



May 22, 2008

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Glenn Kreger, Acting Chief *gk*
Community-Based Planning Division

Khalid Afzal, Team Leader, Georgia Avenue Planning Team
Community-Based Planning Division *KA*

FROM: Frederick Vernon Boyd, Community Planner (301-495-4654) *fvb*
Georgia Avenue Planning Team
Community-Based Planning Division

SUBJECT: Planning Board Worksession #1 on the Limited Amendment to the *1990 Sector Plan for the Wheaton Central Business District and Vicinity*—Land Use and Zoning Recommendations

RECOMMENDATION: Discussion and approval of recommendations

This worksession will address the Limited Amendment to the 1990 Sector Plan for the Wheaton Central Business District and Vicinity. Planning staff seeks the Planning Board's approval of the land use and zoning recommendations found on pages 3-4 of the amendment.

This memorandum summarizes the recommendations in the Public Hearing Draft; reviews and discusses the issues raised at the public hearing on May 15; and proposes a schedule for preparing the Planning Board Draft of the Limited Amendment. A detailed summary of public hearing testimony and planning staff responses is attached.

In order to approve the Planning Board Draft Limited Amendment, the Planning Board should answer these questions:

1. Is the Limited Amendment process the appropriate way to evaluate land use alternatives for this portion of the Wheaton Central Business District?
2. Is mixed-use development in the Limited Amendment study area consistent with the overall goals for development in the CBD?
3. Are the recommendations for the individual properties in the study area consistent with these goals in the CBD?
 - a. Avalon Bay/WMATA
 - b. Weinberg Property

Summary of the Limited Amendment

The study area for the amendment is located at the northern edge of the Wheaton CBD Sector Plan area. It consists of properties on the north side of Blueridge Avenue, between Georgia Avenue and Elkin Street, and a vacant parcel located immediately north of the Blueridge Avenue properties. These properties total approximately 7.6 acres. The Amendment recommends mixed-use development in the CBD-1 Zone for properties totaling 3.65 acres and owned by Avalon Bay Communities. It recommends retention of the existing office uses in the C-O Zone for a 0.13-acre property owned by the Weinberg family. It concludes that a third property, a 3.8-acre parcel owned by the Washington Metropolitan Area Transit Authority, is suitable for higher densities than its current zone allows, but recommends that the upcoming comprehensive amendment to the Wheaton CBD Sector Plan determine the appropriate density.

The table below shows recommendations for each of the properties in the study area:

Property and Size	Existing Zone	Proposed Zone
Avalon Bay (3.65 acres)	C-O	CBD-1
Weinberg (0.13 acres)	C-O	C-O
WMATA (3.8 acres)	R-90/TDR	R-90/TDR

Public Hearing Testimony

Eight speakers testified at the public hearing. Four of them—representatives of the County Executive, the Mid-County Citizens Advisory Board, the Wheaton Urban District Advisory Committee and the Wheaton Redevelopment Advisory Committee—supported the Limited Amendment. Two representatives of Avalon Bay Communities, which owns property in the study area, also supported the Amendment but they expressed the concern that environmental recommendations in it may exceed current county requirements.

Two speakers opposed the Amendment. Both argued that the Limited Amendment did not constitute a comprehensive evaluation of land use issues. Harold Weinberg, whose family owns property in the study area, recommended that work on the Limited Amendment be suspended and incorporated into the upcoming comprehensive amendment to the Sector Plan for the Wheaton Central Business District and Vicinity. Mr. Weinberg also offered legal criticisms of the process. Wayne Goldstein of the Montgomery County Civic Federation echoed those concerns and also criticized the Limited Amendment process generally, arguing that such amendments would not result in “effective, long-range master planning.”

The County Executive provided comments that supported the Limited Amendment, but made several recommendations. He recommended limiting the extent of the design guidelines included in the Plan, which he felt could hinder redevelopment. The Executive also recommended an “Affordable Housing Production Target” for the study area, which would establish a basis for the provision of affordable units in the study area, and the inclusion of an Implementation Section that would outline other needed steps to support the Limited Amendment’s recommendations.

Major Issues

The public hearing for this Limited Amendment raises three issues:

1. Appropriateness of the Limited Amendment process

The Planning Department undertook this Limited Amendment in the wake of discussions between the Planning Board and the Montgomery County Council about the master plan process. The Board and the Council acknowledged the importance of market-driven redevelopment to local land use planning and agreed on the need for a process that would enable timely and responsive consideration of land use initiatives for small areas in that context. The limited amendment process is an effort to address this need. This Limited Amendment applies the process to a set of properties in Wheaton in a way that is consistent with the overall vision for the CBD and responsive to market forces.

2. Consistency of the proposed land use recommendation with planning goals in the Wheaton CBD

Planning staff believes that the recommendation for mixed-use development will further the goals of the Wheaton Central Business District; and that the recommendations for individual properties will successfully implement the goal of creating a lively and functional CBD.

The Public Hearing Draft Limited Amendment notes that “[i]n the years since the Sector Plan’s approval, mixed-use development has become an increasingly attractive and efficient way to redevelop relatively urban commercial areas.” (p.2) The Amendment goes on to state that mixed-use development would provide a transition between more intense uses at the core of the Central Business District and the residential communities outside the CBD and that it could increase the available housing stock in an area near a Metro station.

The Limited Amendment evaluated the study area in relation to the entire Central Business District and makes land use recommendations that further the overall vision for the Central Business District: that it be a place for people to live, work, shop and be entertained. The *1990 Sector Plan* first articulated this vision and it is unlikely to change as the *Plan* is reviewed comprehensively and amended in the next few years. The recommendations in the proposed Limited Amendment help implement that larger vision.

3. Ability of individual property recommendations to implement planning goals

a. Avalon Bay

Introducing mixed uses with a substantial residential component to a portion of the study area helps make the whole Central Business District livelier and more walkable. The CBD-1 Zone recommended for a portion of the study area provides regulatory controls that encourage improved urban design. Those controls will be used to provide a smooth physical transition from the denser core to the residential neighborhoods to the north and east. Recommending increased densities on the WMATA property, along with the use of the CBD-1 Zone along a portion of Blueridge Avenue, creates a land use pattern that clearly steps down from the CBD core to the edge of the Sector Plan area.

b. Weinberg Property

The recommendations in the draft Plan enable the owners of an existing office building to meet a previously expressed desire to continue operations at the existing location. The building was constructed in the C-O Zone prior to the establishment of a maximum floor area ratio (FAR) for the zone. As a result, the building's FAR considerably exceeds the current maximum FAR of 1.5. Recommending the property for the CBD-1 Zone would permit mixed-use development with the same positive impacts as will occur elsewhere in the block. However, it would also create additional conformity issues and would limit the time period during which the owners could alter or reconstruct the building to seven years. Retaining the C-O Zone for the property is not inconsistent with Sector Plan goals in this area.

Recommendation: Approve the land use and zoning recommendation in the draft Plan

Other Issues

1. The Executive's testimony made several recommendations for the Limited Amendment. He recommended limiting design guidelines included in the Amendment. The Plan's detailed guidelines reflect a renewed commitment to improved design for Wheaton's central business district. They help insure that neighborhood retail uses will be prominent along Georgia and Blueridge avenues, which encourages active streets for pedestrians. They will provide expanded space for walking along both streets, ensure activity in the middle of the block along Blueridge Avenue and help ensure that open space is available for pedestrians and residents of the adjoining multifamily neighborhood to the east.

Recommendation: Retain the design guidance in the draft Plan; it will help inform the regulatory process

2. The Executive also recommended inclusion of an "Affordable Housing Production Target" for the Limited Amendment. Planning staff understands that the Executive intends to request this target in future master plans.

Recommendation: Planning staff proposes that this target be provided in the Comprehensive Amendment to the Sector Plan, which will allow a more complete target calculation.

3. The Executive recommended inclusion of an Implementation Section containing information on other requirements associated with the Limited Amendment.

Recommendation: Planning staff will draft an Implementation Section indicating that the Central Business District, Urban District and Parking District boundaries be expanded to include the whole of a parcel now only partially within those districts.

Summary of May 15, 2008 Public Hearing Testimony—Limited Amendment to the Wheaton CBD Sector Plan

Speaker	Position	Comments	Staff Response
Harold Weinberg, property owner	Opposes	<p>Planning Board should suspend consideration of Limited Amendment because:</p> <ol style="list-style-type: none"> 1. Amendment attempts to “spot zone” properties for sole benefit of Avalon Bay; 2. Study area should be evaluated in the context of the entire sector plan area; 3. The process lacks community involvement and transparency. 	<ol style="list-style-type: none"> 1. The Limited Amendment provides land use and zoning recommendations for three sets of properties—with three sets of owners—in a defined study area. 2. The study area is at the edge of the Central Business District, and the amendment’s recommendations are designed to create livelier and more pedestrian-oriented streets and to increase the availability of housing close to Metro, both of which will be goals of the overall sector plan. The recommendations also focus on the transition from more intense uses at the core of the CBD to less intense uses outside it, reflecting a unified approach to planning for the CBD. 3. Planning staff discussed the Limited Amendment with committees associated with the Mid-County Services Center and with the Center’s Citizens Advisory Board. Local civic associations also are aware of the Amendment and have been offered briefings on its recommendations.

Summary of May 15, 2008 Public Hearing Testimony—Limited Amendment to the Wheaton CBD Sector Plan

Speaker	Position	Comments	Staff Response
Isiah Leggett County Executive	Supports	<ol style="list-style-type: none"> Supports objective of creating transition from CBD to residential uses Recommends generally scaling back proposed design guidelines while proposing to include guideline on Crime Prevention by Environmental Design Recommends inclusion of "Affordable Housing Production Target" Recommends addition of Implementation Section Offers a list of detailed comments 	<ol style="list-style-type: none"> Planning staff agrees The Amendment proposes detailed design guidelines to insure that development in the study area is designed to maximize the overall quality of the design and to provide guidance both to the property developer and the Planning Board on design issues for use during the regulatory process. Planning staff will include this item Planning staff will draft an Implementation Section for the Planning Board Draft These detailed editorial comments will be addressed in the Planning Board Draft
Matthew J. Zaborsky, Jr. Mid-County Citizens Advisory Board	Supports	Supports revitalization of BB&T site, which can bring mixed-use development close to Wheaton Metro and stimulate development immediately adjacent to Metro	Planning staff agrees
Dan Somma Wheaton Urban District Advisory Committee	Supports	Limited Amendment supports Smart Growth, which includes mixed-use development in the Urban District	Planning staff agrees
Karen Cordry Wheaton Redevelopment Advisory Committee	Supports	<ol style="list-style-type: none"> Limited Amendment permits mixed-use development that is part of a vision developed by Wheaton stakeholders Residential development provides added foot traffic for existing businesses that are critical to Wheaton's economic culture Proposed project helps maintain active street life Retail development that allows Safeway relocation creates additional site at the CBD core for redevelopment 	Planning staff agrees

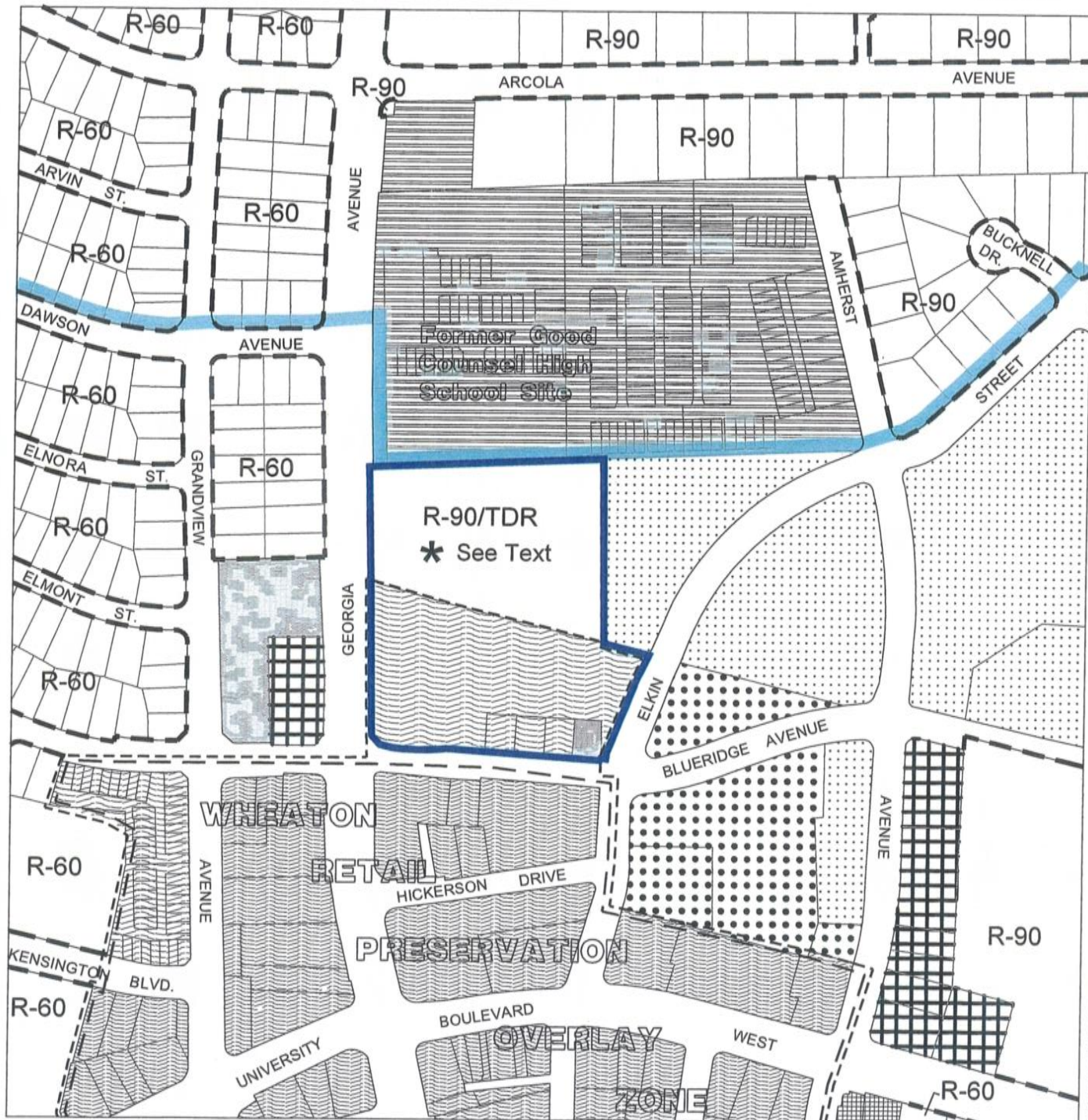
Summary of May 15, 2008 Public Hearing Testimony—Limited Amendment to the Wheaton CBD Sector Plan

Speaker	Position	Comments	Response
<p>Jody Kline and Jonathan Cox Avalon Bay Communities</p>	<p>Support</p>	<ol style="list-style-type: none"> 1. Limited Amendment process recognizes ability of proposed project to stimulate growth 2. Proposed project is “green, smart and it provides enhanced design.” 3. Avalon Bay attempted to incorporate the Weinberg property into the proposed project and believes that the guidelines proposed in the plan offer protection to the existing building 4. Avalon Bay does not consider the project an example of spot zoning 5. Environmental recommendations exceed current County standards 	<ol style="list-style-type: none"> 1. Limited amendments recognize the need to evaluate small area land use initiatives in ways that are responsive to market forces. 2. Planning staff agrees 3. Planning staff agrees 5. The Limited Amendment’s recommendations reflect newly approved legislation stiffening standards for energy efficiency and water conservation and are similar to those to be made in upcoming plans
<p>Wayne Goldstein Montgomery County Civic Federation</p>	<p>Opposes</p>	<ol style="list-style-type: none"> 1. It is preemptive to consider a Limited Amendment to the Wheaton CBD Sector Plan 2. Federation is concerned that limited amendments will not consider increased infrastructure needs in this and adjacent planning areas 3. Limited amendments expose Council members to pressure from development interests 	<p>Limited amendments and the small areas they cover acknowledge the emerging importance of market-driven redevelopment to county land use planning. They also recognize the need to evaluate initiatives regardless of their source and to be responsive to market forces.</p>

ATTACHMENT 2

PROPOSED ZONING

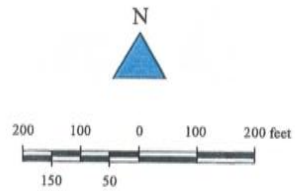
FIGURE 5



X:\AS\W-CBD\STUDY AREA PROPOSED ZONING.Avg (2/20/2011 .dxf)

LEGEND

- ZONE BOUNDARY
 - STUDY AREA BOUNDARY
 - SECTOR PLAN BOUNDARY
 - PROPOSED CENTRAL BUSINESS DISTRICT BOUNDARY
 - PROPOSED WHEATON RETAIL PRESERVATION OVERLAY ZONE
- | | | |
|-------|-------|-----|
| R-30 | RT-15 | C-0 |
| R-20 | CBD-1 | C-1 |
| CBD-2 | C-2 | |



ATTACHMENT 3

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MMC
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May 21, 2008

Montgomery County Planning Board
Maryland-National Capital
Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

RE: Limited Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity

Dear Chairman Hanson and Members of the Planning Board:

The following comments are submitted on behalf of the Avalon Bay Communities (owners of Parcel C, Lots 5, 6, and 7 of the Villa Verde subdivision) in support of the above referenced Limited Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity (hereinafter "Limited Amendment") and to address arguments made by the opposition, challenging its legality.

In particular, Mr. Harold Weinberg (owner of Lot 8 of the Villa Verde subdivision) has argued that the Limited Amendment is somehow inappropriate and would result in "illegal spot zoning" because its scope is focused only on a limited number of properties located on the northern edge of the Wheaton CBD Sector Plan area. However, a publication prepared and released by the Montgomery County Department of Park and Planning, entitled "The Master Planning Process in Montgomery County, Maryland" (dated September 1997) indicates just the opposite. Section 24 of that publication addresses what constitutes a minor master plan amendment and specifically discusses the purpose and intended "scope" of such an amendment. It provides in relevant part as follows:

"To ensure that the community master planning process is more responsive to changing community conditions, a minor master plan amendment process has been created. Such a process would allow for plans to be modified before a major master plan update is

undertaken and would also provide for occasional clarifications of previously adopted master plan recommendations.”

The publication goes on to describe some broad parameters or principles agreed upon by the County Council and the Planning Board to guide the minor master plan amendment process, one of which is that “[m]inor master plan amendments should address only a limited number of issues, which serve to enhance the spirit and intent of the master plan.” (See “The Master Planning Process in Montgomery County, Maryland”, September 1997, page 32)

In further support of the Limited Amendment, we cite to an earlier case that followed a similar master plan amendment process to address a limited issue impacting, in essence, the zoning on one particular property located in the Potomac Subregion Master Plan area. The 1984 amendment to the Potomac Subregion Master Plan dealt almost exclusively with the 948-acre Avenel Farm property. The property had been recommended for designation as a TDR receiving area, along with 26 other sites, in the previous 1982 amendment. However, unlike the other sites, the designation of the Avenel property as a receiving area was made contingent upon the property ultimately NOT being used for a wastewater treatment plant. When Montgomery County and WSSC subsequently ended up deciding to locate a wastewater treatment plant on the Avenel Farm, the 1984 amendment was requested and approved. The 1984 amendment maintained the TDR receiving area designation for the property, but removed the condition relating to the wastewater treatment plant, thereby, allowing more intense development of the property under the TDR optional method of development.

The Planning Board’s subsequent approval of the preliminary plan of subdivision and detailed site plan for the Avenel Farm under the TDR optional method of development was challenged and litigated in *West Montgomery County Citizens Association v. M-NCPPC*, 309 Md. 183, 522 A.2d 1328 (1987) on the following bases: 1) the 1984 amendment allowing more intense development on the Avenel property under the TDR optional method constituted a zoning recommendation change, and 2) the use of the master plan amendment process alone to effectuate that zoning change was invalid. The Court agreed and found that the flaw in the case was not that the master plan amendment process was improper, but that the District Council failed to subsequently adopt a sectional map amendment to implement the zoning change recommended in the master plan amendment. In the instant case as you know, a sectional map amendment process will follow the Limited Amendment such that the error found in *West Montgomery County Citizens Association v. M-NCPPC* will not be repeated.

Finally, on the issue of “spot zoning”, we would simply note that “spot zoning” arises or has the potential to arise in situations where no master plan amendment and sectional map amendment process is followed, i.e., where a zoning change occurs contrary to the recommendations in an established comprehensive plan. Here, the “comprehensive plan” is being properly amended via the minor master plan amendment and sectional map amendment process and therefore “spot zoning” is not implicated.

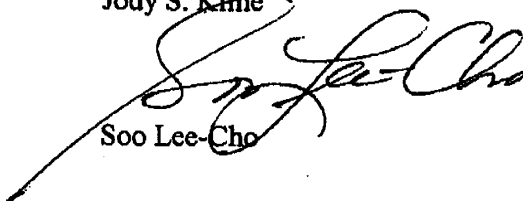
Thank you for the opportunity to submit these comments.

Sincerely yours,

MILLER, MILLER & CANBY

Jody KLINE

Jody S. Kline



Soo Lee-Cho

cc: Fred Boyd
Khalid Afzal
Debra Daniel, Esquire
David Lieb, Esquire
Jon Cox
Chris Helsabeck
Michele Rosenfeld, Esquire

MCP-Chairman

From: Leah Haygood [lvhaygood@earthlink.net]
Sent: Tuesday, May 20, 2008 2:19 PM
To: MCP-Chairman
Cc: 'Leah Haygood'; 'Donna Calacone'; 'Michels, Kathleen (NIH/FIC) [E]'; 'Erin Roberts'; DonQHotay@aol.com; Zoep1@comcast.net; 'Mullen, Elizabeth (NIH/NLM) [E]'; philmullen@verizon.net; stacymenendez@verizon.net; edward_b_murtagh@yahoo.com; 'Olson, Holly - BLS'; 'Stutz, Ben'; 'RK Wild'
Subject: Testimony on May 15 Item 9 Public Hearing: Limited Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity
Attachments: Letter to Planning Board 5-21-08.doc

Dear Mr. Hanson,

Attached is a letter detailing our community's support for the proposed Limited Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity. Thank you for the opportunity to comment.

Leah Haygood
11505 Colt Terrace
Silver Spring, MD 20902

RECEIVED
MAY 21 2008

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

May 21, 2008

Mr. Royce Hanson
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Hanson,

On behalf of the Sligo Headwaters and Upper Sligo Civic Associations, we are writing to voice our strong support for approval of the Limited Amendment to the Sector Plan for the Wheaton Central Business District and Vicinity. Our Civic Associations represent approximately 600 households due East of downtown Wheaton between Arcola Avenue and University Boulevard.

We believe the proposed Avalon Bay development is an essential part of maintaining forward momentum for Wheaton Redevelopment even as the update to the Wheaton Central Business District Sector Plan process moves forward. Some of the benefits include:

- The proposed development is a mixed-use project that supports smart growth by bringing residential development into the urban core.
- It would place residents close to mass transit and provide foot traffic for downtown businesses.
- Our understanding is that the Safeway at Georgia and Reddie would relocate to the Avalon Bay development, giving the community a new and improved grocery store and removing what is, frankly, an eyesore adjacent to the Wheaton Metro.
- Through this move, it would free up the prime Safeway parcel for a more appropriate use.
- The project would provide a transition between the urban core and residential neighborhoods while helping to activate what is currently a 'dead zone' between Blueridge and the Wheaton Public Library

We are aware of and understand the concerns about "spot zoning" taking place outside of the Sector Plan process. However, we believe the benefits of this project merit the Limited Amendment. We have been hearing about Wheaton Redevelopment for more

than a decade – a period during which downtown Silver Spring was indeed redeveloped. During that time, downtown Wheaton has drifted between stagnation and decline. The new residential projects that have been implemented are a good step but offer few benefits to existing residents of the area. The kind of mixed-use development represented by the Avalon Bay project is what's needed to extend the benefits of redevelopment to long-time residents.

We also urge you to proceed as quickly as possible to begin and complete the Sector Plan update. We are concerned about reports that the Sector Plan update could be delayed due to the current budget concerns. Downtown Wheaton has stagnated for decades and further delay in updating the Plan would be very detrimental to the community.

Finally, we urge you to use all means at your disposal to ensure that this and other developments are carried out in an environmentally sensitive manner. We believe that the push for Wheaton Redevelopment comes at the right time to demonstrate the practicality of low-impact development in urban settings. This would benefit our community, which is located downstream of the Wheaton urban core, and Sligo Creek, which forms the heart of our community. It would also give Wheaton a distinctive hallmark for its redevelopment.

Sincerely,

Leah Haygood
Acting Chair, Wheaton Redevelopment
Committee
Sligo Headwaters Civic Association

Kathy Michels
President
Upper Sligo Civic Association

**Raos Management Company
2401 Blueridge Ave. #308
Wheaton, Maryland 20902**

May 22, 2008

Montgomery County Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20910

RE: Supplemental Public Hearing Testimony
Public Hearing Draft – Limited Amendment to the 1990 Sector
Plan for the Wheaton Central Business District and Vicinity

Dear Members of the Planning Board:

I am submitting these comments to the Board in addition to those sent to you in my May 2 and May 15 letters for your consideration.

I first would like to revisit the questions posed by Mr. Bryant and Chairman Hanson. During the public hearing on May 15, these two Boardmembers posed the following questions (with my responses included):

Commissioner Bryant:

I hate to ask this question, but a very very short answer. I heard everything that you said, but, regardless of whatever the outcome, what is it that you really are looking for? What is it that you want for your particular parcel, which is less than an eighth of an acre, if I recall correctly -- I mean -- less than a twelfth of an acre, if I recall correctly.

Mr. Weinberg: It's about 5,500 square feet. I can't answer that question in a short period of time

Commissioner Bryant: OK – thank you.

Chairman Hanson: Is it something other than to retain the current zoning?

Mr. Weinberg: I want to retain the future viability of my investment in that property.

Chairman Hanson: OK

I will take this opportunity to address your questions in this letter. I ask that you not be dismissive of my concerns simply because my site is substantially smaller than the AVB property and because a speedy process is an overriding goal. Our property represents a substantial long-term financial investment for my family. It also has been a long-term business commitment in Wheaton for my family and for our many long-term tenants. If

there were a “quick fix” to our concerns, they would have been addressed long ago. There is no “quick fix,” and that is why the current process is so troublesome.

In response to Mr. Bryant’s question, what we are “really looking for” is a comprehensive review of the planning and zoning impact of the AvalonBay project in the context of the Wheaton Sector Plan Amendment. The necessary comprehensive review cannot occur through the current rezoning proposal. The consequences of the proposed rezoning on our property are substantial, with both immediate and long-term impacts.

From a long-term perspective there are significant compatibility issues. AvalonBay’s proposal will locate a structured parking garage topped by several stories of residential units, which units will directly overlook our property. As a result, not only will our tenants face a view of a parking garage, cut off from light, and located within a “well” of walls that will be significantly higher than our building. Once those units are occupied, I anticipate that those residents will then consider our existing office building to be incompatible with their use, and particularly if we ever need to redevelop the site. It is reasonable to assume that any efforts I undertake to redevelop my site will face significantly more opposition from residential neighbors than I would from other commercial interests, increasing substantially the time and cost of any future redevelopment of my site. Additionally, our tenants have potential concerns regarding whether they want to lease office space adjoining residential uses, which cannot be gauged at this time. That compatibility issue does not exist with the existing zoning (Commercial Office), which is compatible in terms of use, density, height and demands on public infrastructure. This rezoning simply accepts the design as proffered by AvalonBay and creates a cul-de-sac island of commercial office space surrounded on three sides by this project.

From a short-term point of view, the recommended change from an office use to high-density residential and retail (in the form of a new Safeway store) will have a profound immediate impact on the public parking lot that confronts our property and that provides the majority of parking for our tenants and their guests. During the construction period it is highly probable that some of the many contractors will park in this lot. After construction demand for this lot will be high as residents, their guests and others who will use the retail components of the development will park in this lot. The impact on a public facility – and potential solutions to mitigate that impact – could be addressed in a comprehensive planning context. It simply cannot be addressed in the limited context of the proposal before the Board. It has not been addressed – or even acknowledged – in spite of the fact that I have raised this issue a number of times.

Another immediate impact is the fact that the change in use and density associated with the rezoning (from commercial office space to predominantly residential and retail space) has resulted in a the need for a massive structured parking garage. AvalonBay has chosen to locate this parking garage immediately behind our office building. This raises tremendous concerns about the compatibility of the AvalonBay project with our building. In particular the rear of our building – which has windows -- will now overlook a structured parking lot only a few feet from our building. If a broader planning analysis were conducted, a plan might recommend more green space in this location. Perhaps if compatibility were more broadly considered, AvalonBay’s parking could be accommodated elsewhere on the site. It is very ironic that this proposal will simultaneously rob our existing tenants (including pediatricians, realtors and small business owners) and their guests of the public parking facilities that now serve their

business needs while compromising the aesthetics of their office space by dropping a private multi-story parking garage right outside of their windows.

An even more fundamental question, however, is whether this is the best mix of uses to locate at the periphery of the CBD – at the Wheaton Sector Plan kickoff meeting staff reiterated a number of times that there is a dearth of commercial office space in Wheaton. This goes back to the basis question – what is the vision for Wheaton and why is it being pre-determined in the context of one site, even as the broader issues are now under consideration in the Sector Plan amendment process? In other words, the AvalonBay project which has been tagged with the catch-phrase “mixed use” development has not been reviewed in a meaningful way from the perspective of the broader needs of Wheaton. Simply combining residential and a small amount of retail and office uses on a site of this size does not constitute a true “mixed use” development such as Rockville Town Center, the Rio or Reston Town Center. True “mixed use” development is integrated within itself and integrated within the entire area – in this case that would include Wheaton and beyond. To call this “mixed use” development is ludicrous. There is absolutely no planning basis for a conclusion that the proposed residential and retail uses at this location are in the best interests of Wheaton – this rezoning simply implements the property owner’s selection of this site and does not reflect any broader consideration of the public needs that will be addressed as the Wheaton Sector Plan amendment moves forward.

Finally, one additional long-term concern involves appropriate public space. On the one hand, staff has recommended that “public use” space be located on the eastern portion of the site to benefit “neighborhood workers and residents,” and design the public use space so that the new development does not “surround” our building. Staff also recommends that public use space be provided in the form of “significantly widened sidewalks” along Georgia and Blueridge Avenues. On the other hand, staff has recommended that on-site public use space be reduced to only half of the otherwise 20% public use space that the Zoning Ordinance requires on-site. If all of the public use space required by the Zoning Ordinance must be required on site, it would offer the potential to maximize the open space at the eastern end of the site. Certainly it is difficult to see how the on-site public use recommendations can be accommodated in a meaningful way in light of the proposed reduction in required on-site public use space.

I again ask the Planning Board to defer a decision in this proceeding for the legal, planning and policy reasons stated in this and previous letters.

Sincerely,

/s/
Harold Weinberg

Cc: Fred Boyd

Attachments:

1. March 14, 2008 letter to Rollin Stanley
2. May 2, 2008 letter to Planning Board
3. May 15 letter to Planning Board

Michele M. Rosenfeld
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May 22, 2008

Montgomery County Planning Board
MNCPPC
8787 Georgia Avenue
Silver Spring MD 20910

RE: Supplemental Public Hearing Testimony
Public Hearing Draft – Limited Amendment to the 1990 Sector
Plan for the Wheaton Central Business District and Vicinity

Dear Planning Board Members:

In behalf of Mr. Harold Weinberg, this letter responds to Mr. Jody Kline's letter of May 21, 2008, which argues that the "limited master plan amendment" process currently underway does not constitute illegal spot zoning.

First, reliance on the September 1997 Planning Board publication *The Master Planning Process in Montgomery County, Maryland* (noting that "a minor master plan amendment process has been created") is misplaced. Certainly, under the right circumstances, the Board can (and has) undertaken master plan amendments that did not entail reopening an entire master plan. The stated motivation for this "limited amendment," however, is that the AvalonBay project needs immediate approval. The *Master Planning Process* document points out that a minor plan amendment can be processed to allow for modification "before a major master plan update is undertaken . . ." (Section 24.) In this case the Wheaton Sector Plan amendment process already has begun, thus the urgency for a "limited master plan amendment" does not exist under the provisions of this document.

Second, the facts of the *West Montgomery County Citizens Association v. MNCPPC*¹ case only underscore the impropriety of the proceeding now underway. While the Court in that case did conclude that the District Council could not increase density merely through a master plan amendment, the merits of the recommendations of the master plan were not at issue. The 1984 amendment to the Potomac Subregion Master Plan ("1984 Potomac Amendment") differed from the one now before the Planning Board in a number of material ways. First, when the 1982 Potomac Subregion Master Plan was adopted, the Master Plan itself recognized that there was a question of whether WSSC would locate an advanced wastewater treatment (AWT) plant on a 984-acre parcel of land known as the Avanel Farm. The 1982 Master Plan itself expressly stated that "Because of the uncertainties of the AWT, including the size of the total area to be utilized and the most appropriate use of any buffer area, the Planning Board may initiate

¹ *West Montgomery County Citizens Association v. MNCPPC*, 309 Md. 183, 522 A2d 1328 (1987).

a master plan amendment to consider utilization of TDR's on the remaining portions of Area 33 [Avalon Farm]. This amendment would only be considered after the AWT and buffer area decisions have been made." In other words, *the underlying master plan contemplated the potential need to revisit the Avalon Farm site because of the uncertainties at the time the master plan was adopted surrounding the potential impacts on the recommended residential development resulting from the development of a substantial public utility, i.e., a wastewater treatment facility.* The 1984 Potomac Amendment did not "spontaneously" arise as the result of a private development proposal, as with the AvalonBay project. Second, the current "amendment" involves less than 8 acres of land. The 1984 Potomac Amendment included 984 acres. Third, the current amendment recommends a rezoning of the AvalonBay property to accommodate the development as proposed on a pending development plan. The 1984 Potomac Amendment addressed multiple planning issues, including the location and buffering of the AWT plant; open space and recreational facilities surrounding the location and accessibility of a golf course; it required a local park; it addressed the location of a public school site; and it identified appropriate density for purposes of receiving TDRs. Finally, it did not *rezone* the Avalon site. In this case, conversely, the amendment looks to substantially amend the existing zoning – including permitted uses – on the AvalonBay site. In short, the 1984 Potomac Amendment was an anticipated outgrowth of the comprehensive planning undertaken in the 1982 Potomac Master Plan, and resulted in a comprehensive look at a substantial geographic region within that Plan in response to a specific anticipated change in circumstances. The current effort, however, is a mere rubber stamp intended to facilitate the proposed development plan.

Finally, legitimate zoning designations flow from comprehensive planning efforts. When properly adopted they enjoy a presumption of correctness. That is not the case here, because the "master plan" process is being undertaken to facilitate a zoning decision that has been pre-determined. As such it cannot constitute a legitimate comprehensive plan. The Maryland Court of Appeals recently reiterated the long-standing observation that "Zoning decisions which are made during a comprehensive rezoning process are strongly presumed to be correct. The reason for this strong presumption is that when engaged in comprehensive rezoning, the [zoning authority] is not considering individual properties on an isolated or piecemeal basis, but rather it is considering the overall needs and development of the County [or City] as a whole."² Under this standard, the current proceeding cannot qualify as comprehensive planning, and as such any rezoning that flows from this proceeding will be legally suspect.

On behalf of Mr. Weinberg, I again ask the Board to suspend this proceeding and defer this matter until it can be properly and comprehensively considered in the Wheaton Sector Plan amendment process now underway.

Sincerely,

/s/

Michele M. Rosenfeld

Cc: Harold Weinberg

² *Anderson House, LLC v. Mayor and City Council of Rockville*, 402 Md. 689, 722, 939 A.2d 116, 136 (2008).