

Appendix E: Correspondence regarding 8204 Fenton Street/Gerecht Property

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LYNOTT, LYNOTT & PARSONS, P. A.

DEC 16 2008

ATTORNEYS AT LAW

11 NORTH WASHINGTON STREET

SUITE 220

ROCKVILLE, MARYLAND 20850-4208

DEVELOPMENT REVIEW

JOSEPH A. LYNOTT
JOSEPH A. LYNOTT, III
JAMES L. PARSONS, JR.

(301) 424-5100 (phone)
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writer's e-mail:
jlynott@LLPlawfirm.com

December 15, 2008

Mr. Elza Hisel-McCoy
Development Review Division
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

**RE: 8204 Fenton Street, Silver Spring and
"Studio Plaza" Project**

Dear Mr. Hisel-McCoy:

This office represents 8204 Associates Limited Partnership and CD Publications in connection with the impact of the above-referenced project on its property at 8204 Fenton Street. Our client's property is also known as parts of Lots 9 and 10 in Block E in the subdivision known as R. Holt Easley's subdivision.

As you may be aware, our client's property is benefited by several easements which burden two parcels adjoining our client's land, namely: a common driveway easement established by instrument recorded in Liber 2879 at Folio 218; an easement and maintenance agreement with Montgomery County for a trash container alcove recorded in Liber 9658 at Folio 94; and an easement and maintenance agreement with Montgomery County for a "pedestrian bridge" connecting the front entrance of our client's building to the Montgomery County parking lot on the remainder of Lots 9 and 10 recorded in Liber 9322 at Folio 513. Copies of the above referenced easement agreements are enclosed.

It is our understanding the two adjoining properties burdened by the above easements have been incorporated into the development plans for the Studio Plaza project.

My client is concerned that the proposed project will adversely impact our client's land and impair the rights benefiting our client's property contemplated under the above easements. Our client is particularly concerned that the project will block the main entrance to its building and will deprive our client of its rights to ingress and egress and access to public parking contemplated under the easement agreement with Montgomery County recorded in Liber 9322 at Folio 533.

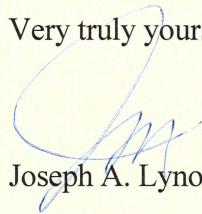
LYNOTT, LYNOTT & PARSONS, P. A.

Mr. Elza Hisel-McCoy
Development Review Division
Maryland National Capital Park and Planning Commission
December 15, 2008
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My client and I would like to meet with you to discuss the above project in more detail at your early convenience. Please give me a call upon your receipt of this letter so that we may arrange to meet to discuss this matter further.

Thank you for your cooperation.

Very truly yours,



Joseph A. Lynott, III

JAL,III/tb

cc: Mike Gerecht
CD Publications



CD Publications

8204 Fenton Street, Silver Spring, MD 20910-4571 Phone 301-588-6380 Fax 301-588-6385
E-mail: info@cdpublications.com Website: www.cdpublications.com

Elza Misel-McCoy
Development Review Division
Maryland National Capitol Park & Planning Commission
8787 Georgia Ave.
Silver Spring, MD 20910

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DEC 16 2008

DEVELOPMENT REVIEW

RE: Studio Plaza Project Application

December 12, 2008

Dear Mr Hisel-McCoy:

I have concerns regarding the Studio Plaza Project for Lot 3. We've owned 8204 Fenton Street for 20 years, leasing to various, quite stable, minority small businesses and our 50-year-old, family small business, CD Publications. We've been in Silver Spring 30 years and have a national reputation. One of our publications actually covers community development!

The building was built in 1962 on its property line with the County. Its main entrance is on the 2nd floor facing the Lot and level with it due to an elevation increase. The County requested we formalize the easement with them after we purchased the property, and at that time we added language permitting us to grade a portion of the County property that sloped steeply towards our building, causing maintenance issues. The attached easement indicates the County shall not interfere with our reasonable use and enjoyment of the easement and right of way, so long as we maintain the bridge, which we have.

We also obtained a County easement for a dumpster enclosure shared with the building next door, and we have an agreement with that property for joint use of the driveway between us.

We strenuously object to a public/private partnership enabling a private developer to purchase public land, block our right of access to our property, and cause us significant financial harm so that that developer can maximize his investment, with County help, at our expense. Blocking access that has existed since the building was constructed significantly affects the value and utility of our property and would cause significant financial harm to our primary tenant.

We paid a premium for the building and invested heavily in renovations because the design met our needs better than other properties we explored, in terms of our need to readily move equipment and material. We added extra doors to our 2nd floor entrance solely to enable us to move items from truck to floor without using steps.

Silver Spring's Redevelopment Office itself has had concerns over our access--Gary Stith asked, prior to relocating the Farmer's Market to Lot 3 at one point, if blocking access on Saturdays posed a problem. It rarely did, and we and the vendors amicably resolved any conflicts.

The Project as planned fully blocks our main entrance. Hillerson indicated to us that if the Lot weren't there, the easement is "useless." Our position is that the easement allows us access clearly intended

by the County when it approved the building and bridge in 1962 and used without challenge or interruption ever since—namely, rights of vehicular and pedestrian ingress and egress from the main door of our building and on out to public right of ways.

It would be difficult and a burden for us to operate without that access. A handicapped employee recently accessed the building through that entrance, but otherwise could not have. (As an older building, we are not ADA-compliant overall.) Hillerson suggests an elevator, however, that's not a desirable nor cost-effective alternative for us.

I was on the Silver Spring Regional Advisory Board and Silver Spring Redevelopment Committee, and worked with MNCPP staff, such as Sandra Tallant, to help them understand the needs of Fenton Street Village, through a group I formed called the Silver Spring Merchant's Association. We worked with the civic association and succeeded in having mutual concerns addressed. I testified to the County Council to convince them that zoning favored by MNCPPC would harm Fenton businesses. MNCPPC reversed its position and recommended even higher zoning than we sought. Ironically, if this Project goes through it will have caused us more harm than the initial restrictive zoning we fought to overcome.

For the record, developer Hillerson, though he owned several Silver Spring properties, took little if any role in redevelopment efforts. In addition to my individual efforts to aid redevelopment, our business has been recognized by the County for its contributions.

I also offer a further major concern. When I was on the Redevelopment Committee much focus was on ensuring survival of Fenton's small and minority businesses. Parking was as critical then as it is now. Currently, Lot 3 is almost always filled weekdays and by our entrance it remains well-occupied nights and weekends by people frequenting area businesses.

While I'm aware of the County's desire for reduced parking requirements, nonetheless, the Project's proposed parking clearly is not only poorly situated for existing Fenton Street businesses, but it can't possibly be sufficient given the significant numbers of new residences and retailers planned for the area—at which point little land will be left for expanded parking.

The only other public parking nearby is, according to the developer himself, a deteriorating garage whose top floors are closed for that reason. Private parking would mean private control on rates and hours. I ask that you consider the parking needs of our home-grown, independent, small businesses as you focus on this Project.

Why not instead leave the lower part of Lot 3 by our entrance as more costly short-term parking for shoppers and thus allow us access as well? Perhaps lose a few spaces and provide a pocket park even, since the only green nearby is useless and unused, near East-West Highway.

Thank you for listening. Please feel free to contact me at 301-588-6380 or via email at mgerecht@cdpublications.com.

Sincerely,



Mike Gerecht
Partner/8204 Associates
President & Publisher/CD Publications

APR 08 2009

DEVELOPMENT REVIEW

April 7, 2009

C. Robert Dalrymple
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Heather Dlhopsky
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VIA EMAIL AND HAND DELIVERY

Mr. Elza Hisel-McCoy
M-NCPPC, Development Review Division
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Studio Plaza, Silver Spring (the "Project") – Project Plan Application No. 920070010
(the "Application") – Options for Loading Access to 8204 Fenton Street (the "Gerecht
Property" or "CD Publications")

Dear Mr. Hisel-McCoy:

On behalf of Michael, L.L.C. (the "Applicant"), we hereby submit the enclosed plans and materials which reflect various options for accommodating the Gerecht Property. The Applicant's post-Development Review Committee (DRC) submission, dated March 16, 2009, explains the current configuration of the Gerecht Property and details the efforts made by the Applicant to accommodate the stated interest of the owner of the Gerecht Property.

For ease of reference, we will again describe the current configuration of the Gerecht Property. The Gerecht Property consists of two small buildings that were, in the past, incorporated into one larger building. It sits at the intersection of Fenton Street to the east and Silver Spring Avenue to the south. The address of the property is 8204 Fenton Street, and there is a building lobby on the first floor at Fenton Street and a staircase to the second floor. The first floor of the Gerecht Property adjacent to Fenton Street and Silver Spring Avenue is leased to a coffee shop, an Ethiopian market, and a beauty parlor. There also exists a joint driveway easement to the west that is shared with the Benbassat property (which is under contract to the Applicant), accessed from Silver Spring Avenue. The first floor space adjacent to the joint driveway easement was originally created as a parking lot beneath the second floor of one of the buildings, which was subsequently enclosed and is now used by CD Publications for its printing operation. The second floor is used entirely by CD Publications as office space. There is also a secondary means of ingress/egress through a stairway off of the joint driveway easement. In addition, there exists an easement (the "Pedestrian Bridge Easement") at the north side of the building on Public Parking Lot #3, seven steps below the level of the second floor of the Gerecht Property. The second floor of the building on the Gerecht Property is not handicapped-accessible from Fenton Street, Silver Spring Avenue, the joint driveway easement, or the Pedestrian Bridge Easement.

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April 7, 2009
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As previously indicated in the post-DRC submission, the Applicant has spent considerable time and effort to work with this property owner (also utilizing involvement of Planning Staff), as it is in everyone's best interest to ensure that the Gerecht Property remains a viable commercial use after construction of the proposed public/private redevelopment Project known as Studio Plaza. The Applicant's good faith efforts to integrate the Gerecht Property in a manner appropriate and compatible with the redevelopment Project has resulted in this current submission, intended to be the Applicant's best and final offer for accommodating the Gerecht Property in advance of the May 7th Planning Board hearing date on the Application.

The owners of the Gerecht Property have indicated that they are currently utilizing the Pedestrian Bridge Easement on Public Parking Lot #3 for loading and unloading from Public Parking Lot #3 to the second floor of their building. To the extent that this is the current use, it is not permissible per County law and continued direct loading and unloading utilizing this Pedestrian Bridge Easement is not feasible. Furthermore, it is not desirable from an urban design perspective with the redevelopment Project. As the existing Pedestrian Bridge Easement grants pedestrian access from the bridge to a public right-of-way (and does not grant loading access from a public parking lot), the Applicant has evaluated how to continue to provide pedestrian access to a public right-of-way with the redevelopment Project. Alternatively, if the primary issue is future loading and unloading from the second floor of the Gerecht Property, the Applicant has evaluated how this can be provided with the redevelopment Project (even though no legal rights exist for special consideration of loading/unloading for the Gerecht Property).

During the course of the past year, the Applicant has presented Mr. Gerecht with five options which, the Applicant believes, would accommodate the loading and/or pedestrian access needs of the Gerecht Property. The work proposed under all options has been offered at no cost to Mr. Gerecht. Initially, the Applicant presented three options requiring internal renovations to the Gerecht Property, each option consisting of an elevator and related renovations, and Mr. Gerecht has rejected all of them. Subsequently, and as a result of further refinement by the Applicant's design team and discussions with Planning Staff, the Applicant has designed and hereby presents two final options for ingress/egress/loading access to the Gerecht Property, one which addresses loading and unloading for the second floor of the Gerecht Property without the need to do any interior work in the Gerecht Property and one which maintains the pedestrian rights of ingress/egress to a public right-of-way utilizing the existing pedestrian bridge.

The first option offered by the Applicant (Attachment 1) moves beyond the literal retention of pedestrian ingress/egress rights via the existing easement and instead provides loading and unloading at the Pedestrian Bridge Easement near the second floor of the Gerecht Property. Under this option, truck access would be provided by the private joint driveway easement to the west of the Gerecht Property. Trucks would back into this private alleyway from Silver Spring Avenue. The trucks would unload at the end of the joint driveway easement, and deliveries

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would be handtrucked approximately 30 feet to the pedestrian bridge easement on the Applicant's property. A portion of the joint driveway easement would be ramped up to bring the level of the truck to the desired delivery point. The ramp would begin north of the doors to the Gerecht Property, assuring ingress and egress to the Gerecht Property from the joint driveway easement. The ramp would be lower than all windows on the west side of the Gerecht Property to prevent any negative impact on leasing efforts related to the first floor space facing the joint driveway easement. In addition, there currently exists a trash dumpster easement at the end of the joint driveway easement. The Applicant has offered to handle trash from the Gerecht Property in the Applicant's adjacent trash room, creating a community trash and recycling center (similar to the community trash and recycling centers on the Applicant's property to serve the Mayor Lane businesses), thereby eliminating the need for the trash dumpster easement.

The second option (Attachment 2) would provide an external staircase leading from the existing pedestrian bridge on Public Parking Lot #3 to Fenton Street. This would provide pedestrian access to the second floor of the Gerecht Property, essentially maintaining the same rights granted by the existing easement – access to a public right-of-way for pedestrian ingress and egress. This external staircase would be located on the Applicant's property and would be designed and constructed at the Applicant's cost and expense. This is a direct and literal response to the existing legal rights retained by the owners of the Gerecht Property.

As indicated above, as of the date of this letter Mr. Gerecht has rejected all of the options that the Applicant has presented, and insists that direct loading access be provided from the existing Public Parking Lot #3. This is not legally required and it is totally inapposite of good urban planning principles for the urban redevelopment of this block as envisioned in the Approved and Adopted Silver Spring CBD Sector Plan for Fenton Village. The existing Pedestrian Bridge Easement does not provide any legal rights for loading/unloading operations serving the Gerecht Property (and instead, as discussed, provides pedestrian access to a public right-of-way). Further, there exists a legal prohibition on loading or unloading of commercial vehicles from a County-owned or -leased and operated public parking facility pursuant to Section 31-29(a)(10) of the Montgomery County Code (and Section 31-27 of the Code further prohibits a range of truck types due to their weight or size from using County parking facilities for any reason, as explained in detail in the Applicant's post-DRC submission and in the Montgomery County Department of Transportation letter dated April 3, 2009 – Attachment 3). Notwithstanding this, the Applicant will continue to exercise commercially reasonable efforts to accommodate adequate, workable access for the Gerecht Property, with necessary modifications and alterations offered to be provided at no cost to Mr. Gerecht. While it has been our understanding that Mr. Gerecht has been acting in good faith in an effort to amicably find a mutually acceptable resolution to outstanding issues, a number of signs have recently been posted on the Gerecht Property (Attachment 4) that might suggest otherwise.

Mr. Elza Hisel-McCoy
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We understand that you will be evaluating these options as part of your Project Plan review and will meet with Mr. Gerecht directly to discuss in further detail. By copy of this letter to Mr. Gerecht's attorney, Joseph A. Lynott, III, the Applicant is also willing and prepared to discuss these options with Mr. Gerecht and his attorney, either with or apart from Planning Board Staff involvement. Thank you for your consideration of the Application and these revised materials. Please do not hesitate to contact us if additional information is necessary prior to the Planning Board hearing scheduled for May 7, 2009.

Sincerely,

LINOWES AND BLOCHER LLP

C. Robert Dalrymple, H O

C. Robert Dalrymple

Heather Dlhopsky

Heather Dlhopsky

Enclosures

cc: Joseph A. Lynott, III, Esq. *(Via Overnight Mail)*
Mr. Robert Hillerson *(Via Email and First-Class Mail)*
Mr. Brian Dayhoff *(Via First-Class Mail)*
Mr. Chris Kabatt *(Via First-Class Mail)*
Mr. William Landfair *(Via First-Class Mail)*
Ms. Trini Rodriguez *(Via First-Class Mail)*

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

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APR 22 2009

DEVELOPMENT REVIEW

April 21, 2009

C. Robert Dalrymple
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bdalrymple@linowes-law.com

Mr. Elza Hisel-McCoy
Senior Planner, Development Review Division
Maryland-National Capital Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Via Hand Delivery & E-Mail

Re: Project Plan No. 920070010; Studio Plaza / Public Parking Lot 3 ("Studio Plaza") –
Revised Proposed Solution for Gerecht Property/CD Publications

Dear Mr. Hisel-McCoy:

As a result of our meeting on Friday, April 17, 2009, attended by Ash Gerecht, Mike Gerecht and Gary Rogers, representing the Gerecht/CD Publications' Property, Al Roshdieh, Steve Nash and Rick Seibert, representing the Department of Transportation, Diane Schwartz Jones, representing the Office of the County Executive, Benjamin Stutz, representing Councilwoman Valerie Ervin, Rose Krasnow, Bill Barron, Elza Hisel-McCoy and John Marcolin, representing M-NCPPC Staff, and Robert Dalrymple and Robert Hillerson, representing the Applicant, the Applicant has developed another alternative solution to accommodate the Gerecht/CD Publications' Property. During our meeting, we heard from the representatives of the Gerecht/CD Publications' Property that they need to be able to have direct loading to the existing improvements, while minimizing disruption of their business operations during construction activity. We also heard a strong need for their overall operations to be independent of any other uses within Studio Plaza.

During this meeting, we briefly reviewed all of the options previously offered by Applicant, as reflected in the attached April 7, 2009 letter from Linowes and Blocher LLP to Mr. Hisel-McCoy, all of which have been rejected by Mike Gerecht. The most recent proposed option offered by the Applicant prior hereto (service trucks backing up to the rear of the Gerecht/CD Publications' Property utilizing a ramp and the existing joint driveway easement), reflected as Attachment 1 to the April 7 letter, was rejected purportedly because it would require deliveries to be hand-trucked approximately 30 feet to the existing pedestrian bridge and entrance to the

Mr. Elza Hisel-McCoy
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building (held out by Mr. Rogers to be an issue specific to transporting equipment such as a high-resolution copying machine – an issue refuted by Mr. Roshdiah based upon his prior experiences with the County working with printing equipment and his observations that such equipment is always delivered in parts and assembled on-site).

The three options first offered by Applicant (and described in the April 7 letter) consisted of retrofitting the Gerecht/CD Publications' Property with an internal elevator to provide loading in various locations. We have been advised by Mike Gerecht that these options did not meet his needs, with no further explanation. However, at our Friday meeting, Mr. Rogers indicated that at first they were somewhat interested in the internal elevator, but ultimately rejected same due to their perception that there would be a 3-6 month period of business disruption during the construction process. While the Applicant believes that it can retrofit Mr. Gerecht's building with an internal elevator in a much shorter period of time and would do so in a manner designed to minimize disruption, the Applicant now at least understands the concern.

Therefore, the Applicant has developed another option, designed to eliminate, to the greatest extent possible, disruption to Mr. Gerecht's business operations while meeting the needs criteria that he has expressed. We briefly discussed this option at our April 17 meeting, and Ash Gerecht indicated that he would be interested in further exploring how it could work. It consists of an elevator constructed wholly on the Gerecht/CD Publications' Property, within the joint driveway easement on the west side of the Gerecht/CD Publications' Property. This elevator, however, is outside of the existing Gerecht/CD Publications' building, to eliminate the disruptions of business operations perceived to be problematic with the internal elevator options. As proposed, the elevator opens from the front door onto the joint driveway easement on the ground level, and into the Gerecht/CD Publications' building through the back door at any existing window opening anywhere from the north end of the joint driveway easement to as close to the south as 40 feet from the face of the Gerecht/CD Publications' building on Silver Spring Avenue (which would require retrofitting of the existing building, but this would be a nominal construction activity that could be scheduled on a weekend or other time of convenience to minimize disruption). This gives Mr. Gerecht a great deal of flexibility as to where he prefers the elevator and loading access to his building. In addition, the Applicant has designed a proposed trash dumpster location for the Gerecht/CD Publications' Property's sole and exclusive use that would allow continued safe and efficient solid waste removal consistent with the proposed new loading/elevator improvement described above. This new trash dumpster location, while on Studio Plaza Property (through creation of a new easement), is accessible for vehicles from the existing joint driveway easement and provides convenient service by being adjacent to the rear doors to the existing building on the Gerecht/CD Publications' Property (the new easement for this location would be in replacement of the

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existing trash dumpster easement currently providing service at the north end of the joint driveway easement). This new trash dumpster location would not be accessible through any Studio Plaza building and again would be exclusively used for the benefit of the Gerecht/CD Publications' Property, thus maintaining complete independence desired by Mike Gerecht.

To further describe this new proposal, please find attached four sketches. Sheet numbered 1 is a plan view of the joint driveway easement on the west side of the Gerecht/CD Publications' Property. It shows the elevator at the north end of the joint driveway easement, but wholly on the Gerecht/CD Publications' Property. The elevator can be constructed in this location or at any other window opening south, provided that it is no closer than 40 feet from the face of the building on Silver Spring Avenue. This is to accommodate the proposed trash dumpster easement on the Studio Plaza Property shown across the joint driveway easement from the back doors to the Gerecht/CD Publications' Property, and in replacement of the existing trash dumpster easement on Lot 3 at the north end of the joint driveway easement.

Sheet numbered 2 is an elevation view of the Gerecht/CD Publications' Property from the west. It shows the elevator in the same location as sheet 1. It also shows the location of the windows on the second floor that could be utilized as an alternative location for the elevator.

Sheet number 3 shows the proposed trash dumpster location area within the Studio Plaza Property that would be allowable by grant of easement to and exclusively for the Gerecht/CD Publications' Property.

Sheet numbered 4, is a plan view of a portion of Studio Plaza in relation to the Gerecht/CD Publications' Property. It shows the existing trash dumpster easement and pedestrian bridge easement, both of which would be extinguished and replaced with the new trash dumpster easement and elevator, and it also shows the relationship of the proposed trash dumpster location on the Studio Plaza Property for the exclusive use of the Gerecht/CD Publications' Property.

All improvements shown, including design, permits and construction, would be at no cost to the Gerecht/CD Publications' Property. Similarly, all legal documentation required to implement and perpetuate these new proposals and extinguish those easements replaced would be at no cost to the Gerecht/CD Publications' Property.

We believe that this option provides the Gerecht/CD Publications' Property with a legal, sustainable, and independent means of loading, the construction of which will result in minimal disruption to their business operations. While the elevator in itself will not make the

Mr. Elza Hisel-McCoy
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Gerecht/CD Publications' Property fully ADA compliant, it will certainly help in this regard when the need for ADA retrofit arises in the future. It also provides a convenient, functional and independent area for handling the trash generated by the Gerecht/CD Publications' Property.

In accordance with the MCDOT letter attached as Attachment 3 to the April 7, 2009 letter, unless the owners of the Gerecht/CD Publications' Property agree to extinguish the said easements on Lot 3 and execute replacement easements as offered by the Applicant and described herein, the Applicant shall construct the pedestrian ingress/egress from the pedestrian bridge easement to Fenton Street described in the April 7 letter in compliance with the legal requirements as set forth in the MCDOT letter (even though this would seemingly replicate existing pedestrian access to the Gerecht/CD Publications' Property from Fenton Street that exists parallel to this proposed new means of pedestrian ingress/egress).

While there have been several alternative proposals put forward relating to the continued operations of the Gerecht/CD Publications' Property within the context of the urban redevelopment of the remainder of the block, we believe that this latest proposal meets the needs and addresses the concerns expressed by the owner's representatives of the Gerecht/CD Publications' Property at our April 17 meeting. We are hopeful that this will bring resolution to these issues and can be incorporated into the Project Plan approval pending for Studio Plaza. Please consider this responsive offer to be a proposed part of the Project Plan to be presented to the Planning Board on May 14, 2009, subject to acceptance or rejection by the Gerecht/CD Publications' Property representatives. We believe that this effort and all previous efforts of the Applicant to reach a resolution, including efforts made by M-NCPPC staff, meet and exceed the test of reasonableness necessary to address issues of compatibility for co-existence of new urban redevelopment and maintenance of existing, viable adjacent uses not included in redevelopment plans.

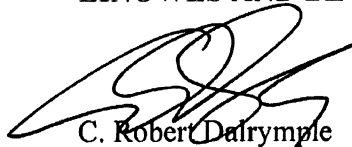
We are sending a copy of this proposal to attorneys Joseph Lynott, Esquire and David Brown, Esquire as it is not clear to us which of these two attorneys is presently representing the owners of the Gerecht/CD Publications' Property (based upon correspondence from the last week). By these copies, we are also offering to meet to discuss this further or to answer any questions that anyone may have pertaining to this latest and final responsive proposal from our meeting on April 17.

Similarly, if Planning Staff needs additional information or explanation, we are available at your convenience to meet to discuss this further. Thank you for your assistance in helping to create a solution to the issues described herein.

Mr. Elza Hisel-McCoy
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Very truly yours,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple

CRD:pi

Enclosures

cc: Joseph Lynott, III, Esq.
David Brown, Esq.
Ms. Rose Krasnow
Mr. John Marcolin
Mr. William Barron
Mr. Al Roshdieh
Mr. Stephen Nash
Mr. Rick Siebert
Diane Schwartz-Jones, Esq.
Mr. Benjamin Stutz (representing Councilwoman Valerie Ervin)
Heather Dlhopsky, Esq.

Proposed Accommodations to 8204 Associates LP by Studio Plaza
April 30, 2009

David:

While we feel our current arrangement works best for us for a number of reasons, and we are not waiving our rights to disagree with any or all aspects of the Studio Plaza project, or to contest any diminution of our property rights as protected in recorded easements. We are nonetheless submitting the following GENERAL rundown of what might work for 8204 Associates LP ("8204") in the event Studio Plaza were to become a reality. This is neither a settlement offer nor a final and definitive list of conditions that 8204 would deem satisfactory.

- County/Michael LLC to be fully responsible for all legal/engineering/architectural and related costs of third parties hired by 8204 for independent consultations, as well as any and all legal/engineering/architectural and related professional service costs incurred by the County/Michael LLC themselves.
- County/Michael to be responsible fully for all aspects of 8204 renovations and installation, including but not limited to permits, insurance, inspections, and collateral costs.
- No building permit is to be issued for that portion of Lot 3 adjacent to the 8204 building until all work agreed to for 8204 has been inspected and approved by 8204 and by the County.
- Studio Plaza building adjacent to 8204 building must be set back from Fenton Street at least to the same building line as the 8204 building.
- Applicant will pay for and install new signage as approved by 8204 to make up for lost visibility.

The previous elevator proposals do not work for us because, among other problems (a) they treat the 8204 building as if it were to always have one tenant on its second floor, although that will not necessarily be the case in the future; and (b) all the other proposals would cause 8204 to lose additional rentable square footage forever. Below is a proposal (pending of course architectural/engineering feasibility) that might work:

- Install commercial elevator in current entranceway of our second floor, with the rear of cab where current double doors are, extending outside the building lot line if necessary to accommodate the depth of the cab.
- The floor where cab the would open facing down our 2nd floor hallway would need to be built up about 4 feet so that when you exit the elevator you will be at the same level as the 2nd floor.
- Current alcove entrance would need to be closed off and the area converted into usable space in our building.
- Due to presence of elevator, the current stairwell from the first floor off Fenton Street would need to be rerouted and affected areas would need to be refinished as usable office space.

The lower level would then need substantial renovation.

- The entrance door off Fenton Street, kept locked for safety reasons, would need to be replaced with a wider and more secure door to readily move in larger bulky items that currently are brought in through our double doors up above. The door would need to be outfitted with a buzzer/intercom/camera security system so that it can readily be unlocked by any current or future tenants from other parts of building.
- The elevator entrance would be located in what is now leased space for our copy shop. Thus the wall/door to our copy shop would need to be moved back so that entry into the leased space is not required if one needs to use the elevator. We would face a perpetual loss of rental income from making this accommodation and would expect to be compensated once the exact amount of lost space is determined.
- In addition, the first floor would need to be reconfigured, if architecturally and mechanically possible, so that there is a wider foyer for moving large items through to the elevator. For various reasons this may quite likely pose difficulty, given the mechanical systems involved. Currently a storage closet and janitorial closet take up much of the left side wall, leaving only a narrow opening between the closets and the existing stairwell.
- The pedestrian bridge would need to be removed.
- We would request compensation to cover long-term elevator maintenance, repair, insurance costs we don't currently incur, and assurances the renovation would not disrupt CD Publications M-F activities, enabling access to our second floor at all times, with any disruptive work to be conducted weekends or evenings.
- There are a number of metered parking spaces along the west side of Fenton Street, adjacent to the 8204 building and to the parking lot. In order to avoid disrupting the flow of traffic on Fenton Street, several of these spaces, north of those fronting our own tenant space, would need to be permanently removed so that we have a permanent loading/unloading zone to replace the lost loading/unloading area in the parking lot.
- The Studio Plaza building to be built adjacent to our building must be set back a reasonable (to be negotiated) distance from our main office window now fronting on the parking lot, so as to minimize loss of light and air and the degrading of a windowed office, and to readily enable access to that portion of our building for maintenance.

LAW OFFICES OF

KNOFF & BROWN

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DAVID W. BROWN

May 12, 2009

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
Senior Planner
Development Review Division
MNCPPC-MC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: **Project Plan # 920070010, Studio Plaza**

Dear Mr. Hisel-McCoy:

This letter will serve to place on the record of the above-referenced proceeding the efforts made by my client, 8204 Associates, LLC, to resolve with the Applicant, Michael, LLC, issues of ingress/egress to the 8204 Associates property, adjacent to the Studio Plaza Project that will arise if the Project is to go forward.

I met with the Applicant and his counsel, with you in attendance, on April 28, 2009, and indicated that I would undertake to discuss with my client the terms and conditions under which 8204 Associates would be prepared to accept the loss of their business-critical pedestrian bridge easement from Parking Lot #3 to the second floor of their business property. I advised that my client had not found any of the previous solutions proffered by the Applicant to be acceptable, but that I hoped to prevail upon the business to define for me and for the Applicant a possible solution other than mere retention of the pedestrian bridge and access to it via a surface parking lot, as has long been the case (as detailed in a Memorandum provided to you under separate cover today).

It was in this same meeting that I explained, on behalf of another client, the Kalivases, that they were not seeking a "settlement" in which withdrawal of their objections to the Project would be the quid pro quo for undertakings by the Applicant. I made the same point with respect to 8204 Associates: agreement on the terms for implementing an alternative means of ingress/egress to 8204 Associates' publishing business would not be in exchange for withdrawal of opposition to the Project.

This explanation did not obviate my commitment to define for the Applicant what 8204 Associates would regard as a feasible substitute for its pedestrian bridge. Subsequent discussion with Mike Gerecht, a principal at 8204 Associates, produced

Elza Hisel-McCoy, Assoc. AIA, LEED-AP
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Exhibit 1, a list detailing how the Applicant, in a manner acceptable to 8204 Associates, could ameliorate the substantial adverse impact on 8204 Associates that would otherwise flow from loss of the pedestrian bridge. Exhibit 1 was sent to the Applicant on April 30, 2009; there has been no response.

I see no need to discuss here the differences between the Applicant's various solutions and that proposed by 8204 Associates. Wholly apart from 8204 Associates' response, I anticipate that the Applicant, consistent with its stance toward the Kalivases, regards its willingness to accommodate 8204 Associates as it has proposed is contingent upon the withdrawal by 8204 Associates of any and all objections to the Project. By separate letter, I have explained that 8204 Associates does not intend to withdraw its objections to the Project for any reason.

As I hope the Board will understand, 8204 Associates made a proposal that is reluctantly predicated on the notion that, if the Project is approved, they will have to endure significant disruption occasioned by the major retrofit of their business space so that the Project can be built as intended by the Applicant. Under these circumstances, 8204 Associates does not feel obliged to withdraw its objections to the Project in exchange for the requested commitments by the Applicant, whether as proposed by the Applicant or by 8204 Associates. It should suffice to say that 8204 Associates regards its suggestions as eminently reasonable, particularly in response to a developer who is undertaking to redevelop large portions of a commercial city block, but not the entire block. Their suggestions are all the more reasonable considering that what is before the Board is a project that reflects no serious effort to promote compatibility with the existing businesses on the block, including 8204 Associates' publishing business.

If you would nevertheless like a more detailed discussion of the differences between the specific 8204 Associates and Applicant proposals, I will be happy to oblige, either in advance of the hearing before the Board on May 28th, or during the hearing itself.

Sincerely yours,



David W. Brown

/enclosures: Exhibits 1

Proposed Accommodations to 8204 Associates LP by Studio Plaza
April 30, 2009

David:

While we feel our current arrangement works best for us for a number of reasons, and we are not waiving our rights to disagree with any or all aspects of the Studio Plaza project, or to contest any diminution of our property rights as protected in recorded easements. We are nonetheless submitting the following GENERAL rundown of what might work for 8204 Associates LP ("8204") in the event Studio Plaza were to become a reality. This is neither a settlement offer nor a final and definitive list of conditions that 8204 would deem satisfactory. This proposal assumes that Studio Plaza will not be occupying any of the land subject to either our joint driveway easement, dating from 1961, or our trash container alcove easement, dating from 1991.

- County/Michael LLC to be fully responsible for all legal/engineering/architectural and related costs of third parties hired by 8204 for independent consultations, as well as any and all legal/engineering/architectural and related professional service costs incurred by the County/Michael LLC themselves.
- County/Michael to be responsible fully for all aspects of 8204 renovations and installation, including but not limited to permits, insurance, inspections, and collateral costs.
- No building permit is to be issued for that portion of Lot 3 adjacent to the 8204 building until all work agreed to for 8204 has been inspected and approved by 8204 and by the County.
- Studio Plaza building adjacent to 8204 building must be set back from Fenton Street at least to the same building line as the 8204 building.
- Applicant will pay for and install new signage as approved by 8204 to make up for lost visibility.

The previous elevator proposals do not work for us because, among other problems (a) they treat the 8204 building as if it were to always have one tenant on its second floor, although that will not necessarily be the case in the future; and (b) all the other proposals would cause 8204 to lose additional rentable square footage forever. Below is a proposal (pending of course architectural/engineering feasibility) that might work:

- Install commercial elevator in current entranceway of our second floor, with the rear of cab where current double doors are, extending outside the building lot line if necessary to accommodate the depth of the cab.
- The floor where cab the would open facing down our 2nd floor hallway would need to be built up about 4 feet so that when you exit the elevator you will be at the same level as the 2nd floor.
- Current alcove entrance would need to be closed off and the area converted into usable space in our building.

- Due to presence of elevator, the current stairwell from the first floor off Fenton Street would need to be rerouted and affected areas would need to be refinished as usable office space.

The lower level would then need substantial renovation.

- The entrance door off Fenton Street, kept locked for safety reasons, would need to be replaced with a wider and more secure door to readily move in larger bulky items that currently are brought in through our double doors up above. The door would need to be outfitted with a buzzer/intercom/camera security system so that it can readily be unlocked by any current or future tenants from other parts of building.
- The elevator entrance would be located in what is now leased space for our copy shop. Thus the wall/door to our copy shop would need to be moved back so that entry into the leased space is not required if one needs to use the elevator. We would face a perpetual loss of rental income from making this accommodation and would expect to be compensated once the exact amount of lost space is determined.
- In addition, the first floor would need to be reconfigured, if architecturally and mechanically possible, so that there is a wider foyer for moving large items through to the elevator. For various reasons this may quite likely pose difficulty, given the mechanical systems involved. Currently a storage closet and janitorial closet take up much of the left side wall, leaving only a narrow opening between the closets and the existing stairwell.
- The pedestrian bridge would need to be removed.
- We would request compensation to cover long-term elevator maintenance, repair, insurance costs we don't currently incur, and assurances the renovation would not disrupt CD Publications M-F activities, enabling access to our second floor at all times, with any disruptive work to be conducted weekends or evenings.
- There are a number of metered parking spaces along the west side of Fenton Street, adjacent to the 8204 building and to the parking lot. In order to avoid disrupting the flow of traffic on Fenton Street, several of these spaces, north of those fronting our own tenant space, would need to be permanently removed so that we have a permanent loading/unloading zone to replace the lost loading/unloading area in the parking lot.
- The Studio Plaza building to be built adjacent to our building must be set back a reasonable (to be negotiated) distance from our main office window now fronting on the parking lot, so as to minimize loss of light and air and the degrading of a windowed office, and to readily enable access to that portion of our building for maintenance.

Elza Hisel-McCoy
Senior Planner/Development Review Division
MNCPPC
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Studio Plaza Project Application
May 11, 2009

RECEIVED

MAY 11 2009

DEVELOPMENT REVIEW

Dear Mr. Hisel-McCoy:

The past few months you have had opportunities to hear concerns I and others have regarding Studio Plaza. I'd like to summarize these without focusing on the separate access issues we have already spent much time on. As you know, I was active years ago organizing businesses to support higher zoning in this area, over what P&P recommended. So this is not about opposing development, but about what works for all stakeholders in Fenton Village, not just what one developer or the County wants.

It seems this project is being "rammed through" for some reason, with little prior research and discussion done before the County initiated its dealings with Mr. Hillerson, thus putting Park and Planning at a considerable disadvantage, once an agreement was signed. Perhaps the question can be raised as to whether this project was conducted in a manner inconsistent with County policy and requirements, leaving your staff to resolve a wide array of public policy/legal issues that should have been researched before so much time and money was spent. Meanwhile, in meetings I have attended it appears the focus is solely on what planners say is good urban design and the County's desire for high density development near Metro Stations—as opposed to weighing what the community needs and wants.

I am reminded of the time 10 years ago when Park & Planning was spending thousands on streetscapes but didn't consult businesses and residents—nor had staff even taken the time to walk the streets and get to know the area. Ultimately, P&P staff were floored to learn the #1 issue was safety and lighting, not bricks and planters, and the project was put on hold. That was the right decision, and putting in the streetscape later was appreciated.

So the question I pose for your staff is whether ALL that matters is urban design and what the County says is good for its residents. I ask you not to get lost in the desire to approve a project because you are being pressured to do so, or because it is the easy thing to do, or that it would look good on a resume as a model urban infill project, but to look without bias at all aspects of this project.

Let's start with the impact of taking away a public facility without any public input. That seems contrary to what most in this County would want to see happen to any public facility. It's not just a matter of having meetings, it's a matter of communicating, working with the parties involved, listening, and determining what's truly best for an area.

We are talking about redeveloping a public asset that for decades has benefited businesses and customers in this area. This can be seen in legal documents from 60 years ago--the parking lot was built with the promise of accommodating surrounding businesses fully, and there was every intention of having that Lot remain a parking lot. Even our building, with its main entrance on the parking Lot, was clearly permitted by the County because the County obviously assumed the Lot would remain.

That the area around Lot 3 is "blighted" is correct. But why, when Silver Spring is booming? Councilwoman Ervin told us when we met her that it is blighted because Mr. Hillerson has torn down

buildings, and put off building in the hope he could make his project larger. So now he is being rewarded for “encouraging blight? Is that how P&P would encourage development deals? Is that what County taxpayers and residents would want to see? Permitting a property owner to deliberately put off building in order to get what he desires?

What does the current parking lot offer the surrounding and long established community? On most days the Lot is filled. At night cars are parked visiting local stores, such as my tenant’s coffee shop. The Lot is convenient, safe, and provides very accessible parking as it has for over 50 years. Good parking was a good reason to locate in this area and sign long-term leases. Were these businesses given any consideration? We are trying to encourage them with the Council’s Buy Local program, while at the same time making it more and more difficult for them to survive.

THE UNDERGROUND PARKING ISSUE

Let’s look at the proposed underground parking. When this project was first proposed, P&P staff routinely noted in public forums that underground public parking was common in the County—as if to say, there’s no need to worry about safety. But your own research now shows otherwise—in fact, there are no other comparable lots in the County—i.e. public, underground only, unstaffed, designed for shoppers 24/7. The NOAA Lot has or had federal agents guarding it since 9/11, is primarily an employee lot, not a lot for customers, and has above ground parking as an option.

Given that, how can such a lot be approved or recommended by P&P staff, or written into an agreement by DOT, when considerations of safety of parking structures clearly require sound research? The Silver Spring police have written repeatedly about their very serious concerns over public safety of underground parking in this project, and went so far as to state that typically with underground parking, customers soon learn to become wary of such structures and stay away, ultimately having an adverse impact on the surrounding businesses. I have that in writing if you’d like to see it.

I’d also suggest you research the archives from the Downtown Silver Spring Project. At the time of that project the County agreed to tear down a couple fairly new, multimillion parking garages that were above ground, because architecturally they presented some significant crime prevention concerns.

This project requires underground-only parking, though even above ground parking wasn’t safe enough for Downtown, and underground public parking is not being used anywhere else in the County, much less in an area with Silver Spring’s crime concerns. This would be a 24-hour, unmanned Lot. The Police aren’t comfortable with it. Yet it is being proposed because without underground parking the project would not be viable. The message from the media, I suspect, will be that the County puts private profit over public safety. And once built, the community will have to live with it. What arguments does P&P have to counter concerns over crime, other than merely stating that higher density mean more people, thus less crime.

Access to parking remains another critical issue that has not been adequately addressed. How can you justify removing the direct vehicular access to street front parking on Fenton Street, which is one of the busier side streets in Downtown, when it’s existed so many years and is so vital? Businesses that count on easy access to parking will lose critical “stop and shop” access, except for a few street slots.

Last, I urge you and your staff to walk the streets and talk with people, not just businesses that would benefit, but also those that would be harmed by this project. See what the area is like. Fenton is comprised of many small businesses, a unique multi-ethnic area—just the type the County, and area residents like to see as it lends much-needed diversity and flavor...a key ingredient in successful urban planning. It adds character to an urban environment that would otherwise be little more than the same

franchises found in Downtown or on Rockville Pike or in Anytown U.S.A. Is that P&P's innovative vision of the future?

Character is important to vitality of an area, not just design, and small business is universally seen as the engine that drives growth in the County and Country. Many of these foreign-born tenants put every dollar they had into their businesses. They should be encouraged, not challenged simply because their buildings don't fit someone else's vision. Mr. Hillerson is free to do what he wants with his properties. But giving away a public asset, at the expense of small businesses, and to the public safety detriment of their customers is hard to justify, or can you?

I'd also ask you to ask yourself, how this project benefits the County. Perhaps that decision is out of your hands. But it surely is not needed to jumpstart growth as Downtown was justified. For example, in an area intended for thousands more employees there would be no added public parking. Private parking is what it is...private control over rates/hours. History has already shown that people prefer free, readily available parking...witness the many who no longer go to Bethesda because it's too hard to park, regardless of how much the County wants to encourage public transit. That's the reality.

While this may be out of your purview, we essentially have a project that harms existing businesses, doesn't give the County anything more than it has, (in fact gives them less as they get underground parking), and gives the Developer one heck of a deal on a valuable County asset within walking distance of Metro. From a public policy perspective, from the perspective of being an employee charged with looking out for the interests of consumers, how can this be acceptable?

BUILDING ACCESS

I am leaving the issue of access out of this discussion, which clearly is my #1 interest, as I believe that will be addressed by David Brown who is address this issue on behalf of neighboring properties, and you are quite familiar with those concerns. However, as you are keenly aware, throughout all of our discussions on access the Developer refused to concede so much as an inch, while we offered various proposals. My understanding is that an optional method developer must seek to be compatible with surrounding properties. Yet, realistically, little effort has been made in that regard. When one steps back, every aspect of this project puts the focus on what the developer wants, not the surrounding community.

Last, but not least, we have suggested, as have others, that if this project were to go through that you recommend leaving the stub of parking by our building. This would readily serve two goals: It would eliminate the need for the County to spend hundreds of thousands of dollars providing us with access when our current access works, and it would more importantly preserve readily available surface parking for Fenton Street Businesses, and could be easily made into a more attractive surface lot with more greenery.

The only objection posed so far, other than from Mr. Hillerson, is the concept of an unbroken street front of retail, rather than having parking on a street front. While in theory that is certainly conventional wisdom, from a practical standpoint, one only needs to survey Bethesda, Silver Spring, and countless other new projects and instead you'll note parking garages (even new ones) that are street facing. Wayne Ave is a notable example, as are many Bethesda Garages. So despite being sound urban design, the simple fact is that that concept gives way to practicality and simple construction limits. Why should Fenton Village be viewed any differently?

If compromise is what's needed to get this project passed, then I ask you to consider the simple solution we propose. Leave surface parking and acknowledge the need not to harm the residents/businesses of Fenton Village, and at the same time resolve the costly issue of access for my

building. This is scarcely the time for the County to spend hundreds of thousands of dollars to permit access that we already have.

Nearly 800 People Have Signed A Petition Opposing the Project!

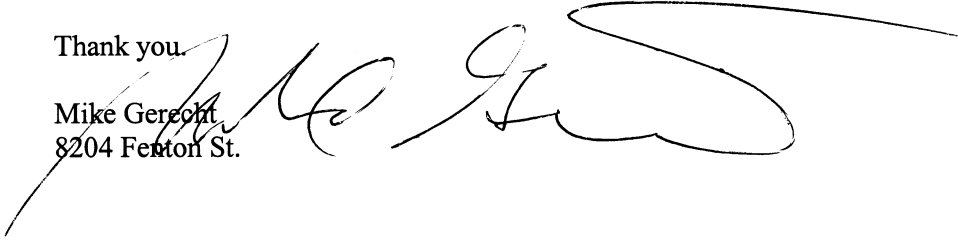
Elza—We have attended many meetings, and listened to you and Mr. Hillerson. What I ask of you is that you and your staff listen to the business that would be affected. Try speaking with them...many don't speak English which is why you've not heard from them, and don't understand the impact of this project. Nearly 800 people signed our petition...in an effort that simply involved sticking them in a few shops and then picking them up. It was not an all out grass roots effort by any means, and quite a few got lost/stolen, damaged or never returned. But the bottom line is 800 people oppose what you would do to their parking and safety in an area that consists of just a few square blocks. .

June 7 is Mr. Hillerson's deadline for avoiding workforce housing. Will he, against your wishes once again, get another extension, at a time when affordable housing is sorely needed? Envision the headlines: "Planning Board gives wealthy Potomac developer his 3rd pass on requiring much-needed affordable housing in 800,000 sf giveaway of public property." Yes, the new project would comply, but not his surrounding buildings. The question residents must ask is that if affordable housing near Metro was important enough to legislate it, why are we giving a pass to the perfect location for workforce housing, and not negotiating hard to have it implemented? Mr. Hillerson argued for the extension because he said he needed 6-9 months to resolve issues with the lot. That time is long past.

I appreciate your efforts at mediating this Elza. But I ask you, look at this not simply from an urban design standpoint, but from the standpoint of the overall community.

Thank you

Mike Gerecht
8204 Fenton St.

A large, handwritten signature in black ink, appearing to read 'Mike Gerecht', is written over the typed name and address. The signature is fluid and cursive, with a long horizontal stroke extending to the right.