

APPENDIX A





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

April 14, 2004

MEMORANDUM

TO: Robert Kronenberg, ASLA, Planner Coordinator
Development Review Division

VIA: Glenn Kreger, Team Leader, Silver Spring/Takoma Park Team 
Community-Based Planning Division

FROM: Miguel Iraola, ASLA, Planner Coordinator 
Community-Based Planning Division

SUBJECT: Project Plan Review No. 9-04005
930 Wayne Avenue

The Community-Based Planning staff has reviewed the above referenced Project Plan for conformance with the *Silver Spring Central Business District and Vicinity Sector Plan* (Approved February 2000). The subject property is located on the south side of Wayne Avenue west of Fenton Street in the core area of Silver Spring. Community-Based Planning recommends the approval of this Project Plan with the following conditions needed to ensure consistency with the approved CBD Sector Plan:

1. Provide full width streetscape improvements along the Wayne Avenue frontage in accordance with the *Silver Spring Streetscape* (April 1992) technical manual or as amended.

ZONING AND LAND USE:

The 30,228 square foot subject property is zoned CBD-2 (Central Business District, 2.0). The approved CBD Sector Plan recommends retaining the CBD-2 zoning for this site and was reconfirmed through the Sectional Map Amendment (SMA) adopted July 18, 2000, per County Council Resolution 14-600.

The proposed mixed-use development is comprised of 143 residential units and 1,740 square feet of retail space which are permitted uses under the CBD-2 zone. The Sector Plan specifically identifies this property as a potential housing site (see **Attachment A-Map 35 Residential Downtown**). The proposal will be implemented under the optional method of development. The project proposes 151,140 GSF (gross square feet) of development (149,400 GSF of residential and 1,740 GSF of non-residential) with a 5.0

FAR. The permitted maximum density for this site under the optional method of development is 5.0 FAR or 151,140 GSF of mixed-use development per the CBD-2 zone. The minimum required public use space for this project is 4,166 square feet (20% of the net lot).

The applicant proposes to satisfy this requirement by providing 4,999 square feet of on-site public use space or 24.0% of the net lot area. In addition, the applicant proposes 4,985 square feet of off-site streetscape improvements for a total of 9,984 square feet of on-site and off-site public use space or 47.9% of the net lot area.

SECTOR PLAN CONFORMANCE:

The Silver Spring Central Business District and Vicinity Sector Plan, approved by the County Council on February 1, 2000, outlines six themes which articulate the shared goals and vision for a revitalized Silver Spring. Four of these themes (i.e. a commercial downtown; a residential downtown; a green downtown; and a pedestrian-friendly downtown) apply to this proposed project. The proposed mixed-use building will provide retail space on the ground floor. The Sector Plan does encourage housing as an important component to the revitalization efforts. This project is being developed under the optional method of development and proposes a new public space with public art as well as the optional method streetscape treatment. This project encourages the development of active urban streets by providing building entrances fronting Wayne Avenue and the clearly accessible public space as activity generators. This proposal improves the quality of the pedestrian environment by extending the optional method streetscape treatment along Wayne Avenue to the west.

- A. **Silver Spring Wayfinding System:** There are no wayfinding signs proposed in the vicinity of the existing street frontage.
- B. **Sector Plan Street Rights-of-Way:** The Sector Plan recommends a street right-of-way of 80 feet for Wayne Avenue. Street right-of-way dedications to Wayne Avenue were required and recorded from a previously approved optional method proposal on this property. No additional street right-of-way will be required.
- C. **Streetscape:** The applicant proposes to improve the sidewalk along Wayne Avenue with streetscape improvements as required for optional method projects. The streetscape design proposed for the project should be in accordance with the standards of the *Silver Spring Streetscape* technical manual or as amended.

COMMUNITY OUTREACH:

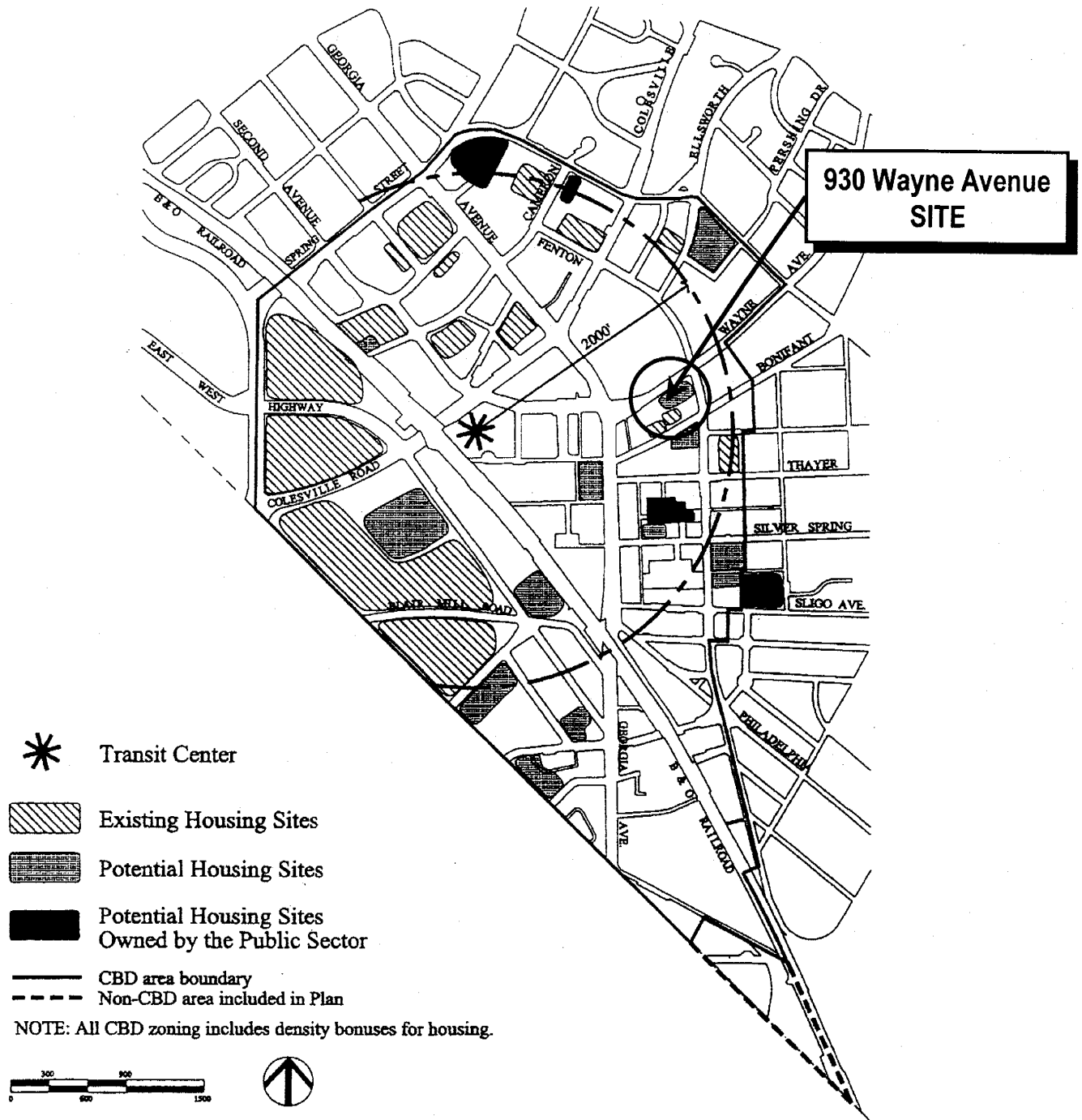
The applicant has met with various community and civic groups regarding this proposal. These groups have been generally supportive of the proposal.

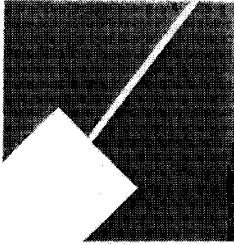
Attachment

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Attachment A- Map 35 Residential Downtown

Map 35 Residential Downtown





April 13, 2004

MEMORANDUM

TO: Robert Kronenberg, Planner
Development Review Division

VIA: Ronald C. Welke, Supervisor
Transportation Planning

FROM: Shahriar Etemadi, Coordinator
Transportation Planning

SUBJECT: Project Plan # 9-04005, 930 Wayne Avenue, Silver Spring Central Business District

This memorandum is Transportation Planning staff's Adequate Public Facilities review of the subject application.

RECOMMENDATION

Transportation Planning staff recommends the following condition as part of the requirements related to the approval of this Project Plan.

1. Dedicate 40 feet from the centerline to provide for a total of 80 feet right-of-way for Wayne Avenue, as shown on the plan.

Local Area Transportation Review

A traffic study was submitted to determine the impact of the proposed development on the local area transportation system. A total of five intersections in the study area were evaluated and Transportation Planning staff concurs with the conclusion of the study that all intersections operate within the congestion standard of 1,800 Critical Lane Volume (CLV) for the Silver Spring Central Business District (CBD).

Generated trips from the site were added to the existing and background traffic (trips from approved but un-built developments) to form the total future traffic. The total future traffic was assigned to five intersections to calculate the CLVs at each intersection. The results of the CLV calculations are shown in the following table.

Intersection	Existing		Background		Total Future	
	AM	PM	AM	PM	AM	PM
Georgia Ave/Wayne Ave	1,225	1,210	1,268	1,482	1,279	1,509
Georgia Ave/Bonifant Street	972	1,015	992	1,048	1,000	1,053
Georgia Ave/Thayer Ave	882	974	899	1,009	906	1,015
Fenton Street/Bonifant Street	738	871	1004	1402	1,009	1,404
Fenton Street/Wayne Avenue	819	978	899	1102	904	1,113

Site Access, Circulation and Pedestrian Facilities.

The site will have one access from Wayne Avenue that is expected to operate safely and efficiently.

Planned pedestrian movements are safe due to minimized points of conflict by having only one access point on Wayne Avenue. Some of the signalized intersections in the vicinity of the site could be provided with additional crossing time to allow for pedestrians to cross safely.

This section of Wayne Avenue is part of the Wayne Avenue Green Corridor, and a Class I bikeway will be installed on the west side of the street (opposite of the site) that will provide for safe bicycling for the users along this corridor.

Policy Area Transportation Review/Staging Ceiling Analysis

The site is located within the Silver Spring CBD area, which has a remaining capacity of 4,583 housing units and 2,860 jobs, as of March 31, 2004. The application therefore satisfies the Policy Area Transportation Review test.

SE/gw

mno to Kronenberg re 930 Wayne Ave - 9-04005

GLW GUTSCHICK, LITTLE & WEBER, PA.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

3909 National Drive, Suite 250 • Burtonsville Office Park • Burtonsville, MD 20866

Tel: 301-421-4024 • Balt: 410-880-1820 • DC/VA: 301-989-2524 • Fax: 301-421-4186

David S. Weber, P.E., Prof. L. S.

David L. Little, P.E.

Carlton K. Gutschick, P.E.

February 5, 2004

ASSOCIATES

Kevin A. Foster, ASLA, AICP

Thomas C. O'Connor, Jr., Prof. L.S., P.E.

Michael J. Trappen, P.E.

✓ Robert Thompson
Verizon
3901 Calverton Blvd., 3rd Floor
Beltsville, Maryland 20705

Jose' Washington, Customer Design
PEPCO
201 West Gude Drive, 2nd Floor
Rockville, Maryland 20850

George Ellis
Washington Gas
6801 Industrial Road
Springfield, Virginia 22151

RE: 930 Wayne Avenue, P.U.E. Abandonment
Lot 30, Block 1, Jordan & Smith's Addition to Silver Spring
Montgomery County, Maryland

Gentlemen:

Our office has prepared and submitted a Project Plan application to the MNCP&PC for development of the existing vacant lot as a 10-story residential condominium building. Through several meetings with the MNCP&PC staff, they are requiring a site layout that places a portion of the proposed building on the Wayne Avenue right of way line. The remaining frontage along Wayne Avenue is required to be covered with a plaza including benches, artwork, landscaping and decorative paving.

As shown on the attached recorded Plat of Subdivision, there is a 10' Public Utility Easement (P.U.E.) on the property along the Wayne Avenue frontage. Our research shows that the P.U.E. is not occupied by any utilities.

Misters Thompson, Washington, & Ellis
930 Wayne Avenue, P.U.E. Abandonment

February 5, 2004
Page 2 of 2

On behalf of our client, we hereby request that the P.U.E. be abandoned so that the site can be developed as directed by the MNCP&PC. Please confirm your agreement that, in concept the P.U.E. can be abandoned, by signing in the space provided below. We agree to proceed with the necessary documents pursuant to accomplishing the abandonment at your direction.

Thank you for your prompt attention to this matter and please contact me at 301-421-4024 to discuss any questions you may have.

Sincerely,



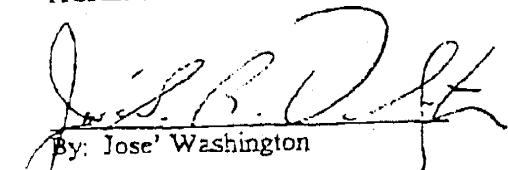
David S. Weber, Principal
Professional Engineer
Professional Land Surveyor

AGREED TO FOR VERIZON:


By: Robert Thompson

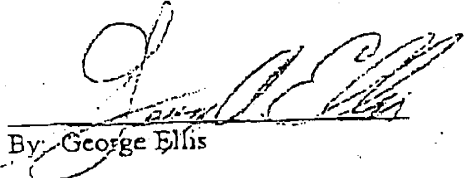
3-1-04
Date:

AGREED TO FOR PEPCO:


By: Jose Washington

03/22/2004
Date:

AGREED TO FOR WASHINGTON GAS:

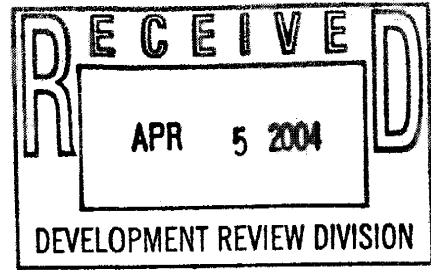

By: George Ellis

02/27/04
Date:

PC: Stephen Jones
Erin Girard

DSW/ekb
03Letmem:03047.205

LINOWES
AND **BLOCHER LLP**
ATTORNEYS AT LAW



April 1, 2004

Stephen Z. Kaufman
301.961.5156
skaufman@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com

Robert Kronenberg
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: 930 Wayne Avenue Public Utility Easement ("PUE") Abandonment

Dear Robert:

On behalf of our client, 930 Wayne Avenue, LLC (the "Applicant"), the purpose of this letter is to inform you of the Applicant's intent to pursue the abandonment of a PUE adjacent to Applicant's property, located at 930 Wayne Avenue in Silver Spring, Maryland ("Property"), during its pursuit of a preliminary plan for the Property. Pursuant to Section 49-67A of the Montgomery County Code, an abutting owner may petition the Planning Board for abandonment of a previously unused PUE when filing for a preliminary plan of subdivision. As you can see from the attached letter, the Applicant has already obtained the consent of Verizon, Pepco and Washington Gas for this abandonment.

While the PUE abandonment is not part of the project plan application for the Property currently before you, we wanted to make you aware of our efforts and intentions in this regard. If you have any questions, please feel free to contact us.

Sincerely,

LINOWES AND BLOCHER LLP


Stephen Z. Kaufman


Erin E. Girard

Robert Kronenberg
April 1, 2004
Page 2

cc: Leith Wain
Stephen Jones
David Weber

GLW GUTSCHICK, LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

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February 5, 2004

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Sincerely,



David S. Weber, Principal
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Professional Land Surveyor

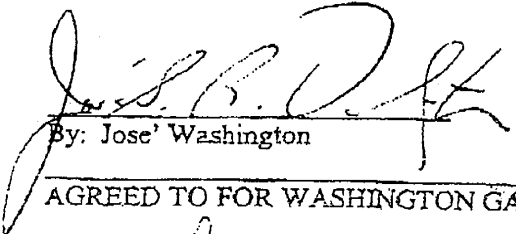
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By: Robert Thompson

3-1-04
Date:

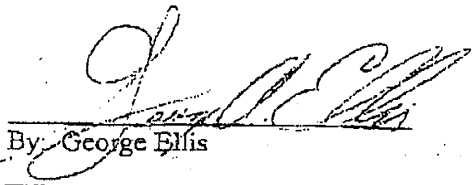
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By: Jose Washington

03/21/2004
Date:

AGREED TO FOR WASHINGTON GAS:



By: George Ellis

02/27/04
Date:

PC: Stephen Jones
Erin Girard

DSW/ekb
03Letmem:03047.205

TOTAL P.02

APPENDIX B



March 11, 2004

Mr. Derick Berlage, Chairman
Montgomery County Park & Planning Commission
8787 Georgia Ave.
Silver Spring, Maryland 20910

Dear Mr. Berlage:


I am writing to express the Greater Silver Spring Chamber of Commerce's support for a new Condominium project in downtown Silver Spring, on Wayne Avenue, which is currently being planned by Patriot Group, LLC.

With its first Silver Spring project, on Kennett Street, Patriot Group has proven the very high demand for owner-occupied, multi-family residential development in downtown Silver Spring. The company's current proposal on Wayne Avenue attests not only to Patriot Group's recognition of the great potential here, but to its commitment to the Silver Spring community.

The project will provide an attractive, activated property along Wayne Avenue, and will further address the significant demand for condominiums in downtown Silver Spring. We applaud Patriot Group's continued investment in downtown Silver Spring, and believe its projects will be of significant benefit to the area.

We urge your approval of this project. Thank you for your consideration.

Sincerely,


Andrew Fraser
President



SILVER SPRING CITIZENS ADVISORY BOARD

February 13, 2004

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

RECEIVED
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FEB 18 2004

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

Dear Chairman Berlage:

I am writing on behalf of the Silver Spring Citizens Advisory Board to express the Board's support for the Condominium Project being proposed by the Patriot Group for Wayne Avenue in the Silver Spring CBD. The proposal is for a 143-unit condominium on Wayne Avenue in the currently vacant lot, about midway between Georgia Avenue and Fenton Street. It will be a 14-story building with underground parking. It will have 18 MPDU's. The building will be set back about 50 feet from Wayne Avenue to create a public plaza, and will have approximately 1700 sq. ft. of retail on the first floor.

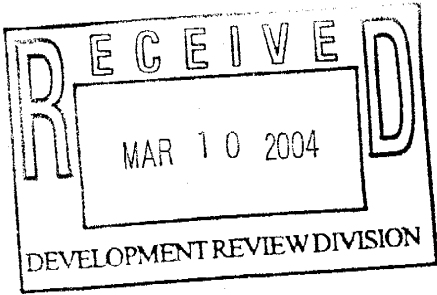
The Board believes that this project will benefit the ongoing redevelopment of Downtown Silver Spring and provide much needed affordable housing in the CBD. Accordingly, the Board urges that this project be approved.

Thank you for your attention to this matter.

Sincerely,

Howard L. Sribnick
Chair

APPENDIX C



AV Investments Maryland LLC
6237 Clearwood Road
Bethesda, MD 20817-5634
301-320-2606

March 8, 2004

Mr. Robert Kronenberg
Mr. Miguel Iraola
Montgomery County Department of Park & Planning
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Project at 930 Wayne Avenue
M-NCCPC File No. Project Plan 9-04005
Public Hearing: March 11, 2004

Gentlemen:

My partner and I own the adjacent property at 938 Wayne Avenue. We received a drawing of the proposed building at 930 Wayne Avenue. We cannot determine from the drawing the "set back distance" from our building, but were told it was about ten feet. I am informed that the required set back is fifteen feet. My building has windows on the east side and I wish to preserve the light coming in those windows as some future tenant may feel this enhances the space. I cannot be at the March 11th hearing, but request that my concern be conveyed to the proper authorities who have jurisdiction over the approval of these plans.

Thank you for your consideration.

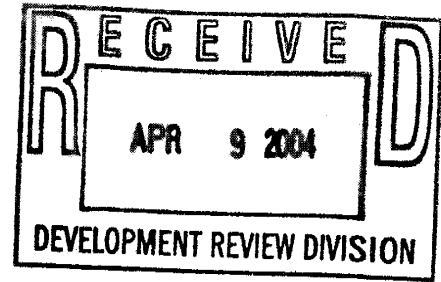
Sincerely,

A handwritten signature in black ink, appearing to read "Martin Auerbach". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Martin Auerbach, Manager

cc: David Weber, P.E., Gutschick, Little & Weber, P.A.

LINOWES
AND **BLOCHER LLP**
ATTORNEYS AT LAW



April 6, 2004

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Erin E. Girard
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egirard@linowes-law.com

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

Re: 930 Wayne Avenue; Project Plan Application No. 9-04005

Dear Chairman Berlage and Members of the Planning Commission:

On behalf of our client, 930 Wayne Avenue, LLC (the "Applicant"), the purpose of this letter is to respond to a letter submitted by Martin Auerbach, Manager of AV Investments Maryland LLC ("AV Investments"), on March 8, 2004 regarding Applicant's project plan application for 930 Wayne Avenue in Silver Spring. AV Investments is the owner of 938 Wayne Avenue, the adjacent property. In its letter, AV Investments expressed concern regarding the setback of the proposed building at 930 Wayne Avenue from the property line its shares with 938 Wayne Avenue, the reason being the existence of AV Investments' building with windows right on the shared property line.

To best respond to AV Investments' concern, our client hired Gary Miller, a consulting architectural engineer and former Montgomery County Department of Permitting Services ("DPS") employee, to review the setback issue for code compliance. Mr. Miller's conclusion, attached hereto as Exhibit "A", is that there is no requirement for a setback from the property line, and Applicant's proposed building not only complies with all code requirements, but by providing an 8- to 13-foot offset, it goes above and beyond code requirements to accommodate AV Investments' concern. Mr. Miller's conclusion has subsequently been confirmed by DPS, as evidenced by the letter attached hereto as Exhibit "B".

Derick P. Berlage, Chairman
April 6, 2004
Page 2

We hope this letter and its attachments adequately address the issues raised in Mr. Auerbach's March 8th letter. If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

LINOWES AND BLOCHER LLP

Stephen Z Kaufman
eeq

Stephen Z. Kaufman

Erin E Girard

Erin E. Girard

cc: Robert Kronenberg
Leith Wain
Stephen Jones

LAW-MILLER CONSULTING
9520 Cape Anne Place
Gaithersburg, MD 20886-1222
Tel/fax: 301-926-0246 Mobile: 301-257-1115
E-mail: *marylaw@erols.com*

March 29, 2004

Stephen W. Jones, Project Manager
Patriot Group, L. L. C.
1003 K Street, N. W.
Washington, DC 20001

Re: Revised Letter of Opinion for Proposed Development at 930 Wayne Avenue

Dear Steve,

You have asked me if your proposed development on the referenced property obligates you to preserve any open space at an interior lot line to ensure light, ventilation, and/or fire-exposure separation for an adjacent building that abuts the line. I've examined the design plans for your proposed development and visited the site (currently vacant) with you. On the basis of your development plans and my interpretation of the applicable county standards, it is my opinion that you are *not* legally bound to provide any open space.

The Montgomery County building and zoning codes do not obligate you to hold your proposed building back from an adjacent property simply because a building exists at the common line, even if there are windows in its exterior walls. As it turns out, the wall in question has window openings, which constitute an existing nonconforming condition that the codes do not require you to address. You *are* required to satisfy certain setback requirements for *your* building, if you have non-fire-resistance-rated exterior walls/and or unprotected exterior openings; but that is totally unrelated to the existence or nonexistence of the adjoining building. The only code that might obligate you to preserve some open space would be the Montgomery County *housing* code, but that would apply only to a *residential* occupancy, which is not the case, and the setback, if required, would be minimal (3'-0").

As a gesture of good will, you have opted to set your building, at its nearest point, 8 feet away from the lot line in question, with the majority of the wall more than 10 feet away, although the building and zoning codes would permit you to place your exterior wall on the line, without regard for the adjoining building.

The above interpretation was confirmed by county officials Shahriar Amiri and Wayne Grossman.

If you need further assistance, please call me. Thanks.

Sincerely,


Gary Kowell Miller, Architectural Engineer



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

April 5, 2004

Mr. Stephen W. Jones, Project Manager
Patriot Group, L. L. C.
1003 K Street, N. W.
Washington, DC 20001

Re: Code Interpretation/Opinion for Proposed Development at 930 Wayne Avenue

Dear Mr. Jones:

Your code consultant Gary Miller, of Law-Miller Consulting, has asked me, on your behalf, to confirm his interpretation of a section of the county building code (Section 704.5, IBC 2000) regulating the construction of building exterior walls. This section stipulates that exterior walls facing interior lot lines must be of fire-resistance-rated construction, or they must be set back a certain distance from the lot lines, depending on the building's use and/or type of construction.

In particular, Mr. Miller asked for my opinion about the implication of this code requirement for the exterior wall of an existing building on an adjoining lot. The existing building's exterior wall abuts the common lot line and has window openings that are nonconforming, because they are within 3 feet of the line. (The current building code prohibits openings within 3 feet.)

I understand that an issue has risen on whether or not the building code requires you to provide additional open space for maintaining light and ventilation to the adjoining non-conforming building. You are proposing to set your building 10 feet away from the common lot line.

There is nothing in the building code that requires you to provide additional space, other than that required to meet code requirements for your building. However, building code requirements do not supercede any legal agreement, recorded easement, county fire and zoning codes or any other laws, and orders.

If you have any questions, please call me at (240) 777-6230.

Sincerely,

Shahriar Amiri, Chief
Division of Building Construction Services



APPENDIX D

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

February 5, 2004

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301.961.5156
skaufman@linowes-law.com
Erin E. Girard
301.961.5153
egirard@linowes-law.com

Robert Kronenberg
Development Review Division
Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Calculation of Land Area for 930 Wayne Avenue

Dear Robert:

As an addendum to our letter to you of January 27, 2003, and pursuant to your request, the purpose of this letter is to explain how land area for the purpose of determining density was calculated for the current 930 Wayne Avenue (the "Property") project plan application.

In our last letter to you, we explained why we believed the Property qualified for the optional method of development, explaining in detail that 2,620 square feet should be credited to the lot area for determination of optional method qualification because the previous optional method application did not proceed after the dedication of this area, required as part of the approvals, was made. Pursuant to standard practice, additional area beyond this 2,620 square feet was included in the lot area for density calculation purposes. As is typically the case, based on the assumption that the dedications for the adjacent rights of way were derived equally from the adjoining lots, the area between the property and the center line of the Wayne Avenue right-of-way and the center line of the alley to the rear of the Property were included in the project plan application for density purposes. Therefore, the calculations were made as follows:

Lot 30, Block 1 land area	20,828 sf
½ Wayne Avenue right of way ¹	7,738 sf
½ alley to rear of Property	<u>1,662</u>
TOTAL	30,228

¹ Included in this calculation is the most recently dedicated 2,620 square feet included for optional method purposes, discussed above. The remainder of the 7,738 was previously dedicated.

Robert Kronenberg
February 5, 2004
Page 2

Based on the FAR of 5 allowed in the zone under the optional method of development, a total density for the project of 151,140 square feet was calculated ($30,228 \times 5.0 = 151,140$).

We hope this information adequately addresses your request. If you are in agreement with the above calculations, and agree, pursuant to our January 27, 2003, letter that the project may proceed under the optional method of development, please indicate your agreement by countersigning this letter and returning a copy to us. If, however, you have any additional questions or concerns, or need further information or documentation, please do not hesitate to contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Erin E. Girard

cc: Leith Wain
Stephen Jones

Robert Kronenberg