

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

June 30, 2004

Re: Schematic Development Plan Amendment (DPA 03-3)

Dear Mr. Berlage,

The Kensington View Citizens Association (KVCA) requests that the Planning Commission deny DPA-03-3, the application of Lilianne Tran Nguyen to remove binding conditions on the two C-T zoned properties at 11107 Valley View Avenue and 2909 University Blvd. in the Kensington View subdivision.

The current C-T zoning with binding elements was applied by the District Council to protect our residential neighborhood from inappropriate and incompatible development at the entrance to our established and stable community. Removal of the binding conditions to allow demolition of the existing structures and unspecified new construction would remove this protection. The applicant can reasonably renovate, reuse, and remodel the existing structures, even increase their size by 40% if, at site plan review, it is deemed compatible with neighboring residential and commercial uses (59-C-4.302 (c) (1-2), under current applicable standards.

Additionally, the recorded covenants for these properties state that these binding elements will **remain with the land until the property is rezoned**. As this current application is not seeking to rezone these lots, can the District Council remove the binding elements?

Approval of DPA 03-3 to remove the provisions that prohibit demolition of the two existing structures would essentially provide a "blank check" for the owner/applicant of these two lots and an adjoining 3rd lot to come back at site plan review with a proposal to do anything that can be done in a C-T zone, including resubdivision into one large lot and proposing a single mini-mall type building as proposed earlier by the applicant. Section (59-C-4.309 (a) of the county code directs that subdivision or resubdivision of lots must be consistent with the recommendations of the relevant approved and adopted master or sector plan. Resubdivision of these lots should not be permitted, if it is sought, without a great more specificity in the binding elements to ensure that the future plan fully complies with the language and intent of the existing Sector Plan and all of the applicable conditions of the C-T zone. There must be a binding commitment that all three lots will be developed according to Sector Plan recommendations and within the applicable C-T zone specifications.

The "binding elements" currently listed on the schematic plan are little more than commitments to adhere to the technical requirements of the C-T zone in a particular way. They do not provide a clear and binding commitment to maintain the three separate lots as referenced in the Sector Plan, or represent a visual commitment to provide a development that is similar to the size and scale of existing conversions and compatible with the adjoining residential neighborhood. The Approved and Adopted Comprehensive Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity, September 1990 specifically references

these properties and recommends, “C-T zoning, (low intensity office development), for the northern frontages of University Blvd. between East Avenue and Valley View Avenue . . . future development should be similar in scale to the existing conversions that have taken place in the block between East Avenue and Valley View Avenue” and “the character and scale of existing low intensity residential neighborhoods must be protected”. “A number of single-family structures along University Boulevard have already been converted to nonresidential uses. While some of the existing houses are large enough to lend themselves to office conversion, a number of properties would be better developed as new low-intensity office development. **New development should be limited to existing lots and should be discouraged on assemblages of more than one lot.** Conversion, where appropriate, and low-intensity new development are encouraged to buffer existing single-family residences from adverse effects associated with major traffic arteries.” (p.46)

Regarding the role of the existing Sector Plan in this current process, page 3 of DPA-03-3 states - “Ten years has obviously passed and intervening events call into question the viability of the plan’s recommendations for discouraging assemblages of properties.” We believe that the opposite is true. Yes, “Master plans generally look ahead to a time horizon of about 20 years from the date of adoption, although it is intended that they be updated and revised about every ten years. It is recognized that the original circumstances at the time of plan adoption will change over time, and that the specifics of a master plan may become less relevant as time goes on.” (Notice to Readers) and “. . . a Sector Plan must be periodically reviewed and adjusted to reflect future decisions, trends, and events not anticipated at the time of its adoption.” (p.5)

However, in the case of the lots referenced in DPA 03-3, **there has been no significant change in the character of the surrounding neighborhood since the 1990 Plan adoption to justify a change in the recommended development options for these specific parcels.** The Plan states “The zoning proposed in this Plan ought to be subject to review within ten years **or when events dictate.**” (p.45) Much of the activity currently underway or proposed in the Wheaton commercial area and surrounds were **anticipated and are addressed in the existing Sector Plan and this document continues to be the relevant guidance resource for their future.** There have been no fundamental changes in the basic nature of the area surrounding the subject properties. **If you were to substitute Westfield Shoppingtown for “Wheaton Plaza”, a lawyer’s office for “Real Estate and Title Company”, and the Ambassador Apartments for “Best Western Motel”, you have just described the surrounding area of the subject properties as it stands today.** Recommendations in this Sector Plan were thoroughly and publicly debated and evaluated by the business and civic communities, the Hearing Examiner, and the District Council at the time the current zoning on these lots was in place and ratified 3 years later in 1990.

DPA-03-3 also requests that the permitted uses for this project be expanded from general office to office/retail. KVCA strongly opposes this request to change existing permitted uses of the CT zone (banks/financial/charitable institutions, day care, duplicating services, general office, places of worship, etc.) to include “office/retail” uses, even by special exception. There is already a proliferation of special exceptions and non-residential uses in our community. More importantly, retail activities should be directed into the Wheaton CBD to support the revitalization efforts underway and should not be allowed to creep into residential communities. Also, KVCA will vehemently oppose any future requests for new “Special Exceptions” in our

neighborhood, as we are already suffering the negative consequences of spot zoning and “Special Exceptions” throughout our subdivision.

Note that “Application G-540 approved reclassification from the R-60 Zone to the C-T Zone of what is now part of Lot 7 and Lot 23 Block H, (Kensington View subdivision), under the optional method of application on September 15, 1987. This application was subject to the restrictions contained in a Schematic Development Plan (Exh. 32 (b) of G-540) which the District Council, in it’s opinion (Res. No. 11-448, pg 2) states “The existing structure on-site will be retained and the only change that will result of the Councils’ approval of this application will be the change in use from residential to **general office**”. The original rezoning application in 1987 was for the assemblage of the lots, which was denied.

There are several letters of support in the file for this application. We would like to comment on the letters from the Wheaton Urban District Advisory Committee and the Wheaton Redevelopment Office. It is irresponsible for any organization to support projects that do not conform to relevant requirements of the zoning ordinance and applicable Sector or Master plan. Removal of the interior lot lines and resubdivision of the three lots into one is the opposite of the Sector Plan recommendation and also is not part of the application before you. The “binding elements” listed on the schematic drawing are merely a restatement of code requirements and do not address KVCA issues. These groups have frequently endorsed proposed projects without seeking information about their compliance with zoning or use requirements or community issues, often relying only on the presentation of applicant representatives. Comments in the letters in this file reflect a lack of knowledge and understanding of county procedures and processes. The letter from Charles Smith refers to retail trades and not low intensity office and is obviously not based on site inspection or an understanding of the zoning issues involved. A similar comment about the lack of awareness of the issues and concerns from the community can be made regarding the County Executives letter of support.

Many residents have a great distrust of the county decision-makers and processes based on experiences in our community, which has resulted in Acorn storage, with all-night noise and activity and security lights that penetrate deeply into nearby residences, and a large lighted sign that is on all night just feet from occupied homes. Also associated with this facility are several moving vans stored on site and the adjacent streets. We also have new houses approved with no physical street frontage to accommodate extra family cars and visitors, causing existing residents to vie for parking convenient to their homes. Many of the remaining specimen oaks and other significant trees, once part of an old growth forest, will be destroyed this summer when another approved project gets underway. “Preserving the character and integrity of existing neighborhoods” and “forest preservation” are just empty words to us, some of whom have lived here for more than 40 years.

Kensington View Civic Association opposes DPS 03-3 because it does not conform to the language and intent for the development of these properties as specified in the existing Wheaton Sector Plan. Additionally, the applicant/owner can reasonably remodel and renovate the existing structures within current regulations to achieve the same results. For these reasons, we request that the Planning Commission refer this application to the Office of the Zoning Examiner for a public hearing as provided for in 59.D.1.74 (d) (1) where opinion of the Planning Commission and any other details not available for review prior to this hearing can be discussed before this application is presented to the District Council for action.

Elizabeth Quinn
Kensington View Civic Association

The fact that a development plan complies with all of the stated general regulations, development standards, or other specific requirements of the zone does not, by itself, create a presumption that the proposed development would be desirable and is not sufficient to require the approval of the development plan or the granting of the application. (59-D-1.2)

FAX COVERSHEET

To: Kathy Reilly – MNPPC

FX: 301-495-1304

From: Alice Fisher
11109 Midvale Rd.
Kensington, MD 20895

301-962-5581, W 301-962-8346

Enclosed is a copy of the Code Interpretation /Policy concerning subdivisions recorded prior to the 1928 Zoning Ordinance. Since the Nguyen properties are part of the Kensington View subdivision which was recorded in July of 1925, any proposed development must conform to the standards of the 1928 code, "Therefore, standards including minimum lot area and setbacks must comply with the 1928 code". If this is not accurate please provide a written explanation along with applicable code numbers.
Thanks.

Pages including cover: **6**



Department of Permitting Services
Division of Casework Management
 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850

CODE INTERPRETATION/POLICY

Code/Year 2004	Section of Code 59-B-5.1 and 59-B-5.3	Title of Code Section/Subsection/Policy Exemptions from Controls
<p>Statement/Background of Issue Lots recorded prior to 1928 are subject to different development standards for new construction or additions than those required under today's Zoning Ordinance. Historically, the Department has had to interpret whether the original 1928 Zoning Ordinance controls development or if subsequent reenactments of the 1928 Code take precedent, particularly the 1930 Zoning Ordinance or amendments thereto.</p>		
<p>Division Interpretation/Policy For purposes of clarification and consistency, the Department has determined that the language of the 1928 Zoning Ordinance as originally enacted will be the single reference point for determining development standards on lots recorded prior to March 16, 1928. This is the code citation referenced in the current Zoning Ordinance and accurately reflects the language contained in the Zoning Text Amendment which amended Sections 59-B-5.1 and 59-B-5.3. Therefore, standards including minimum lot area and setbacks must comply with the provisions of the 1928 Code.</p>		
Interpretation/Policy No. ZP0404-1	Date	Division Chief Reginald T. Jetter
Interpretation/Policy No.	Date	Assistant County Attorney Malcolm F. Spicer
Interpretation/Policy No.	Date	Director Robert C. Hubbard

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Maryland Department of Assessments and Taxation
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Account Identifier: District - 13 Account Number - 02893234

Owner Information

Owner Name:	NGUYEN, LILIANNE	Use:	COMMERCIAL
		Principal Residence:	NO
Mailing Address:	9812 FALLS RD STE 115 POTOMAC MD 20854-3976	Deed Reference:	1) /15670/ 643 2)

Location & Structure Information

Premises Address	Legal Description
2909 W UNIVERSITY BLV KENSINGTON 20895	PLAT 17969 KENSINGTO N VIEW SEC 1

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plot No:
HQ61				16		H	23	80	Plot Ref:

Special Tax Areas	Town Ad Valorem Tax Class
	38

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1939	1,459 SF	15,000.00 SF	600
Stories	Basement	Type	Exterior

Value Information

	Base Value	Phase-in Assessments		
		Value As Of	As Of	As Of
		01/01/2004	07/01/2003	07/01/2004
Land:	300,000	360,000		
Improvements:	60,400	61,900		
Total:	360,400	421,900	360,400	380,900
Preferential Land:	0	0	0	0

Transfer Information

Seller: LICH & T-M NGUYEN ET AL	Date: 03/27/1998	Price: \$0
Type: MULT ACCTS ARMS-LENGTH	Deed1: /15670/ 643	Deed2:
Seller:	Date: 08/09/1990	Price: \$0
Type: NOT ARMS-LENGTH	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO **Special Tax Recapture:**
Exempt Class: * NONE *

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REAL PROPERTY CONSOLIDATED TAX BILL
LEVY YEAR 2003
ANNUAL BILL
TAX PERIOD 07/01/2003-06/30/2004

ACCOUNT NUMBER	BILL NO.	PROPERTY ADDRESS	MORTGAGE	OC
01026853	23091528	11107 VALLEY VIEW AVE	UNKNOWN	NOT RE

PROPERTY DESCRIPTION	NGUYEN, LILIANNE T
KENSINGTON VIEW	9812 FALLS RD STE 115 POTOMAC, MD 21

LOT	P7	TAX DESCRIPTION	ASSESSMENT	RATE	TAX/CH
BLOCK	H	COUNTY PROPERTY TAX	259,200	.751*	1,9
DISTRICT	13	STATE PROPERTY TAX	259,200	.132*	3
SUB	016	SPECIAL AREA PROPERTY TAX		.268*	6
CLASS	R038	SOLID WASTE CHARGE		202.37	2
REFUSE AREA	R35	TOTAL			3,1
REFUSE UNIT	1	PRIOR PAYMENTS ****			3,1
		INTEREST			
		AS OF 6/30/2004			
		BALANCE			

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- DEBIT CARD

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Last edited: 5/7/2004

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Account Identifier: District - 13 Account Number - 02893223

Owner Information

Owner Name: NGUYEN, LILIANNE Use: COMMERCIAL
 Principal Residence: NO
 Mailing Address: 9812 FALLS RD STE 115 Deed Reference: 1) /15670/ 643
 POTOMAC MD 20854-3976 2)

Location & Structure Information

Premises Address Legal Description
 2907 W UNIVERSITY BLV KENSINGTON VIEW
 KENSINGTON 20895 SEC 1

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
HQ61				16		H	22	80	Plat Ref:

Special Tax Areas	Town Ad Valorem Tax Class	38
Primary Structure Built	Enclosed Area	Property Land Area
1939	1,901 SF	15,025.00 SF
County Use		602

Stories	Basement	Type	Exterior

Value Information

	Base Value	Phase-In Assessments		
		Value As Of 01/01/2004	As Of 07/01/2003	As Of 07/01/2004
Land:	300,500	360,600		
Improvements:	127,900	142,600		
Total:	428,400	503,200	428,400	453,333
Preferential Land:	0	0	0	0

Transfer Information

Seller: LICH & T-M NGUYEN ET AL	Date: 03/27/1998	Price: \$0
Type: MULT ACCTS ARMS-LENGTH	Deed1: /15670/ 643	Deed2:
Seller: LICH & T-M NGUYEN ET AL	Date: 06/17/1996	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /14189/ 465	Deed2:
Seller:	Date: 08/09/1990	Price: \$0
Type: NOT ARMS-LENGTH	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO Special Tax Recapture:
 Exempt Class: * NONE *

Friday, February 27, 2004

Dear Kathleen and Khalid,

I'm sorry I couldn't meet with you today. As stated at our last meeting, my main requests are as follows:

1. **Do not assemble lots** on University Boulevard between East Avenue and Valley View. This is a sensitive area and the last remaining gateway to the Kensington View Subdivision.

The 1989 Master Plan identified Kensington View as a residential "Euclidean" zone and "Recommends C-T Zoning (low-intensity office development) for the northern frontages of University Boulevard between East Avenue and Valley View Avenue, and the south frontage of University Boulevard adjacent to Wheaton Plaza on those parcels where this zoning does not currently exist....**New development should be limited to existing lots and should be discouraged on assemblages of more than one lot.** Conversion, where appropriate, and low-intensity new development are encouraged to buffer existing single-family residences from adverse effects associated with major traffic arteries." (page 46 of the Sector Plan)

2. **Do not allow zero lot line setbacks.** The Zoning Law states:
59-C-4.305. Setbacks.

All buildings must be set back from lot lines at least as follows:

(a) From any street right-of-way as shown on a master plan-10 feet.

(b) From any other lot line:

(1) If the building has windows or apertures providing light, access, or ventilation to a space intended to be occupied for commercial or residential purposes that faces that lot line-15 feet, except as provided in subparagraph (3) below.

(2) If the adjoining lot is in a residential zone and is not recommended for commercial or industrial zoning on a master plan-15

feet, except as provided in subparagraph (3) below.

(3) For a building existing at the time the C-T zone is granted, the board may approve a setback of less than 15 feet, provided the smaller setback is not less than the setback existing at the time of rezoning.

(4) In all other cases, no building setback is required.

Filing G-229 (approving C-T zoning on 2907 University Boulevard) required an eight foot setback between 2907 and 2909 University Boulevard.

I firmly believe the purpose of not assembling lots in this area is to prevent huge buildings from being built. Using zero lot lines would achieve the appearance of assembling lots.

3. Buildings should have pitched roofs.

Since the base zone is R-60 and residential, I believe it is important that any new buildings be compatible with the neighborhood.

4. All construction and usage adhere to the Zoning Ordinance for C-T zoning.

5. Do not allow "false floors".

These floors expand the floor area regardless of whether they are used or not.

Thank you.

Eleanor B. Duckett
Eleanor B. Duckett