



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
5/23/02
Item #3

MEMORANDUM

DATE: May 17, 2002
TO: Montgomery County Planning Board
VIA: John Carter, Chief, Community-Based Planning *He*
FROM: Bill Landfair, AICP, for the Department of Park and Planning *WRL*

REVIEW TYPE: **REMAND** – Zoning Application No. G-788
APPLYING FOR: O-M and R-200 Zones to C-3 Zone
APPLICANT: I.O. Limited Partnership LLLP
LOCATION: MD 118 and Bowman Mill Drive, Germantown
MASTER PLAN: Germantown Master Plan

The County Council has issued an order of remand to the Hearing Examiner to reopen the record of the above-cited zoning application. The purpose of the remand is to permit the applicant to address certain technical deficiencies and issues in the application previously identified in the Hearing Examiners report and to permit the Planning Board an opportunity for further comment and recommendation.

In conformance with the remand, the applicant has submitted a number of documents that address the technical issues. However, staff finds that there are still substantive issues remaining with the zoning application including compliance with the Germantown Master Plan and compatibility with the surrounding area. For these reasons, staff continues to recommend denial.

BACKGROUND

The applicant requests reclassification from the O-M and R-200 Zones to the C-3 (Highway Commercial) Zone of 1.6 acres located in the southeast quadrant of the intersection of relocated MD 118 and Bowman Mill Drive, Germantown. The application was filed under the Optional Method which permits binding elements with respect to land use, density and development standards. In the past, the

Schematic Development Plan (SDP) has proposed an automobile filling station and ancillary convenience store. While still shown on the amended SDP, the applicant indicates that this is for illustrative purposes only.

In a report dated May 4, 2001, the staff recommended denial of the application. On May 10, 2001, the Planning Board considered the application and in a two-to-one vote recommended denial. At the request of the applicant, the Planning Board was asked to reconsider the case on two occasions, but did not do so. A public hearing was held on May 15, 2001 and continued over several dates ending on October 23, 2001. The Hearing Examiners issued a report on December 7, 2001 recommending that the application be denied. For reference, copies of the original staff report, Planning Board action, and Hearing Examiners report are included with this memorandum.

At the request of the applicant, the County Council heard oral argument on March 5, 2002 and subsequently ordered the case to be remanded to the Hearing Examiner. The purposes of the remand are outlined below:

1. To permit the applicant an opportunity to amend its application to address the following technical deficiencies or issues:
 - a. The inconsistencies between the declaration of covenants submitted and the binding elements reflected on the schematic development plan;
 - b. The absence of an executed declaration of covenants;
 - c. The traffic conditions at the intersection of MD 118 and Dawson Farm Road;
 - d. The effect of gaps in traffic from the southwest on the safety of vehicular movements from Bowman Mill Drive onto MD 118; and
 - e. The absence of a binding commitment on the Schematic Development Plan to ensure adequate mitigation of the traffic effects of the proposed development.
2. To permit the Planning Board an opportunity for further comment and recommendation in light of any amendment to the application submitted following the order of remand.

The applicant has submitted an amended Schematic Development Plan and an amended and executed covenant to address items 1a, 1b and 1e described above. In response to items 1c and 1d, the applicant submitted a supplemental traffic analysis. The Hearing Examiner has reviewed these documents and

concludes that they resolve most if not all of the technical issues identified in the Hearing Examiners report. The Hearing Examiner finds that the more substantive issues of the case remain open.

ANALYSIS

Based on staff review of the submitted documents, staff is in agreement with the Hearing Examiners assessment regarding the technical issues. The executed declaration of covenants now contains all of the binding elements reflected on the Schematic Development Plan. These include development standards relating to the total area to be rezoned, building height, building coverage, amount of green area provided, and parking spaces. The declaration of covenants also includes certain land use elements and traffic mitigation improvements. It is noted in the covenants that the binding elements are subject to final site plan approval by the Planning Board and special exception approval (if necessary) by the Board of Appeals. The declaration of covenants runs with the land and is recorded in the event the zoning request and SDP are approved.

The amended Schematic Development Plan provides a binding element for traffic mitigation improvements. This binding element is consistent with the Transportation staff recommendations in the original staff report and will provide adequate mitigation of the traffic effects of the proposed development. Subject to governmental approval, the applicant is committed to: 1) construction of a right-turn lane from southbound Middlebrook Road to westbound MD 118 at the MD 118/Middelbrook Road intersection including changing the signal phasing from the current north-south split to concurrent phasing, and 2) paying the cost necessary to change the exclusive right-turn land to a through/right choice lane westbound on MD 118 at Wisteria Drive.

Based on the supplemental traffic analysis submitted by the applicant, staff finds that the MD 118 and Dawson Farm Road intersection is projected to operate at an acceptable operating condition with the inclusion of traffic volumes generated by the proposed automobile filling station and ancillary convenience store. Staff also finds that based on the traffic gap analysis for left-turning vehicles at the MD 118 and Bowman Mill Drive intersection, there will be more than a sufficient number of gaps occurring during the morning and evening peak periods to safely accommodate the number of vehicles wishing to turn left into or out of the subject property.

As noted at the beginning of the staff report, while the technical issues have been addressed through the submittal of the supplemental documents, there remain substantive issues of concern including compliance with the Germantown Master Plan and compatibility with the surrounding area.

The subject property falls within the Town Center, Analysis Area No. TC-6 of the Germantown Master Plan. The Master Plan recommends that this area be a quiet, green, pedestrian-oriented enclave that provides relief from the more intense development located in the Town Center core areas to the northeast (page 42). The Plan further states that the area should establish a strong visual and functional link to the Germantown Historic District located across the railroad tracks to the southwest. In the autumn of 2000, a pedestrian bridge was dedicated (replacing an earlier automobile-oriented bridge) consistent with the Plans recommendation to "further enhance the passive environment" in the area and provide a connection to the historic district.

The subject property is located near the historic Pumphrey/Mateney House and the Germantown Historic District. The Germantown Historic District is one of the county's most important historic districts and is the one area in Germantown with an intact ensemble of historic resources that recall an overall historic ambiance. In the original staff report, the Historic Preservation staff concluded that the zoning application was inconsistent with the strong and clear direction provided by the Master Plan. While acknowledging that certain specific uses otherwise allowed in the C-3 Zone are prohibited by binding element, other uses like an automobile filling station and ancillary convenience store are not. Such a use on the subject property would be the antithesis of the passive pedestrian environment described in the Master Plan. The C-3 Zone is incompatible with the Historic District both visually and in terms of land use.

The rezoning application is contrary to the Master Plan intent for establishing an historic, pedestrian oriented, quiet, enclave for the area. The Plan recommends retaining the existing R-200 Zone as the base zone (page 43). The area also could be appropriate for the O-M (Office Building – Moderate Intensity) Zone if certain issues of compatibility are addressed. Staff does not believe that the presence of the adjacent MARC commuter train station and parking lot undermines the Plans goals for the area. The facility does generate brief moments of activity with train arrivals during the peak periods in the morning and evening. However, for much of the day and evening there is little rail service and consequently little activity.

A majority of the Planning Board had previously agreed with staff's finding regarding consistency with the Master Plan and the goals for establishing a quiet, green, pedestrian-oriented enclave that could accommodate low-scale office type development. The majority had found that in the 10 plus years since the Plan was adopted, there has been considerable progress towards implementing this vision. Approval of the C-3 highway commercial zone would move the area in a different direction, one that is inconsistent with the Master Plan.

For these reasons, staff continues to recommend denial of the zoning application.

Attachments

Vicinity Map

Amended Schematic Development Plan

Declaration of Covenants, Conditions and Restrictions

Order of Remand

Town Center: Analysis Area

Germantown Historic District

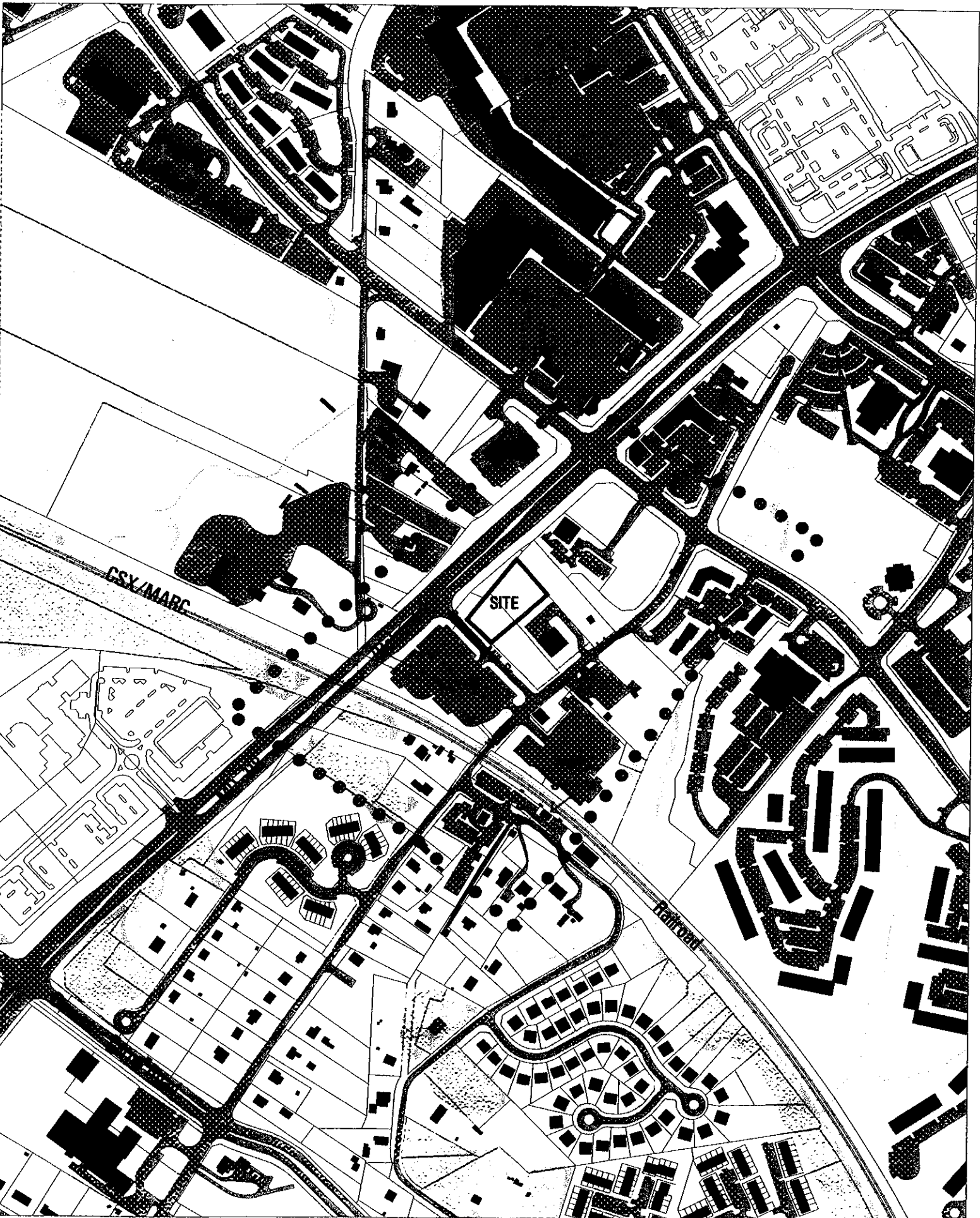
Letter of Support – Stanley D. Abrams, Esq.

Letter of Opposition – William J. Chen, Esq.

Letter of Opposition – Susan Soderberg, Germantown Historical Society

Letter of Opposition – Raymond J. Howar

G-788 VICINITY MAP



● ● ● ● Surrounding Area

OWNER/APPLICANT: JO LIMITED PARTNERSHIP, LLP
P.O. BOX 3181
DENWOOD, MD. 20855
(301) 840-0114

SITE AREA: 69716. SQ.FT. ± OR 1.6005 AC. ±

- EXISTING SITE ZONING: O-H/R-200
- PROPOSED SITE ZONING: C-3
- EXISTING USE: VACANT
- WOODED

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P.O. BOX 3181
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- EXISTING SITE ZONING: O-H/R-200
- PROPOSED SITE ZONING: C-3
- EXISTING USE: VACANT
- WOODED

844 3332 LPA 20-326 ELEV. 490.585 (NOV0219)
CONCRETE MONUMENT WITH A PIPER CENTER, IN
A 8' TERRA COTTA PIPE.
EAST SIDE WATERS ROAD, 100' NORTH OF
WISTERIA DRIVE.

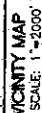
844 3790 LPA 370-326 ELEV. 494.720 (NOV0219)
BRASS BOLT AND WASHER SET IN A 2" IRON PIPE.
STAMPED 3790.
EAST SIDE WATERS ROAD, 200' NORTH OF
WISTERIA DRIVE.

844 3332 LPA 20-326 ELEV. 490.585 (NOV0219)
CONCRETE MONUMENT WITH A PIPER CENTER, IN
A 8' TERRA COTTA PIPE.
EAST SIDE WATERS ROAD, 100' NORTH OF
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EAST SIDE WATERS ROAD, 200' NORTH OF
WISTERIA DRIVE.

EXISTING CURB & GUTTER
PROPOSED CURB & GUTTER
PROPOSED MSHA C&G
FUTURE CURB & GUTTER
EXISTING STREET TREE
EXISTING WOODS

EXISTING CURB & GUTTER
PROPOSED CURB & GUTTER
PROPOSED MSHA C&G
FUTURE CURB & GUTTER
EXISTING STREET TREE
EXISTING WOODS

[illegible][illegible]

ALL OF THE ABOVE-BINDING ELEMENTS ARE SUBJECT TO FINAL SITE PLAN APPROVAL BY THE MONTGOMERY COUNTY PLANNING BOARD AND SPECIAL EXCEPTION APPROVAL.

THIS DEVELOPMENT IS SUBJECT TO SITE PLAN APPROVAL PURSUANT TO SECTION 59-0-3 OF THE MONTGOMERY COUNTY ZONING ORDINANCE

BUILDINGS, STRUCTURES, ARCHITECTURAL COMPATIBILITY, PARKING ACCESS, LOCATIONS, SETBACKS, AND USE ARE ILLUSTRATIVE ONLY; AND WILL BE ESTABLISHED AT TIME OF SPECIAL CONCURRENCE.

APPROVAL BY THE MONTGOMERY COUNTY BOARD OF APPEALS AND/OR AT THE TIME OF SITE PLAN APPROVAL BY THE MONTGOMERY COUNTY PLANNING BOARD.

IMPROVEMENTS OF CONCURRENT

SCHEMATIC DEVELOPMENT PLAN
AUTOMOBILE ELLING STATION

TO REDUCE CIV
AL OF
ONED TO

RELOCATED GERMANTOWN ROAD (MD. RTE. 11)
AND, BOWMAN MILL DRIVE

CLERK: JENNIFER L. MOULTON
COUNTY CLERK
COUNTY OF MONTECALM
DATE: NOVEMBER 5, 2000

<p>COMMUNITY PLANNED THE MARYLAND CAPITAL BUDGET AND A BUDGET FOR THE FUTURE</p>	<p>Colbert Matz Rosenfeld, Inc.</p>
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Engineers • Surveyors • Planners
200 W. 2nd St., Suite 200, Chicago, IL 60601
(312) 467-1111

RECURSIVE
SILVER SPRING, MD
221 17-202
Baltimore, Maryland 21209
Telephone: (410) 653-3336

	Foodservice (410) 653-7953	1000 N. 10th St. Suite 100 Philadelphia, PA 19107	1000 N. 10th St. Suite 100 Philadelphia, PA 19107
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DATE MAY 8, 2005	
ADM NO. 20000713	
PERSONAL 8.2	

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NO.	DATE:	REVISIONS:	BY:	SHEET 1 OF
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ENDING TRAFFIC MIGRATION IN ASIA

PALMANT WILL PROVIDE, SUBJECT TO CONTRACTUAL APPROVAL, VARIATIONS / MODIFICATIONS TO THE INTERSECTIONS OF MD. RTE. 118 / "MODELS" ROAD BY THE INSTALLATION OF CONCRETE PAVEMENT, RECONSTRUCTION OF A SOUTHWEST-TO-WESTBOUND TURN LANE AND TO, THE WESTERN / WESTING CONVEYING THE EXISTING WESTBOUND-TO-NORTHBOUND RIGHT TURN LANE, PAVING A DRIVEWAY CHANGING THE EXISTING WESTBOUND-TO-NORTHBOUND RIGHT TURN LANE, AND RECONSTRUCTING TURN LANE ON THE ALTERNATE, PROVIDING SUCH OTHER TRAFFIC CONTROL DEVICES AS REQUIRED BY APPLICABLE CONTRACTUAL AUTHORITIES TO REDUCE CIVILIAN TRAFFIC ACCIDENTS AND TO IMPROVE TRAFFIC FLOW. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ASSURANCE OF OCCUPANCY PERMITS FOR THE SUBJECT PROPERTY.

THE PURPOSE OF THIS PLAN IS TO ACCOMPANY A PETITION FOR REZONING OF THE PROPERTY FROM O-M & R-200 TO C-3.



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ADDITIONAL INFORMATION BASED ON A FIELD SURVEY PREPARED BY COLBERT HANZ, PROJECT NUMBER 06-0078, MAY 1978.
SUBJECT SITE SOILS HAVE BEEN MAPPED BY THE WASHINGTON COUNTY SOIL SURVEY AS OCCURRUM LOW (17B).
THE NW1/32 NO. 34 - 06-0078
CROSSES THE NORTH BANK OF THE GREAT SALT LAKE DRAIN WATERED.
STORMWATER MANAGEMENT QUANTITY CONTROL IS PROVIDED IN A REGIONAL FACILITY.
STORMWATER MANAGEMENT QUANTITY CONTROL WILL BE PROVIDED ON-SITE.
A SPECIAL EXCEPTION TO PERMIT AN AUTOMOBILE PULLING STATION IN A C-3 ZONE WITH CONFORMANCE WITH SECTIONS 34-C-1(1) & 39-C-2(2) OF THE WASHINGTON COUNTY ORDINANCE.
THERE ARE NO ROCK OUTCROPPINGS OR SCENIC VIEWS AT THIS SITE.
PRECEDENCE IS NOT AN HISTORIC SITE AS LISTED ON THE MASTER PLAN FOR HISTORIC

[illegible]

RESOURCES

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

I.O. LIMITED PARTNERSHIP, LLLP ("Declarant"), the owner of certain real property containing 1.60± acres of land located in Montgomery County, Maryland, known as Lot 1, Block A, Bowman Mill Subdivision, recorded among the Land Records of Montgomery County, Maryland in Plat Book _____, Plat No. _____ and also being part of Lands described in deeds recorded in Liber 18231, Folio 021 and Liber 4017 at Folio 707 among the Land Records of Montgomery County, Maryland.

WHEREAS, in November, 2000, the Declarant filed Zoning Application G-788, requesting the reclassification of the aforesaid property from the OM & R-200 Zones to the C-3 Zone, in accordance with the optional method of application for local map amendments provided for in §59-H-2.5 of the Zoning Ordinance for Montgomery County, Maryland, being also Chapter 59 of the Montgomery County Code, 1984, as amended; and

WHEREAS, pursuant to the optional method of application for local map amendments, the Declarant submitted an amended schematic development plan ("SDP") (Exh. _____) as part of the rezoning application for the purpose of limiting the use, height, building area, density and location of improvements, as depicted on the aforesaid SDP; and

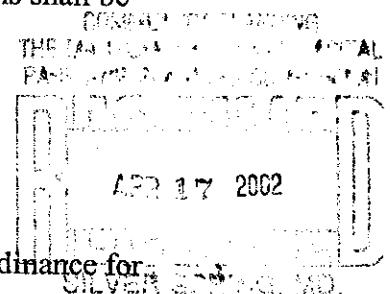
WHEREAS, Zoning Application G-788 was granted by the Montgomery County Council, sitting as a District Council on _____, and the aforesaid amended SDP (Exh. _____) has been approved as submitted; and

WHEREAS, §59-H-2.54 of the Zoning Ordinance for Montgomery County, Maryland, requires the submission and filing in the Land Records of Montgomery County, Maryland, a covenant indicating in specific language that the property which is the subject of a zoning application is restricted in its use and/or development standards as to the SDP or amended plan, and any accompanying or qualifying text materials submitted with said development plan.

NOW, THEREFORE, in compliance with §59-H-2.54 of the Zoning Ordinance for Montgomery County, Maryland, being also Chapter 59 of the Montgomery County Code, 1984, as amended, Declarant hereby declares that all of the real property described above, and each part thereof, shall be held, sold and conveyed only subject to the following covenants running with the land, and shall be binding on all parties having any right, title or interest in the above described property or any part thereof, their heirs, successors and assigns, and shall enure to the benefit of each owner thereof and to Montgomery County, Maryland, until such time as the property may be rezoned, at which time said covenants, conditions and restrictions shall be removed.

ARTICLE I RESTRICTIONS

So long as the aforesaid property is zoned C-3, pursuant to the Zoning Ordinance for



Montgomery County, Maryland, no development, construction or use shall be commenced, erected or maintained on the aforesaid property, except in conformance with the SDP (Exh. ____), and any accompanying text material, submitted as part of Zoning Application G-788, as such plan may be approved or modified by the Montgomery County Planning Board at the time of site plan approval or the Montgomery County Board of Appeals as part of any special exception approval, or thereafter amended as may be authorized by law, ordinance or regulation. Further, that said SDP contains the following restrictions and limitations, as indicated below, under the caption "Schedule of Binding Elements", denoting those elements by which the Declarant shall be bound:

SCHEDULE OF BINDING ELEMENTS:

The applicant agrees to restrict and limit the development standards applicable to the subject property according to the following binding elements. All other elements will be governed by the provisions of the County Code.

Area to be rezoned: 55,965 sq. ft. (Lot 1)
 13,753 sq. ft. (Pub. Rd. Ded.)
 69,718 sq. ft. (Total)

Maximum Building Coverage: 5.5% (3100 sq. ft.)

Green Area: 35% (19588 sq. ft.)

Other Binding Restrictions:

1. No storage of waste material, auto parts, refuse, and/or motor vehicles will be allowed within any required setback.
2. Proposed signage must comply with Section 59-F of the Montgomery County Code.
3. No major motor vehicle repair operations may be conducted on-site.
4. The following C-3 Zone uses are specifically prohibited; Automobile, truck, boat and trailer sales, service and rentals; building supply stores; eating and drinking establishments including drive-ins; heavy equipment sales and service; billiard parlors; bowling alleys; miniature golf course; or roller rink.
5. Applicant will provide, subject to governmental approval, traffic mitigation/improvements to the intersection of Md. Rt. 118/Middlebrook Road by installation of concurrent signal phasing and construction of a southbound - to - westbound turn lane and to Md. Rt. 118/Wisteria Drive by changing the exclusive westbound - to - northbound right turn lane to a through and right turn lane or, in the alternative, providing such other traffic mitigation/improvements as required by applicable government authorities to reduce CLV (critical lane volume) to levels below background traffic conditions as of the date of the approval of Application G-788. All traffic mitigation/improvements

STATE OF MARYLAND
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 2nd day of March,
2002, before me, the subscriber, a notary in and for the jurisdiction aforesaid, personally
appeared Aris Mardirossian, and made oath in due form of law that he executed the foregoing
Declaration of Covenants, Conditions and Restrictions for the purposes contained therein.

WITNESS my hand and notarial seal.


NOTARY PUBLIC

My Commission Expires: 05-01-05

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

**IN THE MATTER OF:
I.O. LIMITED PARTNERSHIP, L.L.L.P.**

Applicant

Zoning Application No. G-788

* * * * *

ORDER OF REMAND

It is hereby ordered this 12th day of March, 2002, by the County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District lying within Montgomery County, Maryland, that this matter be remanded to the Hearing Examiner to reopen the record for the following purposes:

(1) To permit the Applicant to amend his application to address issues identified by the Applicant's counsel in his letter of December 14, 2001, as described below:

- (a) inconsistencies between the declaration of covenants submitted and the binding elements reflected on the schematic development plan;
- (b) the absence of an executed declaration of covenants;
- (c) traffic conditions at the intersection of MD Rt. 118 and Dawson Farm Road;
- (d) the effect of gaps in traffic from the southwest on the safety of vehicular movements from Bowman Mill Drive onto MD Rt. 118; and
- (e) the absence of a binding commitment on the schematic development plan to ensure adequate mitigation of the traffic effects of the proposed development.

(2) To permit the Planning Board an opportunity for further comment and recommendation on the application in light of any amendment to the application submitted following this remand.

All parties will be permitted an opportunity for written comment on any amendment to the application submitted and any comment or recommendation by the Planning Board. After the close of the record, the Hearing Examiner will provide the Council with a brief supplemental report.

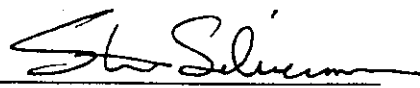
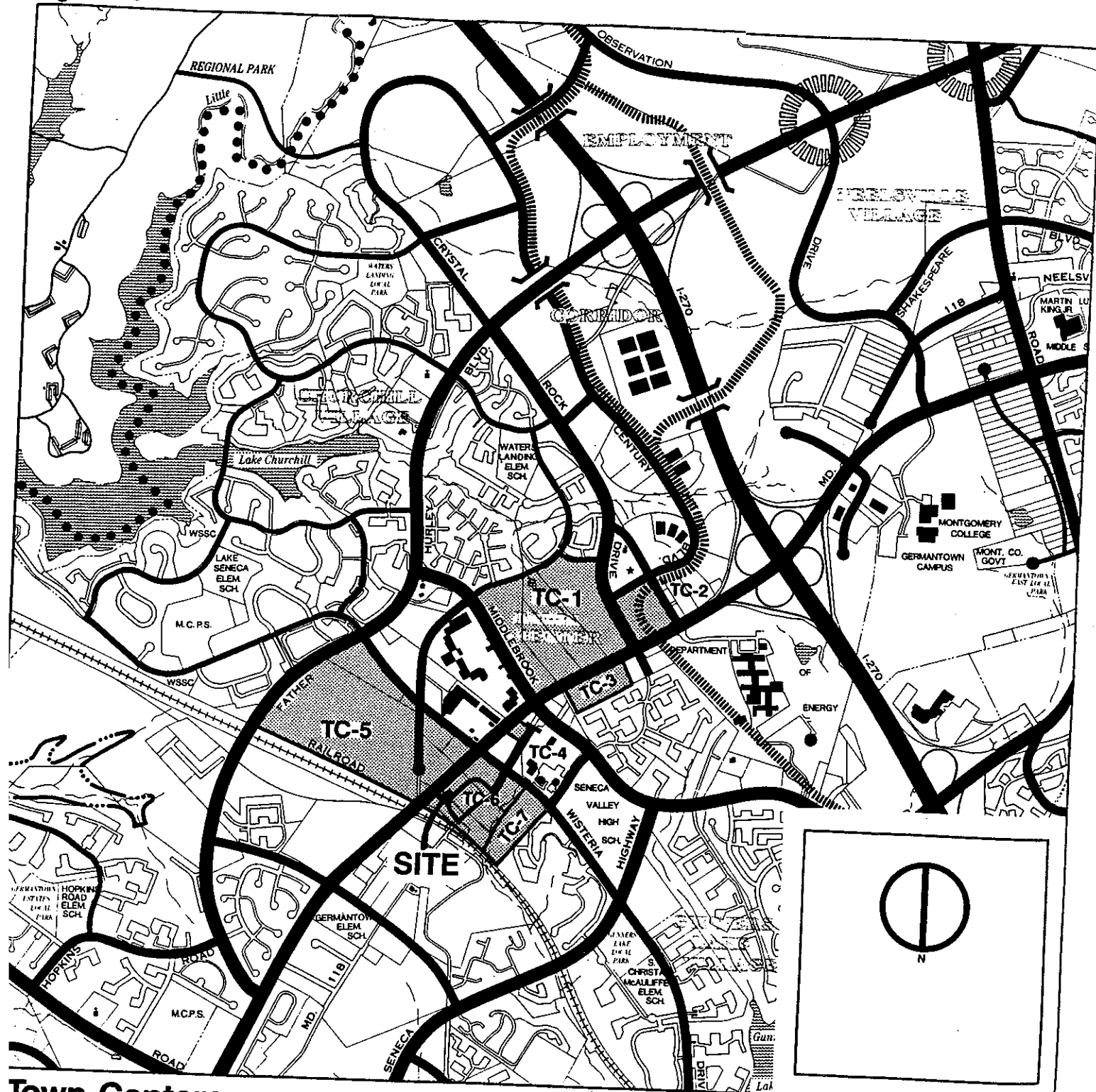
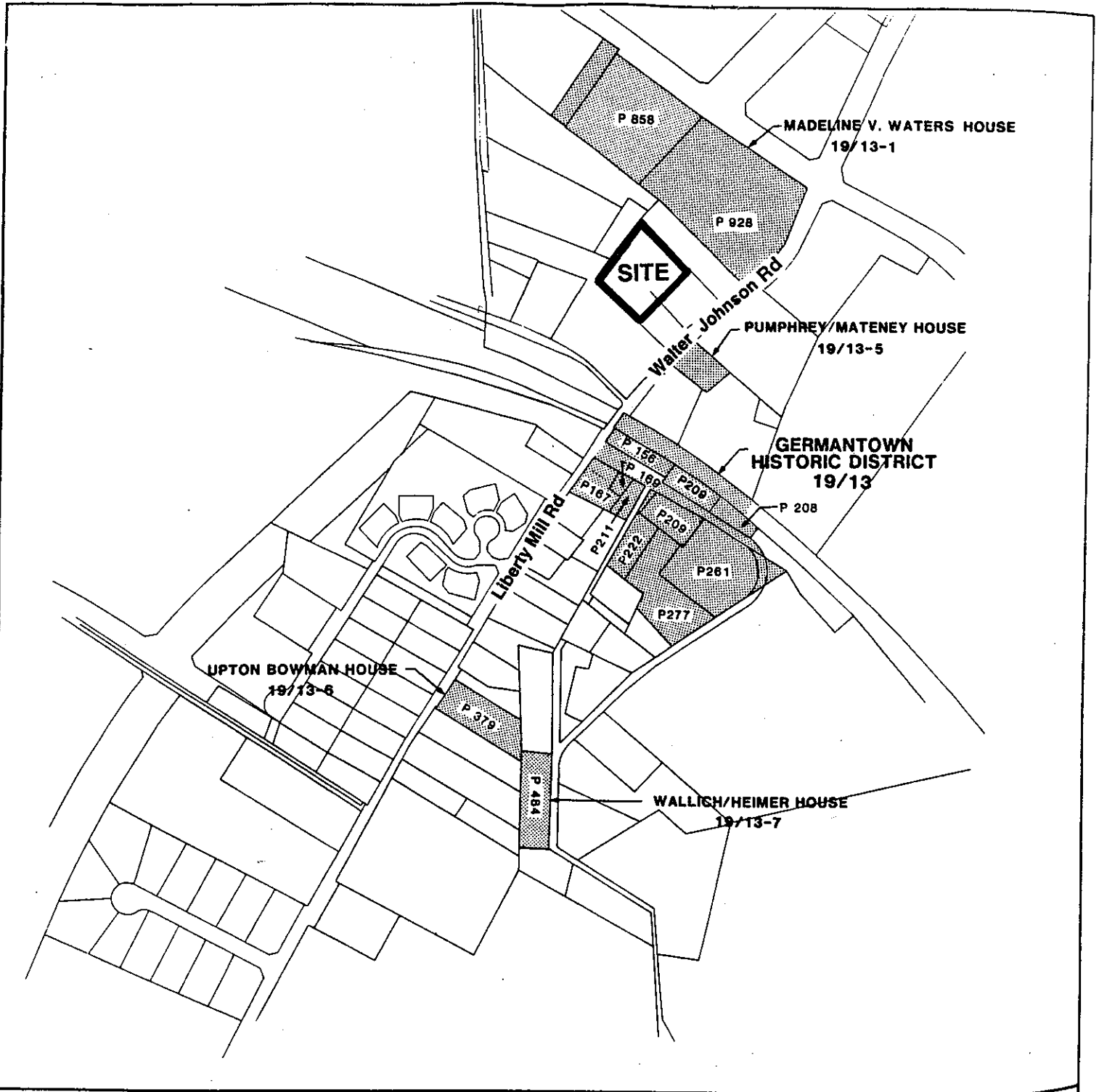

Steven Silverman, President
Montgomery County Council

Figure 16



Town Center: Analysis Areas

Figure L-1



Germantown Historic District And Adjacent Historic Resources

ABRAMS, WEST & STORM, P.C.

ATTORNEYS AT LAW

SUITE 760N

4550 MONTGOMERY AVENUE

BETHESDA, MARYLAND 20814-3304

(301) 951-1550

FAX: (301) 951-1543

M. GREGG DIAMOND
OF COUNSEL

KENNETH R. WEST
STANLEY D. ABRAMS
HARRY C. STORM
CATHY G. BORTEN
JAMES L. PARSONS, JR.

PRACTICING IN MARYLAND AND
THE DISTRICT OF COLUMBIA

WRITER'S DIRECT DIAL NUMBER
(301) 951-1540
EMAIL "sabrams@awstdlaw.com"

May 16, 2002

RECEIVED
MAY 17 2002

Mr. Arthur Holmes, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

**RE: Remand of Zoning Application G-788
May 23, 2002 Planning Board Agenda**

Dear Chairman Holmes and Commissioners:

I represent the applicant in the above referenced local map amendment application requesting reclassification of 1.6 acres of land located in the south east corner of Maryland Rt. 118 and Bowman Mill Drive, Germantown, Maryland from the O-M and R-200 Zones to the C-3 Zone, optional method. When this application was before the Board previously only three (3) members were present and voted 2-1 to recommend disapproval. Ultimately the application went to the District Council which initially voted 5-4 to approve but this would have resulted in a statutory denial since a super majority was required under the Regional District Act to approve an application which is contrary to the area master plan (The Germantown Plan recommends O-M Zoning) and not recommended for approval by the Planning Board. The District Council then voted to remand the application to the Planning Board for among other reasons further comment and recommendation on the application.

When this application was before the Planning Board in May, 2001, the use proposed was for an automobile filling station and convenience store but has since been amended to show no binding specific use¹ with the binding elements of the Schematic Development Plan (SDP) being a single story, 3100 square foot building, 0.25 FAR, 5.5% building coverage, 35% minimum green space and 25 parking spaces. That is the current application and not an automobile filling station.

¹ The Schematic Development Plan (SDP) does however prohibit certain specific uses including: Automobile, truck, boat, and trailer sales, sales, service and rentals, building supply stores, eating and drinking establishments including drive-ins, heavy equipment sales and service, billiard parlors, bowling alleys, miniature golf course or roller rink.

The Board (i.e.: two member majority at the time) previously found that the proposed rezoning was not consistent with the Germantown Master Plan, that the Master Plan calls for a quiet, green, pedestrian oriented character and that vision has been implemented since the adoption of the plan, ten years prior. The Board further found the rezoning incompatible with the surrounding area.

We respectfully submit that the description of the area (i.e.: TC-6 Analysis Area)² in the 1989 master plan as a "passive and pastoral environment" and a "quiet green pedestrian oriented enclave" and any conclusion that the area has developed that way since the adoption of the master plan defies the facts and is patently incredulous. This property is but two (2) blocks west of the most intensive commercial area in the Germantown Town Center and next to the large MARC Train parking lot. The preeminent single use within the entire TC-6 analysis area has been and is now, off-street parking. The evidence of record reflects that 32% of the existing land area in TC-6 is currently devoted to off-street parking and upon final master plan build out will have 50% of the total land area in off-street parking.

When the master plan was adopted in 1989 the MARC Train parking lot was planned for 388 spaces but has grown over the years to provide 588 parking spaces which include thirty foot (30') tall high intensity lighting. Maryland Rt. 118 upon which this property and other areas in TC-6 front carries 28,000 vehicles per day and has garage and automotive and research and development uses opposite this area fronting on MD Rt. 118.

One has to look through the proverbial "rose colored glasses" to picture acres of asphalt, covered with automobiles and their movements in and out of the MARC parking lot which is lit up at night to give one the picture of a quiet, green pastoral, pedestrian oriented enclave. Similarly, to say that a single story, 3100 square foot building isolated on three (3) sides by roads (MD Rt. 118, Bowman Mill Drive and the proposed loop extension of Walter Johnson Road) across from the MARC parking lot on the west and a Verizon Dial Center on the south which has been approved for a 23,000 square foot extension in a forty foot (40') tall building is incompatible strains logic.

The master plan recommends O-M Zoning for this property. Under the O-M Zone you can put up a five (5) story building at a 1.5 FAR or 104,544 square feet with only a 10% green space requirement. Compare this to a 3,100 square foot single story building with 35% green space, as proposed here and answer the obvious question - which is more compatible and in keeping with this alleged passive, pastoral, green enclave?

² The TC-6 Analysis Area encompasses the geographic area within MD Rt. 118 on the north, the CSX Railroad right-of-way on the west, Wisteria Drive on the east and just below Walter Johnson Road (Old MD Rt. 118) on the south.

Also, much was made about protection of the historic sites in TC-6 of which there are two and the Historic District across the CSX tracks to the west. Our comments as to each are as follows:

Madeline Waters House – This is located to the east of the property at MD Rt. 118 and Wisteria Drive. It is separated from the subject property by other undeveloped land. The house on the property burned down around the time of the adoption of the master plan. The property is adjacent to a large retail copy center and across Wisteria Drive from C-3 zoned land and development. No one provided any evidence at the public hearing that this property would be adversely impacted.

Pumphrey Mateney House – this is located on Walter Johnson Road at its intersection with Bowman Mill Drive. It is currently used for office purposes and surrounded on three (3) sides by off-street parking including portions of the MARC Train parking lot. This house/office is buffered from the subject property by the Verizon Dial Center which as described above was approved by the Board of Appeals for a substantial expansion. No traffic to or from the applicants property would have any reason to even pass this property given the subject property's orientation to MD Rt. 118. The view shed down Bowman Mill Drive to this historic site would not be changed or obscured.

Germantown Historic District – The historic district does not encompass the TC-6 Analysis Area. It is in a separate village, Clopper Village and separate analysis area (Analysis Area CL-1). This application will have no effect on the Historic District. The Historic District is 660' - 1000 feet away across the railroad right-of-way and is heavily treed on both sides of the railroad tracks. There is no vehicular access between Area TC-6 and the Historic District. Old MD Rt. 118 (now Walter Johnson Road) was closed to vehicular traffic and only pedestrian access is permitted. Consequently no vehicular traffic to or from the subject property will pass through the historic district. There will be no noise from mechanical repairs since repair uses are prohibited by the SDP. High intensity lighting already exists on the MARC Train parking lot. Consequently there will be no adverse impact on the Historic District or any historic site.

Finally, the issue was raised as to the safety of turning movements into and out of Bowman Mill Drive considering traffic along MD Rt. 118. Irrespective of the fact that there has been no evidence of any reported accidents in the last decade at this intersection despite traffic from the MARC parking lot doing these same turning movements, our traffic consultant, Mr. Lee Cunningham, analyzed the intersection upon remand and found that this intersection operates at level of Service A during peak hours and that traffic lights at Wisteria Drive/Rt. 118 to the east and Dawson Farm Road/Rt. 118 to the west provide more than sufficient gap time considering sight distance available and speeds he measured along this stretch of Rt. 118 to safely make turning movements into and out of that intersection. Also as part of the remand he analyzed the intersection of Dawson Farm Road and Rt. 118 and found that intersection will continue to operate at safe and acceptable levels of service during peak hours, irrespective of development of

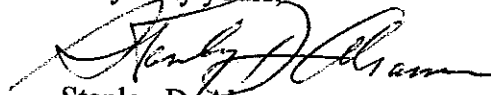
Mr. Arthur Holmes, Chairman
May 16, 2002
Page 4

the subject property.

The bottom line is that we are proposing a rezoning at a location which is appropriate, compatible and has no detrimental impact on the surrounding TC-6 Analysis Area or the Historic District within Clopper Village. The 1989 Germantown Master Plan mischaracterized this analysis area as a quiet, green pastoral, pedestrian environment whose largest single use is a public parking lot.

My client regrets the necessity of this rather lengthy letter but given the abbreviated time allowed at your meetings for presentation we believe that this method will allow the applicant the time to acquaint you with those issues and facts which we would otherwise not have time to present. We request that the Planning Board recommend approval of this local map amendment.

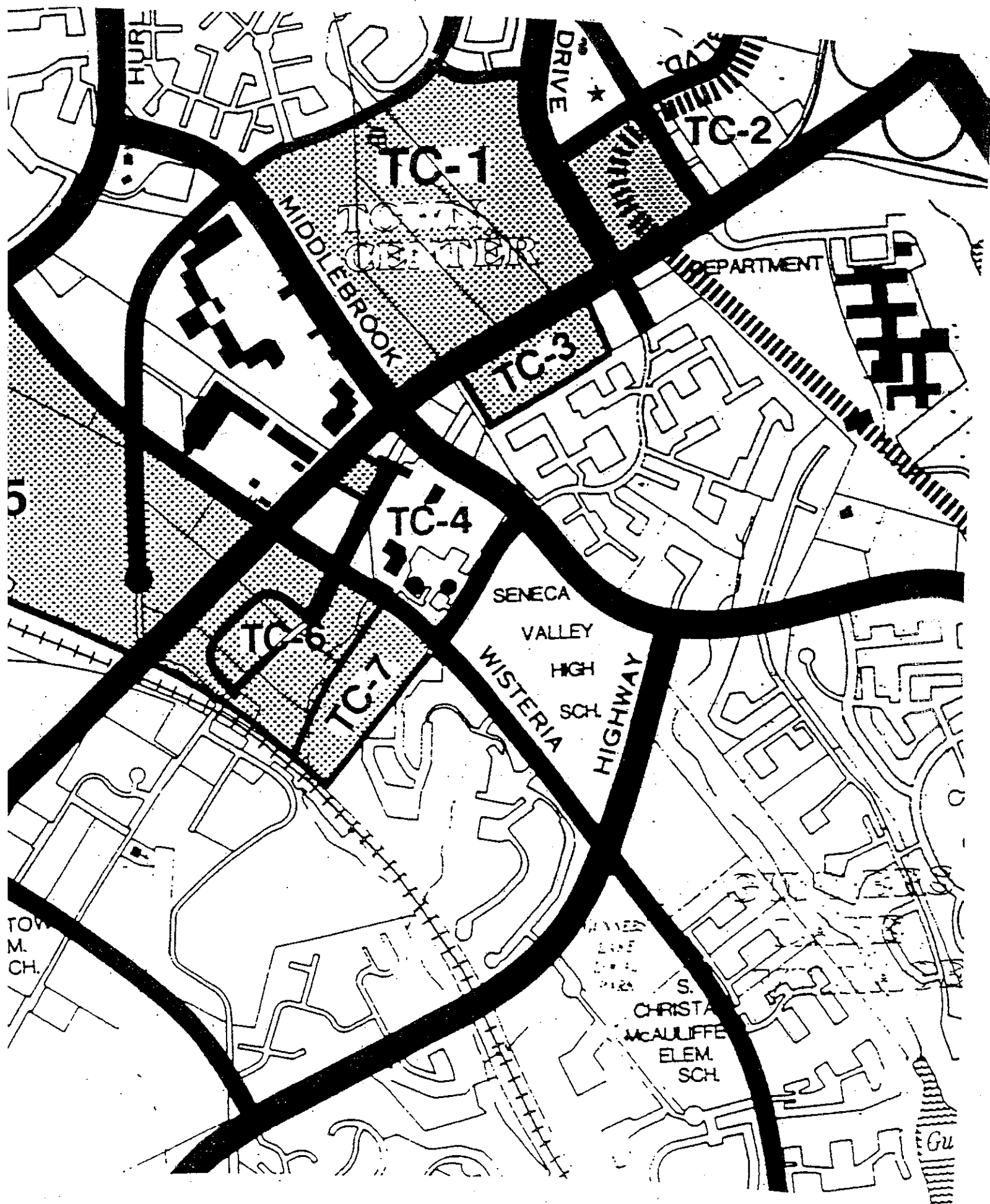
Very truly yours,



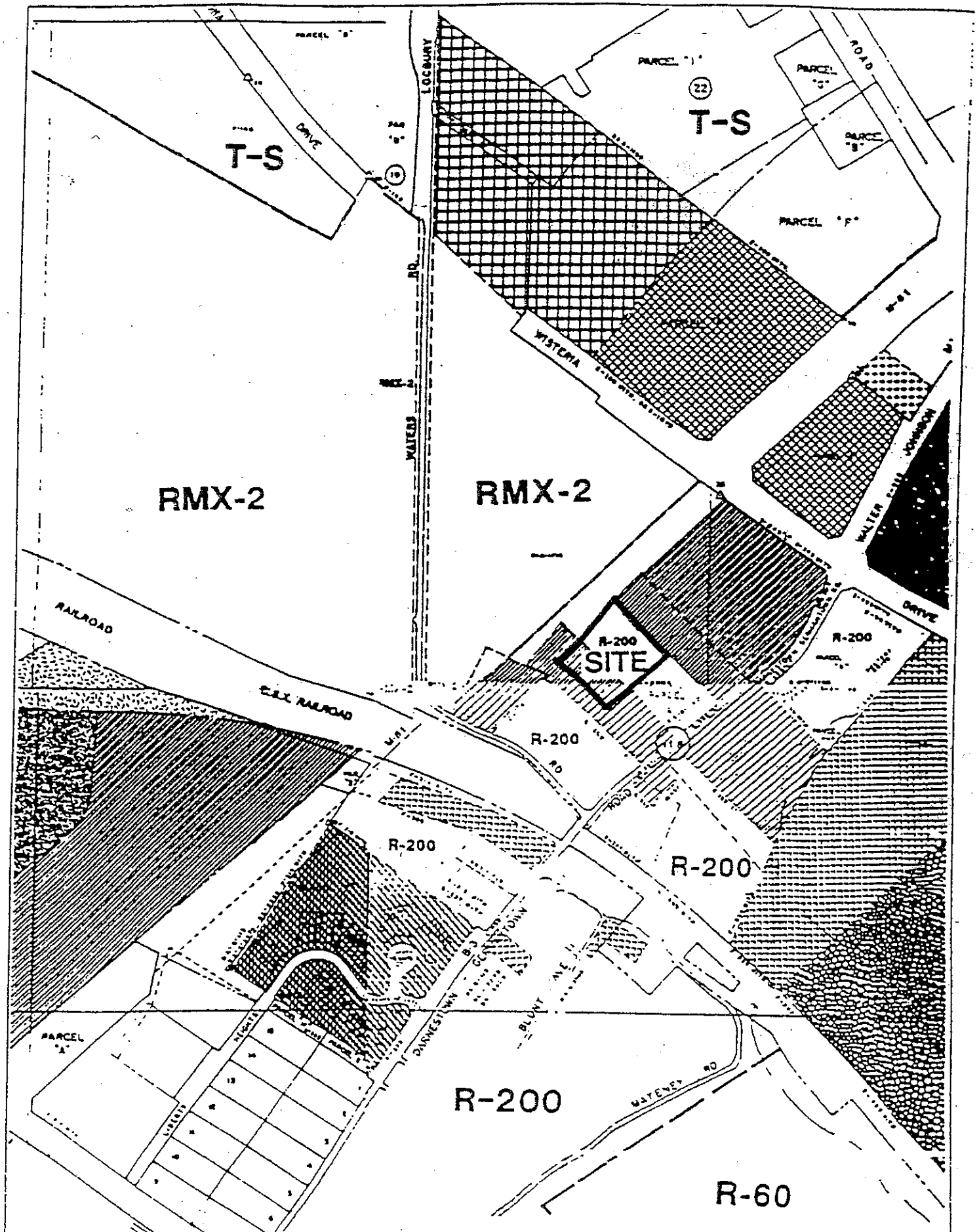
Stanley D. Abrams

SDA:dw

cc: All Planning Board Members
Aris Mardirossian
William Landfair
William Chen, Esq.
Susan Soderberg
Harry Murphy
Ms. Francoise Carrier, Hearing Examiner



Zoning Map



CHEN, WALSH, TECLER & MCCABE, LLP.

ATTORNEYS AT LAW

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JOHN BURGESS WALSH, JR.
WILLIAM JAMES CHEN, JR.*
KENNETH B. TECLER*
JOHN F. MCCABE, JR.*

*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

1-800-229-9510

May 16, 2002

Arthur Holmes, Jr., Chairman
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

Re: Zoning Application G-788

Dear Chairman Holmes and Board Members:

As the Board may recall, I am legal counsel for certain parties who oppose Zoning Application G-788.

Zoning Application G-788 has been remanded to you by the County Council, sitting as the District Council. In that regard, the Applicant has submitted certain material to the Hearing Examiner, copies of which have been provided to your technical staff. That submission pertains to a few technical irregularities in the application, and does not address, much less overcome, the multiple serious substantive impediments which preclude favorable consideration of the rezoning application.

The Zoning Application involved six days of hearings before the Office of Zoning and Administrative Hearings over the course of several months. During that period, over my clients' objection, the Hearing Examiners allowed the Applicant to revise and amend its application twice, specifically its schematic development plan. Additionally, the Hearing Examiners heard days of testimony from expert witnesses. Ultimately, the Examiners issued a seventy-five page report and recommendation which carefully detailed the evidence presented by the Applicant, evaluated all of the evidence of record, properly applied the law to the evidence, and determined, on multiple grounds, that Zoning Application G-788 should not be granted. The seventy-five page report and recommendation issued by the Hearing Examiners was signed by both the County's long time, highly respected examiner, Philip J. Tierney, who was joined by the County's new examiner, Francoise M. Carrier. I am a former hearing examiner and have practiced before the Planning Board, the Hearing Examiners, and

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the County Council since 1975, and I have never seen a report and recommendation signed by two hearing examiners. I suggest that the fact that the report and recommendation was signed by both examiners underscores the comprehensive and proper analysis that was given to the rezoning application and the professional convictions of the examiners.

The Hearing Examiners' report and recommendation determined that the requested rezoning failed in every area of substantive evaluation. Specifically, the Examiners found that the requested rezoning was not in accordance with the recommendations of the Germantown Master Plan, did not comply with the purpose clause of the C-3 Zone, was not compatible with surrounding land uses, and was contrary to the public interest. As I note, the recent submission by the Applicant does not address the substantive issues presented by its meritless application, nor undercut the analysis undertaken by the Hearing Examiners.

I also add that this application has received extensive close examination by your technical staff. It, too, has issued a very comprehensive and correct report, analysis, and recommendation. Its approach to the proposed rezoning and analysis of the substantive issues involved in the application has been fair and professional. Its performance on this assignment is a credit to the Board. It has consistently recommended, on multiple grounds, denial of Zoning Application G-788. I add that during the course of the Examiners' hearing members of your staff appeared and testified, and demonstrated their understanding of the facts and issues presented and the logic and proper bases for their conclusions and recommendation.

Given your staff's comprehensive evaluation and recommendation and the comparable evaluation and recommendation of the Hearing Examiners, it is respectfully submitted that the Planning Board should reaffirm its previous recommendation of denial of Zoning Application G-788.

One issue, however, is deserving of particular focus for your consideration. That issue is compliance with the Germantown Master Plan. Undisputably, the requested rezoning to the C-3 Zone as proposed by Application G-788 is contrary to the recommendation for the subject property that is contained in the Germantown Master Plan. The analysis presented by your technical staff and the testimony of area residents who have first hand experience with the development of their community established that the proposed rezoning is violative of the goals and objectives of the Master Plan. The analysis of your staff and the testimony of area residents clearly proved that the subject property and its environs have experienced the type of activity and development proposed and recommended by the Germantown Master Plan. That development and sense of community would be compromised by approval of Application G-788. The Planning Board, beyond any other agency, has a responsibility to

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safeguard and insure that adopted and approved master plans are not violated. This responsibility is fundamental to your official obligations to County residents, and, in particular, those who reside within an area affected by a proposed rezoning.

The property that is the subject of Application G-788 is located in Analysis Area TC-6 of the Germantown Master Plan. The Master Plan's recommendation for this area is as follows:

"Analysis Area TC-6 is the Town Center Historic Area and includes the properties fronting on existing MD 118, northeast of the railroad tracks. Included in this 23-acre area are the C&P Telephone Company building and the expansion of the commuter train station parking area. The Pumphrey/Mateney house (*Master Plan Site #19/13-5*), an historic resource in the Germantown Historic Area, is located in this area, near the railroad tracks. Two parcels and a portion of another are zoned O-M in conformance with the Service Commercial recommendation of the 1974 *Master Plan*; the balance of the area is zoned R-200.

* * *

"This Plan recommends that this Analysis Area be a quiet, green, pedestrian-oriented enclave that provides relief from the intense development of the Town Center. It should establish a strong visual and functional link to the Germantown Historic District directly across the railroad tracks. (*See, Analysis Area CL-1.*) When relocated MD 118 is open to traffic, the existing railroad bridge will be either closed to automobile traffic or replaced by a pedestrian bridge. This will serve to limit traffic and further enhance the passive environment."

See, Germantown Master Plan, p. 42.

The Master Plan accurately describes Analysis Area TC-6, and its recommendations for that area have occurred. The evidence of actual development in the area and compliance with the Master Plan is undisputed. The Examiners' Report and Recommendation has accurately described that area as it exists today. Analysis Area TC-6 functions as a transition

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between the intense development of the Town Center and the Germantown Historic District.

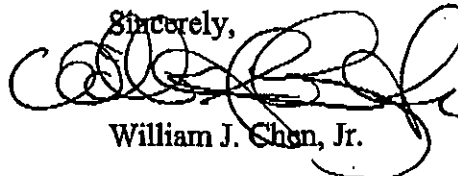
The Applicant has relied upon the testimony of its consultants who visited Analysis Area TC-6. On the other hand, area residents testified from their personal observations and experiences about the land use activities that have developed and occurred in their community under the guidance of the Germantown Master Plan. The evidence from the area residents included photographs of the area which depicted activities as contemplated by the Master Plan. For instance, the Master Plan recognized that the MARC Station parking lot would be constructed, and the testimony before the Hearing Examiner revealed that the parking area is used by area children, as well as adults. The old railroad bridge (former Md. Route 118) has been converted for pedestrian use, and has received an award for that conversion and use.

There is no C-3 Zoned land anywhere within Analysis Area TC-6. The Pumphrey-Mateny House is within Analysis Area TC-6, and is a historic resource which has been restored and functions well with its surroundings, including the parking area for the MARC Station. Indeed, in times past that house served as a grocery store as part of the Germantown railroad community, and the transition to a contemporary function in association with commuter parking is consistent with that heritage. Development of the Verizon Dial Center office use has had absolutely no adverse impact on the area. It is a type of low intensity land use contemplated by the Master Plan.

The undisputed testimony presented to the Hearing Examiners revealed that Analysis Area TC-6 is functioning in the way recommended and contemplated by the Germantown Master Plan. It is a passive, pedestrian-oriented area that serves as a visual and functional link between the Town Center area to the east and the Germantown Historic District to the west. There is no serious debate, much less dispute, that the Germantown Master Plan recommendations for Analysis Area TC-6 have been followed. In accordance with the Master Plan recommendations, that development has functioned well for the Germantown community. The requested rezoning to the C-3 Zone is, undeniably, contrary to the Master Plan, and would compromise the Master Plan.

It is respectfully submitted that the Planning Board should reaffirm its previous recommendation of denial of Zoning Application G-788.

Sincerely,



William J. Chen, Jr.

WJC:mmml

cc: Stanley D. Abrams, Esq.
mm/zoning-app.G-788#12/b:holmes.liz

May 15, 2002

Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910

Zoning Application No. G-788

Dear Planning Board:

The Germantown Historical Society is in opposition to the zoning application G-788. There should be no highway commercial (C-3) zoning at the intersection of Rt. 118 and Bowman Mill Road.

This property is recommended in the Germantown Master Plan for low-density office development as a buffer between the commercial area and the residential historic district. The language of the Germantown Master Plan is very explicit that this area (referred to as TC-7) is to be a quiet, green, pedestrian oriented enclave that provides relief from the intense development of the Town Center. It should establish a strong visual and functional link to the Germantown Historic District directly across the railroad tracks.(pg. 42)

Any business allowed by C-3 zoning would create more traffic entering and exiting Bowman Mill Road, would create a dangerous situation at the intersection of Bowman Mill Rd. and Rt. 118. The bright light and noise coming from a commercial establishment will be considerable. What is being proposed would not be a general store serving the local community, it would be a convenience mart like a 7-11. Since the management rules of these establishments say that people are not allowed to stay in the immediate area of the store for more than 10 minutes, those who want to linger to eat, smoke, talk, etc. would move out to the further areas of the commuter parking lot, probably even into the neighborhood. This would not be good for the Historic District, or for any neighborhood.

To approve this re-zoning would compromise the Historic District formerly approved by the Planning Board and registered in the Master Plan of Historic Sites of the County.

To change the zoning for this property to C-3 would not only disregard the Master Plan that others have been using as a guide, but would also endanger lives and property.

Sincerely,

The Germantown Historical Society
Susan Soderberg, Vice-president

**Raymond J. Howar
Julie M. Howar
19215 Blunt Ave
Germantown, Maryland 20874
301-353-9393**

VIA FACSIMILE 301.495.1320

May 16, 2002

Montgomery County Planning Board
Maryland Park and Planning Commission
8787 Georgia Ave
Silver Spring, Maryland 20980

Re: G-788 application, Germantown, Maryland

RECEIVED
MAY 16 2002

**OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION**

Dear Board Members:

Thank you for the opportunity to place my concerns into the record of the above mention remanded application. I am somewhat at a loss as why we are starting this process all over again.

My family and I have expended a significant amount of time and money concerning this issue. This requested zoning change has a huge impact on our small neighborhood. To see many years of hard work by many individuals in the neighborhood and at MPPC, especially John Mathias, destroyed would be a huge loss to the community. I think the Germantown Master Plan is a legacy that Mr. Mathias left us. It would be unfortunate to see this change.

The vision of the Planning Board, Mr. Mathias, other members of your staff and community residents to have a gathering place for adults and children to play has come to fruition. This has not gone unnoticed throughout the community. The long awaited conversion of the railroad bridge (old MD. Route #118) is completed and thriving. The wonderful concept of a pedestrian area for the Historical District works. This area is the weekend gathering spot for many in the surrounding neighborhood. Many watch trains from the only (pedestrian only) train overpass in the upper county. This gathering area has been a huge success and continues to draw many of the new residences throughout Germantown.

My concerns have not changed since May 10th, 2001, when I testified last year. There is nothing with this remanded application that has changed since 2001. I again, strongly

believe that a 24-hour convenience mart or gas station operation diminishes the quality of life in our small and unique neighborhood.

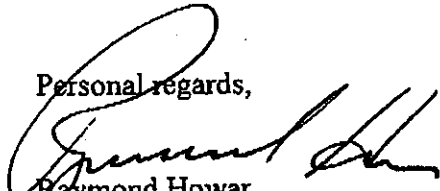
I AGAIN, REMIND THE PLANNING BOARD THAT I DO NOT OPPOSE AN OFFICE BUILDING OR RESIDENTIAL USE. HOWEVER A 24-HOUR CONVENIENCE MART OR GAS STATION OPERATION IS AN ENTIRELY DIFFERENT USE, WITH HIGH IMPACT.

The following points are of continued concern.

- The zoning change requested is far beyond the goals of the Germantown Master Plan and will encourage other properties to seek a higher zoning density.
- We will experience a DOMINO EFFECT of property owners increasing density through zoning
- This zoning change impacts the Historical District and our right of quiet enjoyment
- Our Historical District and property values will be impacted negatively
- This change would be in direct opposition to the Germantown Master Plan, which calls for OM (office) zoning for this parcel. To change the Master Plan the applicant must prove that a mistake was made in the Master Plan. No mistake was made.
- The intention of the Germantown Master Plan in making this area an OM zone was to make the property part of a buffer for the historic neighborhood that is just across the parking lot and is at the same elevation of my front porch.
- A gas station and 24-hour convenience mart/gas station on the property would disrupt the quiet residential neighborhood, create additional trash, and increase vandalism in the surrounding area, especially in the commuter parking lot where cars are often left over weekends, as well as during the day on week days.

Please contact me, if you require further information. I expect that I will attend your meeting on the 23rd of May 2002.

Personal regards,



Raymond Howar

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