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December 22, 2003

ROBERT R. HARRIS
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VIA HAND DELIVERY

Martin Hutt, Esquire
Lerch, Early & Brewer, Chartered
3 Bethesda Metro Center
Suite 460
Bethesda, MD 20814

Re: 4504 Walsh Street – Corrective Map Amendment G-816

Dear Marty:

As we discussed by telephone yesterday, this letter is to provide you with the information upon which this Corrective Map Amendment is based.

First, as you are aware, the 1994 Bethesda CBD Sector Plan recognized that building permit had been issued for this property. In the interest of avoiding a non-conforming situation, the Sector Plan stated, "If the zoning is vested at the time of the Sectional Map Amendment, the Plan recommends confirming the existing zone." Park and Planning Staff has confirmed the clear intention of this reference was to keep the previous C-2 zoning in place if construction under the permit of a commercial building under the C-2 zone had sufficiently begun before October 11, 1994 (the date of the Sectional Map Amendment). I believe you already have copies of the Affidavit of the owner at that time, dated November 23, 1994, the Sediment Control Permit dated November 2, 1992 and the Building Permit dated January 21, 1994, as well as an Order of the Montgomery County Circuit Court dated April 4, 1995. There also was an earlier Consent Order dated December 21, 1994 referenced in the subsequent court Order.

By way of explanation, these documents demonstrate that construction of the building had progressed sufficiently before October 11, 1994 in order to vest the

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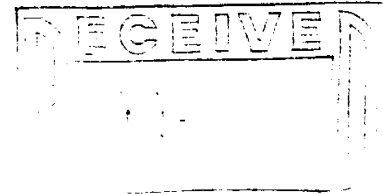
ATTORNEYS

MARTIN J. HUTT

DIRECT 301.657.0170

MJHUTT@LERCHEARLY.COM

January 2, 2004



Derick P. Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Corrective Map Amendment G-816

Dear Mr. Berlage:

We represent the Town of Chevy Chase, a municipal corporation, whose municipal boundaries include that portion of Walsh Street, which adjoins 4504 Walsh Street, which is the subject matter of the above referenced Corrective Map Amendment. We have been advised by the owner of the property located at 4504 Walsh Street, Chevy Chase, Maryland (Lot 8, Block D, Section 8) that he has requested the Montgomery County Planning Board to submit a Corrective Map Amendment, pursuant to the provisions of Section 59-H-10 of the Montgomery County Zoning Ordinance, to the Montgomery County Council sitting as the District Council to re-zone the subject property from its current R-60/TDR zoning classification to its former C-2 zoning classification.

Under the provisions of Section 59-H-10.3(3) of the Montgomery County Zoning Ordinance, the Corrective Map Amendment submission is to contain a "statement of the rationale in support of the zoning adjustments."

It is also our understanding from the property owner, his attorney and your staff that the staff of the Montgomery County Planning Board have met with the owner of the subject property, and based upon that meeting and the documentation provided by the owner to the Planning Board's staff, the staff have placed the above referenced Corrective Map Amendment on the Planning Board's January 15, 2004 public hearing schedule.

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To date, the only rationale which the Town of Chevy Chase has been provided for the Corrective Map Amendment is that stated by Bob Harris, the owner's attorney, in his letter to Planning Board staff, dated October 23, 2003, in which Mr. Harris states in pertinent part:

"As we discussed, the 1994 Bethesda CBD Sector Plan called for retaining the pre-existing C-2 zoning for this property if that zoning was vested by the issuance of a building permit and the initiation of construction, prior to adoption of the Sector Plan. I am enclosing a copy of a Circuit Court Order entered March 4, 1995, confirming that the rights under the C-2 zoning and the pre-existing building permit were vested on or before October 10, 1994. I have also enclosed an Affidavit describing the circumstances. Given that the property was not re-zoned until October 11, 1994, the Sector Plan called for its zoning to remain C-2. Unfortunately, the parties involved at that time did not monitor the Sectional Map Amendment for the Bethesda CBD and the property was mistakenly rezoned to R-60/TDR."

As noted above, the Town of Chevy Chase has been advised by the property owner of his request to the Planning Board staff for a Corrective Map Amendment. At the present time the Town is still attempting to completely understand the rationale in support of the Corrective Map Amendment.

From our reading of Mr. Harris' letter of October 23, 2003 we glean the asserted rationale for the Corrective Map Amendment is as follows:

1. the 1994 Bethesda CBD Sector Plan called for retaining the pre-existing C-2 zoning for the property if zoning vested by (i) issuance of a building permit and (ii) initiation of construction prior to adoption of the Sector Plan; and
2. the March 4, 1995 Court Order confirmed that the rights under the C-2 zoning and pre-existing building permit were vested on or before October 10, 1994; and
3. the parties involved at the time did not monitor the Sectional Map Amendment and the property was mistakenly rezoned to R-60/TDR.

From our review of the available materials the following are established :

- (1) The applicable Bethesda Central Business District Sector Plan

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recommendation for the subject property actually states: "A building permit has been issued for Lot 8 under the existing C-2 Zone. If the zoning is vested at the time of the Sectional Map Amendment, the Plan recommends confirming the existing zoning." (emphasis added). Therefore, the Sector Plan recommendation was based upon the vesting of zoning not the fact a building permit had been previously issued.

We have had discussions with Bob Harris seeking to know the rationale for the Corrective Map Amendment. By letter to me of December 22, 2003, a copy of which is attached, his position is that if the extent of construction activities were such that the Montgomery County Court in its order of March 4, 1995 concluded that the building permit "vested" allowing construction to be completed and the building used in accordance with C-2 zoned uses then such construction activities are sufficient construction activities for the "vesting of C-2 zoning".

Under Maryland law, zoning is not vested merely by the issuance of a building permit but rather vesting is based upon the extent of construction done prior to the effective date of the rezoning action. Therefore, it would appear that the legal and factual issue to be determined in connection with the Corrective Map Amendment is whether the construction authorized by the building permit had commenced to a point, as recognized by Maryland case law, prior to the County Council's adoption of the Sectional Map Amendment that rezoned the property to R-60/TDR, that the C-2 zoning was vested.

(2) The difficulty the Town is having is that neither the current owner nor his attorney were directly involved in the subject property and litigation during the applicable period of time. The current owner is claiming that the March 4, 1995 Montgomery County Circuit Court order confirmed that the rights under the C-2 zoning and the pre-existing building permit were vested on or before October 10, 1994.

The portions of the Circuit Court's March 4, 1995 order that are relevant to that question states as follows :

"2. "Plaintiff's rights to use the property at 4504 Walsh Street, Chevy Chase, Montgomery County, Maryland, also known by legal description as Lot #8, Block D, Chevy Chase, Section 8, in conformance with the C-2 Zoning were vested on or before October 10, 1994, and Plaintiff thereby acquired vested rights to continue and complete the construction of a building pursuant to the herein referenced permits and any lawful revisions or amendments thereto; and the building and the use of the building will be considered to be nonconforming and

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subject to the restrictions imposed by the laws of the State of Maryland and Montgomery County applicable to non conforming uses..” (Emphasis Added)

The above statements from the court order confirm only that the Plaintiff's right to use the property in conformance with the C-2 zoning was vested as were the right to complete construction under the building permit and the use and building were to be considered “nonconforming” in accordance with the laws of Maryland and the Montgomery County Zoning Ordinance. If the C-2 zoning had vested, then the uses and the building would be lawfully conforming and not non-conforming as the above paragraph 2 clearly states.

This factual and legal distinction between the vesting of zoning compared to the right to use the building as a non conforming building is clearly seen when one compares the above language with the earlier paragraphs 2 and 3 of the Montgomery County Circuit Court Consent Order, dated December 21, 1994 on the same subject property and issues, which court order was neither referred to in Mr. Harris' letter nor attached thereto. These paragraphs stated as follows:

“2. Plaintiff's rights in and to the C-2 Zoning on the property located at 4504 Walsh Street, Chevy Chase, Montgomery County, Maryland, also known by legal description as Lot # 8, Block D, Chevy Chase, Section 8, were vested on or before October 10, 1994, and therefore, are not subject to or changed by the action of the Montgomery County Council on October 11, 1994, when that body adopted Sectional Map Amendment (SMA) No. G-711 for the Bethesda Central Business District,

3. The aforesaid property is to be considered zoned C-2 and not zoned R-60/TDR.” (Emphasis Added)

From our reading of the December 21, 1994 Consent Order, the C-2 zoning was vested. However, the March 4, 1995 Court order changed the vesting of zoning to merely the right to complete construction of the building and use it in accordance with the C-2 zone but as a non-conforming building. We know that subsequent to the issuance of the December 21, 1994 Consent Order the County requested the Court to modify the Consent Order in part because the County Attorney did not have the authority to agree to the terms of the Consent Order, most notably the vesting of the C-2 zoning since that is a legislative function. Since the December 1994 order was a Consent Order, the Court

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probably did not hear arguments as to the vesting of the C-2 based upon the extent of construction activities as of October 10, 1994. Similarly, all we know about the March 1995 court proceedings was the Court in March 1995 concluded that only the building permit vested not the C-2 zoning.

The construction activities as of October 11, 1994 as described in court papers submitted by the then property owner, describes the construction as of October 10, 1994 as follows :

- (1) approximately 235 lineal feet of excavated footings on the site ranging in depth from 30 to 36 inches and in width 24 to 30 inches. The remaining footprint of the building was outlined in chalk lines.
- (2) Grading on the property removed surface 12 to 36 inches over the property.
- (3) The rectangle formed by the footings and markings was 45 feet by 90 feet.
- (4) The footings across the rear property line is 45 feet in length and abuts the rear wall of a commercial structure on the lot behind it.
- (5) Trees and shrubbery had been cleared from the property.
- (6) A graveled and blacktopped parking area had been removed from the property.
- (7) A backhoe and other construction equipment were on the property
- (8) Steel rebar rods for reinforcement of concrete were sitting on the property.

In 1994 and 1995 it was the County Department of Permitting Services, the County Attorney's office and your own legal office's position in the court proceedings that the construction on the subject property as shown on the attached photographs (dated October 27, 1994) and described in the attached draft affidavits and memo to file for both Don Downing and Carolyn Hufbauer had not commenced to that point under the law the C-2 zoning vested.

(3) The last point raised by Mr. Harris of the then property owner not paying attention to the sectional map amendment is not relevant since that is self created hardship and is not a proper basis for a Corrective Map Amendment. Moreover, the enclosed memo to file of Carolyn Hufbauer clearly indicate the property owner was aware for a long period of time of the proposed Sector Plan

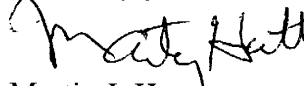
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recommendation to rezone to R-60/TDR and told by her of the need to have footings of the building in the ground to be vested.

The Town Council does not meet until January 14, 2004. Based upon the information presented to the Town justifying the Corrective Map Amendment, the Town is not yet convinced that the rational provided to date supports the requested rezoning to C-2 through the Corrective Map Amendment procedure. Therefore, we respectfully request being provided with the factual rational which the Planning Board staff believes supports the proposed Corrective Map Amendment so that the Town of Chevy Chase may better determine what position, if any, it should take at the January 15, 2004 Planning Board hearing.

Finally, since the County disagreed with the argument that zoning had vested in October 1994, they should be notified of the proposed Corrective Map Amendment so they may participate before the Planning Board on January 15, 2004.

Very truly yours,



Martin J. Hutt

c.c.
Robert Harris, Esq.
Bill Landfair

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ROBERT R. HARRIS
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robert.harris@hklaw.com

January 27, 2004

VIA FACSIMILE and U.S. MAIL

Derick Berlage, Esquire
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: 4504 Walsh Street (Bethesda) — Corrective Map Amendment

Dear Chairman Berlage:

We represent 4501 Walsh Street LLC, which owns this property on the eastern edge of the Bethesda business district. We have been discussing with your staff restoration of the pre-existing C-2 Zoning for this property and your staff has decided to consult with you in Executive Session in order to determine for sure whether they can proceed with their plan for a Corrective Map Amendment. The purpose of this letter is to provide you with some of the background information to help in your decision.

We support the proposal for a Corrective Map Amendment because it will enable the zoning to be corrected in the most expeditious manner enabling the owner to secure an appropriate user for the building which has remained vacant for much too long. By way of background, this property was zoned C-2 for many years. A previous owner planned to construct an office/retail building under that zone at the time the current Bethesda Sector Plan was under review. The adopted Bethesda Sector Plan provided either for this building or, for possible residential use if the office/retail building were not built. Specifically, page 120 of the 1994 Bethesda Sector Plan states:

A building permit has been issued for Lot 8 [4504 Walsh Street] under the existing C-2 Zone. If the zoning is vested at the time of the Sectional Map Amendment, the Plan recommends confirming the existing zone.

Otherwise, it proposed R-60/TDR zoning. The sector plan thus recognized that if sufficient construction of such a building had progressed by the time of the Sectional Map Amendment implementing the Sector Plan, then the C-2 zoning should be retained. The obvious purpose was to avoid a situation where a non-conforming building would exist and create challenges for financing, sale, occupancy, and use into the future. Were such a building not under construction at that time, the Sector Plan recommended residential zoning for possible townhouse development.

On October 11, 1994, when the Council was set to take action on the Sectional Map Amendment, it was informed that construction sufficient to vest development rights under the C-2 zoning had not occurred and that it was appropriate to rezone the property to the residential zone. The Council acted on the basis of that understanding and rezoned the property. Subsequently, however, the subject building permit was reviewed by the Montgomery County Circuit Court to determine whether the owner's rights had in fact vested. By initial Consent Order dated December 21, 1994, and amended by the Court's Order of March 4, 1995, the Court rejected the County's belief that development rights had not vested. The Court thus reinstated the building permit for the property, enabling completion of the office/retail building for which construction had begun months earlier. Specifically, the Court ruled:

Plaintiff's rights to use the property located at 4504 Walsh Street, Chevy Chase, Montgomery County, Maryland, also known by legal description as Lot #8 Block D, Chevy Chase, Section 8, in conformance with the C-2 zoning were vested on or before October 10, 1994, and plaintiff thereby acquired vested rights to continue and complete the construction of a building pursuant to the herein referenced permits and any lawful revisions or amendments thereto

Although the Court reinstated the building permit and allowed the building to be constructed, the Court did not have jurisdiction at that time to rezone the property back to the intended C-2 zone, instead leaving that obligation to the District Council. Although the Court could allow construction of the building to proceed, until the zoning was corrected, the building remains a non-conforming building, directly contrary to the intent of the Bethesda Sector Plan. Instead, the Sector Plan called for retaining the C-2 zoning if, as subsequently

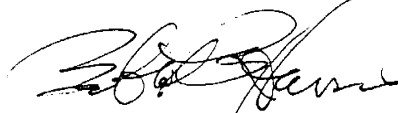
Mr. Derick Berlage
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determined by the Circuit Court, rights to construct a commercial building were vested at the time of the Sectional Map Amendment. Unfortunately, the Circuit Court had not ruled until March 4, 1995, nearly five months after the District Council had acted on the Sector Plan.

We support the Corrective Map Amendment because it is the most direct way in which to correct this mistake. It will enable the current owner to complete a contract with an office user who will occupy the property in a manner consistent with the existing building and its surroundings.

Very truly yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Robert R. Harris", is written over the typed name below.

Robert R. Harris

cc: Michele Rosenfeld, Esq.
Joe Davis
Bill Landfair
Bob Hillerson

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