and modernize them, as needed over time. These concerns are particularly exacerbated by the Draft Plan’s prospect of possible right-of-way expansions along the properties’ frontages that may cause a need to modify the existing improvements or the site design.

As you can see from Attachment I, MLC owns properties (1) in the land area median formed by the separated lanes of University Boulevard west of Colesville Road, and (2) on the south side of eastbound University Boulevard, also west of Colesville Road. Without recognition of the need to allow flexible responses to physical conditions resulting from right-of-way expansion, the Draft Plan and the

related Overlay Zone risk sacrificing viability and functionality of these businesses, due to restrictions that would be placed on them if they become non-conforming.

Treatment of Existing Auto-Oriented Uses

The ZTA contemplates phasing out auto-oriented uses, such as drive-throughs and filling stations, to support a more pedestrian- and transit-oriented environment (Lines 54-65, especially Lines 59 and 62). While this may be a legitimate long-term governmental goal, outright prohibition creates immediate near-term consequences and long-term uncertainty for the businesses and property owners, as well as the surrounding neighborhood.

These specific uses to be prohibited, which currently exist in Four Corners, are viable neighborhood-serving businesses that are patronized by local residents. Notwithstanding future transit potential, residents are likely to continue to own and operate automobiles, powered by petroleum fuel products. If gas stations are prohibited, and current ones disappear, residents will necessarily need to travel farther afield, in both distance and time, to obtain this needed service. Thus, responding to one concern merely creates a different one.

Rendering these uses as nonconforming would prevent their reconfiguration in response to right-of-way acquisition or modernization generally. This could force closures of the businesses long before redevelopment is feasible. Further, gas stations and drive-throughs are businesses that often represent a local outpost of a large national or multi-national corporation, often times operated as franchises with local franchisees. The franchisor corporation often has design parameters for buildings, site design, signage, etc., that must be followed in order to maintain the franchise. If the local business cannot comply with the franchise requirements/standards – either because of loss of land area to right-of-way acquisition, or because of non-conforming status not allowing a required physical building or site change, the franchise could be revoked. Such a change could result in vacating the property and cause future occupancy by less financially secure tenants, less quality maintenance, and a progressive downward spiral for the property and the corresponding effect on the surrounding community.

The ZTA should clarify that such uses may reconfigure within their parcels to restore safe, functioning operations, or for other business purposes, and may modernize within their existing footprints and with responsible expansion.

One simple solution to these conflicting desires would be to make the prohibition on uses only prospective. The ZTA would make clear that where such uses exist at the time of mapping the Overlay Zone, the uses may remain and are deemed conforming (thus allowing them to modify their physical elements as needed to maintain operations). However, new uses of such types would not be allowed to commence. This approach would seem to accommodate both elements of concern – protect the viability of existing, neighborhood-serving businesses, while at the same time, precluding new auto-oriented uses that are considered inconsistent with the efforts toward greater walkability and public safety. This balances the Draft Plan’s long-term redevelopment objectives with short-term viability, and continuity for the consumer community.

In addition to the proposed use restrictions and prohibitions, the near-term effect of the possible right-of-way expansions is problematic for existing filling stations in Four Corners. Because pumps, canopies, and drive aisles are calibrated to precise tolerances for these uses, even small frontage shifts may make safe operations impossible. As a non-conforming use, without the ability to reconfigure, these properties could become functionally obsolete, forcing premature closure or costly public acquisition.

To prevent this outcome, the ZTA should grandfather the existing uses as conforming. If it does not grandfather them as conforming, the ZTA should clearly state that service stations impacted by right-of-way acquisitions may reconfigure pumps, canopies, and circulation lanes within their parcels as conforming adjustments. Modernization should not only be permitted but encouraged - such as adding EV charging stations, canopy replacements, and ADA upgrades - to improve environmental and safety performance. These changes are consistent with County climate and mobility objectives, while ensuring continuity of valued services during implementation of the Draft Plan. Similar modifications should be allowed for existing drive-throughs.

There is no clear timing or sequencing for implementation of the right-of-way elements of Draft Plan. This creates a burden on businesses, because without guidance on timing, funding, or agency responsibility, property owners cannot plan responsibly for leases, tenants, or phased redevelopment. At the same time, there will be a reluctance to make improvements when there is no certainty of them remaining without impairment. This uncertainty itself deters reinvestment.

Relief Mechanisms to Enable Redevelopment

To resolve these constraints and potential conflicts between the right-of-way implementation methods of the Draft Plan (and their uncertain timing), the ZTA should expressly authorize the liberal use of existing relief mechanisms under County law. To this end, Subdivision Waivers under Chapter 50 allow relief from frontage, block size, or open space standards, where strict compliance is infeasible due to site geometry. The MLC properties, and others similarly situated, are exactly the type of properties for which subdivision waivers are appropriate. Additionally, alternative compliance, use of site plan review, and other relief methodologies established under the Zoning Ordinance, permit deviations from strict standards—such as frontage, transparency, screening, or parking placement—when equal or better design outcomes can be achieved.

The ZTA should encourage flexible application of site plan findings, emphasizing that achieving the intent of activated frontages and public realm improvements may override strict application of the Zoning Ordinance’s dimensional and bulk regulations. The methods for this relief should be built into the Overlay Zone to effectuate the performance goal we suggested for inclusion in the Draft Plan:

“In evaluating plans for use of properties with frontage on University Boulevard west of Colesville Road, including, without limitation, expansion, reconfiguration, repair, renovation, modernization, and redevelopment, this Plan supports very flexible application of zoning and subdivision requirements in order to accommodate the impacts of near-term and long-term roadway recommendations, including, for example, the use and liberal construction of alternative compliance, subdivision waivers, and variances from Zoning Ordinance Development Standards.”

By recognizing these conflicts and acknowledging and supporting appropriate relief mechanisms, the ZTA can provide a predictable pathway for redevelopment of constrained parcels, while maintaining urban design goals. Without recommendations for these relief mechanisms, the zoning changes proposed in the Draft Plan will likely remain aspirational and not practical to translate into reinvestment.

Please place this letter in the Record of the Council’s Public Hearing on October 28, 2025.

Thank you for your consideration of our comments on the ZTA. Please do not hesitate to contact us with any questions.

Very truly yours,

Lerch, Early & Brewer, Chtd.



William Kominers



Vince G. Biase

Enclosure

cc: Mr. Paul Dutko
Livhu Ndou, Esquire
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ATTACHMENT I

