



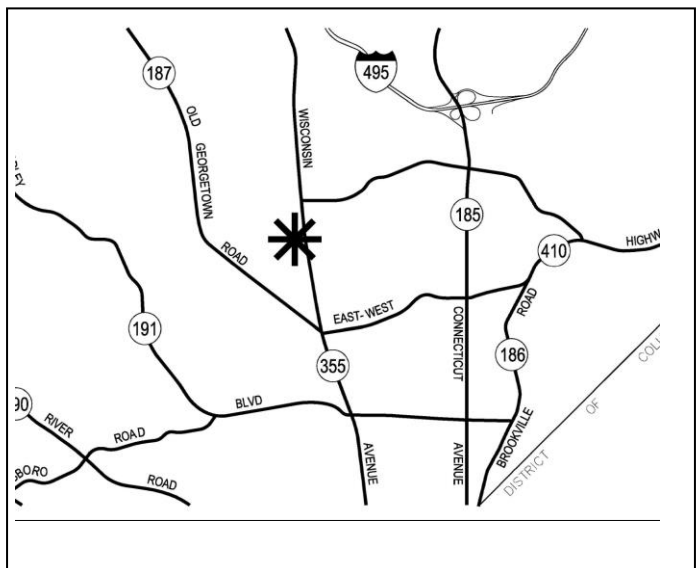
Stonehall Development Plan Amendment, DPA 2017-01 (formerly Woodmont View)

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Completed: 10/10/16

Description

- Request for an Amendment to remove Binding Element #10 for quality restaurant in ground floor commercial space of building;
- Location: 8032 Woodmont Avenue;
- Zone: PD-75
- Master Plan: 1994 *Bethesda CBD Sector Plan* and 2006 *Woodmont Triangle Amendment to Bethesda CBD Sector Plan*;
- Applicant: Duball BW LLC
- Filing Date: June 28, 2016;
- Public Hearing at the Hearing Examiner: December 9, 2016.
- Review Basis: 2004 Montgomery County Zoning Ordinance



STAFF RECOMMENDATION:

Approval of Development Plan Amendment DPA 2017-01 based on the following reasons:

- The Amendment is consistent with the recommendations of the 1994 Bethesda CBD Plan, and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Plan.
- The Amendment continues to satisfy the purpose clause of the PD-75 Zone as found in the 2004 Zoning Ordinance.
- The Amendment will continue to be compatible with adjacent development.
- No correspondence in opposition to Development Plan Amendment (DPA 2017-01) has been received.
- Staff notes the previously approved Site Plan will need to be amended to modify Binding Element #10 to allow a retail service establishment use that does not exceed more than three (3) morning peak hour vehicular trips and twenty-four (24) evening peak hour vehicular trips.
- Staff notes there is no opposition to DPA 2017-01 and recommends that the Amendment be placed on the first available District Council agenda without the necessity of a public hearing by the Hearing Examiner.

Summary

This Development Plan Amendment (DPA) seeks to eliminate Binding Element #10 from the previously approved DPA 2006-01. Binding Element #10 states that:

The street commercial space in the planned building will be occupied by a 'Quality Restaurant' as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (i.e., one producing more peak hour traffic).

The Applicant is seeking removal of this Binding Element and requesting to replace the restaurant use with another retail/service establishment use that will generate the same amount of vehicular traffic as the approved restaurant use. This Binding Element was placed on DPA 2006-01 by the Hearing Examiner to ensure that the vehicular trips associated with the overall development did not exceed capacity limits of nearby intersections. If the subject DPA is approved the Applicant will need to amend the previously approved Site Plan to reflect the change in use and modify Binding Element #10. Staff recommends approval of the DPA and that the Amendment be placed on the first available District Council agenda without the necessity of a public hearing by the Hearing Examiner.

Property Description

The Subject Property is located at the northwest corner of the intersection of Woodmont Avenue and Battery Lane in Downtown Bethesda. It is rectangular in shape with approximately 340 feet of frontage on Woodmont Avenue and approximately 60 feet of frontage on Battery Lane. The Subject Property is zoned PD-75 and the gross tract area is 22,618 square feet. The front portion of the Property is under construction and will be developed with an 8-story multi-family building with 46 dwelling units, including 9 Moderately Priced Dwelling Units (MPDUs). The rear portion of the Property contains a one-family detached dwelling unit developed as a conditional use formerly known as a Special Exception Use, (S-2740) for a charitable or philanthropic institution which was approved by the Board of Appeals (BOA) on March 27, 2009. The conditional use is known as the Children's Inn at NIH and is operational. There are no rare, threatened or endangered species, streams, specimen or champion trees on the site. In all previous zoning and site plan approvals, this Project was referred to as Woodmont View but is now known as Stonehall.



*Figure 1: Subject Property under construction
(corner of Woodmont Ave/Battery Lane looking northwest)*

Surrounding Area

The surrounding area was defined and approved by the District Council in LMA (G-808). This area is defined by the following boundaries: the northwest intersection of Battery Lane and Woodmont Avenue and extending westward from Wisconsin Avenue to the Battery Lane Urban Park and Norfolk Avenue, and southward from the grounds of the National Library of Medicine on National Institutes of Health (NIH) campus to Cheltenham Drive.

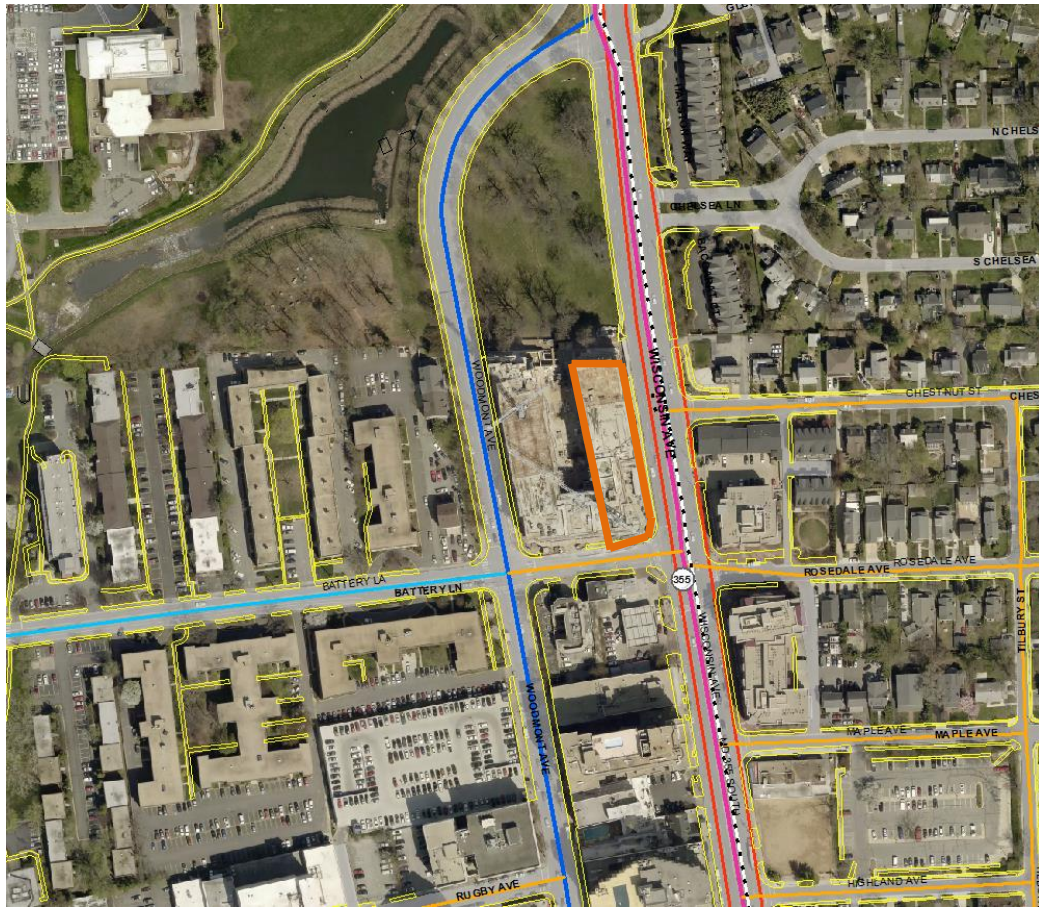


Figure 2: Surrounding Neighborhood (Subject Property outlined in orange)

Previous Approval History

The approval history for the Subject Property is as follows:

Local Map Amendment (G-808) was approved by the District Council on March 30, 2004, to change the zoning from the Commercial Transitional (C-T) Zone to the Planned Unit Development Zone (PD 75). The Development Plan accompanying the rezoning request proposed 10 townhouses and the existing one-family detached dwelling unit to remain in its location.

On April 24, 2007, Development Plan Amendment (2006-01) was approved by the District Council to amend the previously approved Local Map Amendment (LMA) and associated Development Plan to remove the 10 townhouse units and replace them with an 8 story condominium building with 46 units including 15% MDPU or 8 units, a restaurant use and a 1,408 square foot amenity use. The one-family dwelling would remain on the north end of the site.

On March 27, 2009, the Board of Appeals approved a Special Exception (S-2740) for a charitable and philanthropic institution to be located in the existing one-family dwelling unit on the rear portion of the property. The special exception would contain the Children's Inn at NIH, an extended stay residence for up to five families.

On July 23, 2009, the Planning Board approved a Site Plan No. 820090010 for development of a 46-unit multi-family building, a 3,200 square foot restaurant and the existing one-family dwelling to remain.

On October 19, 2010, the County Council approved DPA 2010-02 to allow a maximum height of 90 feet by including 19% MPDUs (9 units) and maximum building coverage of 60.5 percent.

On June 21, 2012, a Plat #24439 (Lot 62, Block 2, Northwest Park) was recorded in the County Land records for the subject Property. Lot 62 contains 22,618 square feet of land.

On August 1, 2013, the Planning Board approved a Site Plan No. 82009001A to waive the parking requirement for the commercial use, modify the recreation facilities and modify building elevation and footprint.

Proposal

The proposed Development Plan Amendment seeks to remove Binding Element #10 from the approved DPA 2006-01. Binding Element #10 states:

The street commercial space in the planned building will be occupied by a 'quality restaurant' as described in the Institute of the Transportation Engineers (ITE) Trip Generation Manual, 7th edition, page 1703, not by any more intensive commercial use (i.e., one producing more peak hour traffic).

According to the submitted statement of justification, a "quality restaurant" in this location is no longer a viable development option. The Applicant would like the flexibility to locate any retail/service establishment as defined in Section 59.3.5.11.B.1 of the Zoning Ordinance in this ground floor commercial space. There are no environmental issues or impacts associated with the subject DPA. A copy of the approved DPA is included in Attachment A. The approved Binding Elements with the proposed deletion of Binding Element #10 are found on the following page.

TEXTUAL BINDING ELEMENTS

1. THE MAXIMUM NUMBER OF DWELLING UNITS WILL BE 47, INCLUDING ~~186 MFUS (OR 9 MFUS)~~.
2. THE BUILDING HEIGHT IS PROPOSED WITH A MAXIMUM OF 40 FEET 0 INCHES MEASURED FROM THE PAVEMENT CENTERLINE ALONG WOODMONT AVENUE TO THE HIGHEST POINT OF THE MAIN ROOF SLAB (THE ROOF AREA COVERING THE MAJOR AREA OF THE BUILDING EXCLUDING MECHANICAL, ACCESS, ELEVATOR PENTHOUSES, AND DECORATIVE GABLES).
3. THE MINIMUM SETBACKS WILL BE 0 FEET FOR THE FRONT YARDS AT WOODMONT AVENUE AND BATTERY LANE, 11.5 FEET SIDE YARD TO THE WEST, AND 40.5 FEET REAR YARD FROM EXISTING BUILDING AT THE NORTH PROPERTY LINE.
4. THE MINIMUM GREEN SPACE WILL BE 30% OF THE GROSS TRACT AREA.
5. ALL GREEN AREAS (INCLUDING THE ACTIVE/PASSIVE RECREATION ROOFTOP GREEN AREA) FOR THE CONDOMINIUM BUILDING WILL BE ACCESSIBLE TO THE RESIDENTS OF THE CONDOMINIUM BUILDING.
6. THE MAXIMUM BUILDING COVERAGE WILL BE ~~60.5%~~ OF THE SITE AREA.
7. THE MINIMUM NUMBER OF PARKING SPACES FOR THE RESIDENTIAL UNITS WILL BE 54, AND THE NUMBER OF PARKING SPACES REQUIRED FOR THE COMMERCIAL USE WILL COMPLY WITH THE ZONING ORDINANCE.
8. THIS PROPERTY IS SUBJECT TO A COMMON DRIVEWAY AGREEMENT RECORDED AT LIBER 26425, FOLIO 122 AMONG THE LAND RECORDS OF MONTGOMERY COUNTY. THE COMMON DRIVEWAY AGREEMENT SETS FORTH THE AGREEMENT BETWEEN THE SUBJECT PROPERTY OWNERS AND THE ADJACENT PROPERTY OWNER TO SHARE CERTAIN PORTIONS OF THEIR RESPECTIVE PROPERTIES FOR MUTUAL INGRESS AND EGRESS FROM BATTERY LANE IN ORDER TO ACHIEVE MORE EFFICIENT, CONVENIENT, AND SAFER ACCESS TO BOTH PROPERTIES.
9. APPLICANT SHALL SUBMIT A REVISED STORMWATER MANAGEMENT CONCEPT PLAN TO BE APPROVED BY THE SITE PLAN.
10. ~~THE STREET COMMERCIAL SPACE IN THE PLANNED BUILDING WILL BE OCCUPIED BY A "QUALITY RESTAURANT" AS DESCRIBED IN THE INSTITUTE OF TRANSPORTATION ENGINEERS (ITE) TRIP GENERATION MANUAL, 7TH EDITION, PAGE 1703, NOT BY ANY MORE INTENSIVE COMMERCIAL USE (I.E. ONE PRODUCING MORE PEAK HOUR TRAFFIC).~~

07/15/10	REVISED PLAN PER PLANNING BOARD COMMENTS
11/02/09	REVISED PLAN TO INCLUDE 40'-0" BUILDING HEIGHT, NEW UNIT MIX, AND PARKING
02/16/17	REVISED PLAN PER COMMENTS FROM ZONING HEARING EXAMINER

Figure 3: Approved Binding Elements of DPA 2006-01 with Applicant's proposed removal of Binding Element #10.

EX. STRIPPING METHOD BY ACCESS PARALLEL TO BE REMOVED

EX. APARTMENT BUILDING 4 STORY FRONT 3 STORY REAR

PROPOSED PARALLEL PARKING SPACES TO BE STRIPPED ALONG GARD ONCE EXISTING STRIPPING REMOVED BY OTHERS

BLOCK 2, LOT 22
N/F BATTERY LANE APT. INC.
L. 8517 P. 407

NOTE: The only change proposed from DPA 10-2, approved October 2010 by resolution 16-1520 in LMA Application G-808, is the removal of textual binding element number 10, highlighted in the red cloud.

MAJ	
MD	
MAJ	

PROPOSED FPD & FUND: Professional Certification

Figure 4: Note on DPA 2017-06 regarding removal of Binding Element #10.

PUBLIC FACILITIES

Transportation

Under DPA 2006-01 Binding Element #10 established the maximum number of estimated peak hour vehicular trips for the Subject Property to ensure that the proposed development did not exceed capacity limits of intersections within close proximity to the Site, using a Local Area Transportation Review (LATR). Binding Element #10 referenced a specific trip generation rate, contained in the 7th Edition of the ITE Trip Generation Manual, that equates to three morning peak hour trips and 24 evening peak hour trips.

Under the subject DPA, the Applicant seeks removal of Binding Element #10 to provide flexibility in implementing the Project. The Applicant's submitted Statement of Justification states that "Quality

Restaurant” would no longer be the best street-activating use in this location. The Applicant is requesting that the quality restaurant use be replaced with any retail/ service establishment use, as defined in Section 59.3.5.11.B.1 of the Zoning Ordinance and be located within the previously approved ground floor commercial space.

Under the 2013 *LATR Guidelines*, ground floor retail and restaurant uses in the Bethesda CBD generate the same number of trips. As such, the estimated number of peak hour trips for either a restaurant or retail use would be two morning trips or eight evening trips. Under the Guidelines, vehicular trips generated by a restaurant or retail use would remain within the previously approved trip cap. Table 1 provides a comparison of the previously approved Quality Restaurant and the proposed LATR trip generation for a new retail use/service establishment use.

Table 1: Peak Hour Trip Generation Comparison

Trip Generation	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
3,200 SF Quality Restaurant ¹	2	1	3	16	8	24
3,200 SF Restaurant/ Retail Bethesda CBD ²	1	1	2	4	4	8
Net New Trips	(1)	0	(1)	(8)	(4)	(16)

Therefore, elimination of Binding Element #10 will not result in additional burden to the local area transportation and would permit flexibility in implementing this Project. However, staff recommends to the Hearing Examiner that in approving this amendment the future retail/service establishment use not exceed more than three (3) morning peak hour vehicular trips and twenty-four (24) evening peak hour vehicular trips as estimated in the LATR Guidelines.

Schools

The adequacy finding for school capacity was made at the time of the rezoning approval (G-808) and in subsequent DPA approvals and remains valid under this DPA request.

Utilities

Public water and sewer, electricity, telephone and cable currently serve the property and will be utilized for this development.

MASTER PLAN

DPA 17-01 is located within the boundaries of two master plans: the 1994 *Bethesda CBD Sector Plan* and the 2006 *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. The *Bethesda CBD Sector Plan* recommendations for the area include the provision of more housing, including affordable housing, and street-activating uses. Moreover, the urban design guidelines of *Woodmont Triangle Amendment* offer the following recommendation for first floor spaces in new developments:

¹Institute of Transportation Engineers Trip Generation Manual, 7th Edition (AM: 0.81/1,000 SF; PM: 7.49/1,000 SF)

² Montgomery County Local Area Transportation Review Guidelines, January 2013 (AM: 0.65/1,000 SF; PM: 2.60/1,000 SF)

Review new projects for compatibility with existing uses and to ensure animation of the first floor space through use of retail, restaurant or other activating uses. (p.14)

The Project's compatibility with existing uses was reviewed and found to be acceptable under earlier DPA and Site Plan approvals. The Applicant's request to remove the quality restaurant binding element and replace it with another retail or service establishment use that will be street activating along Woodmont Avenue is consistent with the above urban design recommendation.

Thus, the Applicant's request to remove the Textual Binding Element #10 is in general conformance with both the 1994 Bethesda CBD Sector Plan and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. Staff recommends that the ground floor space is occupied by a type of commercial space that includes "street-oriented ground floor activating uses" which is more in keeping the master plan recommendations for the area.

TRANSPORTATION

Vehicular and Pedestrian Access

The site is located at the northwest corner of Woodmont Avenue and Battery Lane, both roadways are County rights-of-way. Vehicular access to the multi-family development will be provided from a circular driveway located on Woodmont Avenue. The Special Exception use will continue to receive its access from Battery Lane via a driveway easement located on the multi-family portion of the Property. These delineated access points provide adequate and safe circulation and internal movement for vehicles entering and exiting the site. Sidewalks along Woodmont Avenue and Battery Lane provide safe and adequate pedestrian access from the Project to the surrounding area.

Transit

The site is approximately ½ mile from the NIH Medical Center Metrorail station. This distance equates to a walking time of 10 minutes.

ENVIRONMENT

The Property is exempt from the Forest Conservation Requirements. An exemption letter (#4-02206E) was approved on January 25, 2002, and remains valid under the requested DPA.

COMMUNITY CONCERNS

To date, Staff has not received any letters in opposition to the subject DPA. Staff recommends that the Amendment be placed on the first available District Council agenda without the necessity of a public hearing by the Hearing Examiner.

EVALUATION AND FINDINGS

Section 8.1.2 Modification of Zones

A. Amending a Development Plan

An amendment to an approved development plan or schematic development plan in any zone in Article [59-8](#) must follow:

- 1. the procedures for amendment of a development plan under the zoning ordinance in effect on October 29, 2014;*

The subject DPA was reviewed in accordance with the procedures of the Zoning Ordinance in effect on October 29, 2014. The rezoning application (G-808) and its accompanying development plan were originally approved on March 30, 2004.

2. the parking, queuing, and loading standards in Division [6.2](#); and

Not applicable. The queuing and loading standards for this Project were found to be adequate under the previous DPA and Site Plan approvals and continue to meet these standards under DPA 2017-01. With respect to parking, under Site Plan Amendment 82009001A, the Planning Board approved a waiver of the required parking spaces for the on-site commercial use. The parking standards for the residential component of this Project continue to be met.

3. the signage standards in Division [6.7](#).

Not applicable, signage standards were met under the previous Site Plan approvals.

Sec. 59-C-7.1. P-D Zone-Planned Development Zone.

59-C-7.11. Purpose.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balanced and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

Not applicable. At the time of the rezoning approval (G-808), the Application was found to meet the purpose clause of the requested PD Zone. Subsequent DPAs and Site Plan approvals continued to meet the purpose clause. The subject DPA does not alter those findings and continues to meet the purpose clause of Section 59-C-7.11 of the 2004 Zoning Ordinance.

59-C-7.12. Where applicable.

59-C-7.121. Master plan. *No land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.*

Not applicable. Both the 1994 Bethesda CBD Sector Plan and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan recommended the PD-75 Zone for this Property.

59-C-7.122. Minimum area. *No land can be classified in the planned development zone unless the district council finds that the proposed development meets at least one of the following criteria:*

- (a) That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted;*
- (b) That it would be a logical extension of an existing planned development;*
- (c) That it would result in the preservation of an historic structure or site (as indicated on the current historic sites identification map or as recommended by the planning board as being of historic value and worthy of preservation);*
- (d) That the accompanying development plan would result in the development of a community redevelopment area;*
- (e) That the site is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.*

Not applicable. At the time of the rezoning application (G-808), the site was recommended for the PD zone in the approved and adopted sector plan. Furthermore, the assembly of enough land to accommodate at least 50 units was unlikely and the development of fewer than 50 units was deemed to be in the public interest at the time of rezoning.

59-C-7.13. Uses permitted.

59-C-7.131. Residential. All types of residential uses are permitted, including accessory uses. These include the following, provided they are shown on the development plan: housing and related facilities for senior adults or persons with disabilities, a group home, and a life care facility. A life care facility is subject to the provisions of Section G-2.35.1. The various dwelling unit types must be planned and constructed in accordance with the following table. The table establishes, by density category and size of development, the minimum percentage required for each dwelling unit type within a planned development. All remaining dwelling units not included in the minimum requirements may be of any type or combination of types permitted in the applicable density category and development size, provided the maximum percentage is not exceeded in any instance.

		Minimum (Maximum) Percentage ¹			
		One-Family	Multiple-Family ²		
Density Category	Size of Development (Units) ³	Detached	Townhouse and Attached	4-Story or Less ⁴	Over 4-Story ⁵
Urban High: PD-75	NP	P	P	P	P

Key: NP Not permitted.; P Permitted but not required; () Maximum percentage permitted.

1 The District Council may waive the percentage requirements for one-family and multiple-family dwelling units, if it finds that a proposed development (a) is more desirable for stated environmental reasons than development in accordance with these limits, or (b) achieves goals, policies or recommendations stated in an approved and adopted master or sector plan.

2 If the minimum percentage would yield a total of 150 multiple-family dwelling units or less, this requirement does not apply and no such units are required. Whenever the minimum percentage would yield 151 units or more, the full number is required, unless it is waived as provided by Footnote 1.

3 Total number of dwelling units planned.

4 One-family attached units may be substituted for all or part of this requirement.

5 Four-story height limit may be waived for a building designated and approved as housing for senior adults or persons with disabilities if (a) such housing is in accord with both the purposes of the zone and County policies and goals concerning the need for such housing; and (b) appropriately located with respect to the special needs of senior adults or persons with disabilities.

The DPA shows that the Project will be developed with 46 multi-family dwellings including 19% MPDU's, (9 units) and 1 one-family detached dwelling unit. The finding continues to be met by this DPA.

59-C-7.132. Commercial.

(a) Pedestrian-oriented local commercial facilities not indicated on the master plan for the area in which the proposed development is located may be permitted at the discretion of the district council upon a finding that they are compatible with the development and are necessary for the service of the residents of the proposed development and adjacent residential developments, in amounts not to exceed the following:

(1) If the number of dwelling units shown on the development plan is greater than 500, retail, personal service and professional office facilities principally for the service of the residents in the development may be permitted in an amount not exceeding 10 square feet of gross floor area per dwelling unit shown on the development plan.

(2) If the number of dwelling units shown on the development plan is greater than 1,000, retail, personal service and professional office facilities principally for the service of the residents in the development may be permitted in an amount not exceeding 20 square feet of gross floor area per dwelling unit shown on the development plan.

Not applicable. This Project consisting of 46 multi-family units, 1 single-family detached unit and a commercial use was proposed and approved under previous DPAs.

(b) Commercial and industrial uses may be permitted in addition to the local commercial facilities permitted under paragraph (a) above, if any, subject to the following conditions:

(1) That such uses are proposed by the appropriate master plan to be located within the area covered by the planned development zone.

(2) That such uses are so designed and located as to achieve the purposes of the planned development zone and to be compatible with other uses within and adjacent to the development.

This DPA seeks to remove a binding element of approved DPA 2006-01 which specified a “Quality Restaurant” use in the street-level commercial space for this Project. Both sector plans for this area recommend first-floor commercial uses and other activating uses in new projects that would be compatible with other uses adjacent to the development. The Applicant proposes to replace the quality restaurant use with another retail or service establishment that will provide animation of the first floor commercial space. This proposal continues to be consistent with the sector plan recommendations for the area and the purpose of the PD-Zone. The finding of compatibility for the commercial use was made in an earlier DPA approval and continues to be acceptable under the subject Application.

(c) A transitory use is allowed in accordance with Section [59-A-6.13](#).

Not applicable. A transitory use is not proposed under this Amendment application.

59-C-7.133. Other uses.

(a) Noncommercial community recreational facilities which are intended exclusively for the use of the residents of the development and their guests may be permitted.

(b) Any nonresidential, noncommercial use may be permitted at the discretion of the district council on a finding that it is compatible with the planned development and satisfies the requirements of section [59-C-7.15](#).

Sections 59-C-7.133 (a) and (b) of the Zoning Ordinance are not applicable. The Subject DPA does not propose to add a non-commercial recreational facility for exclusive use of future residents to this Project.

(c) *Cable communications system as a special exception use, except as provided in sections [59-A-6.9](#) and [59-G-2.10.1](#).*

Not applicable. This DPA is not proposing a cable communication facility as a special exception use.

(d) Any special exception use in the R-90 zone, as shown in section [59-C-1.31](#), may be permitted by the district council if the use meets the requirements of section [59-G-1.2](#) and division [59-G-2](#). If the use is

proposed after the district council has approved the development plan, a petition for a special exception must be filed with the board of appeals. The board may approve the special exception if:

- (1) It finds that the use:*
 - (i) Is consistent with the design standards of the development plan; and*
 - (ii) Satisfies the requirements of [article 59-G](#); or*
- (2) The use is not consistent with the design standards of the development plan but the approval is contingent on the district council's approval of an amendment to the development plan that incorporates the special exception use.*

Not applicable, a Special Exception (S-2740) for a charitable or philanthropic institution was approved by the Board of Appeals on March 27, 2009. This conditional use was recognized by the District Council under previously approved DPA 2010-02 and remains unchanged under the subject DPA.

(e) Rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room may be installed under the guidelines contained in Sec. [59-A-6.14](#).

Not applicable. No such structures are proposed by this Amendment.

59-C-7.14. Density of residential development.

(a) An application for the planned development zone must specify one of the following density categories and the district council in granting the planned development zone must specify one of the following density categories:

<i>Density Category</i>	<i>Maximum Density (Dwelling Units per Acre)</i>
<i>Urban High</i>	
<i>PD-75</i>	<i>75</i>

Not applicable, in approving the rezoning application, the District Council approved the requested PD-75 zone and specified the density at 75 du/ac. There is no change in density under the subject DPA.

(b) The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide moderately priced dwelling units in accordance with Chapter 25A of this Code, as amended, and such other information as may be relevant. Where 2 or more parts of the proposed planned development are indicated for different densities on a master plan, a density category may be granted which would produce the same total number of dwelling units as would the several parts if calculated individually at the density indicated for each respective part and then totaled together for the entire planned development.

Not applicable, as the density and the percentage of MPDUs remain unchanged under this DPA and were approved in previous DPAs.

(c) The density of development is based on the area shown for residential use on the master plan and must not exceed the density permitted by the density category granted. However, the maximum density allowed under subsection (a) may be increased to accommodate the construction of Moderately Priced Dwelling Units and workforce housing units as follows:

(1) For projects with a residential density of less than 28 dwelling units per acre, the number of Moderately Priced Dwelling Units must not be less than either the number of bonus density units or 12.5 percent of the total number of dwelling units, whichever is greater.

(2) For projects with a residential density of more than 28 dwelling units per acre, the number of Moderately Priced Dwelling Units must be at least 12.5 percent of the total number of dwelling units under Chapter 25A.

(3) Any project with a residential density at or above 40 dwelling units per acre may provide workforce housing units under Section [59-A-6.18](#) and Chapter 25B.

Not applicable. No increase in density is proposed by the requested DPA. This Project proposes 19% MPDUs or 9 units which exceeds the 12.5 % minimum requirement under Chapter 25A.

(d) Notwithstanding the density provisions of this zone, the District Council may approve an increase in density for housing for senior adults or persons with disabilities, as defined in Section [59-A-2.1](#), within a planned development in accordance with the following requirements:

(1) The total number of dwelling units within that portion of the site proposed for such housing shall not exceed 3 times the density normally permitted for the same area under the density category requested. At least 20 percent of such housing shall be moderately priced dwelling units in accordance with Chapter 25A of this Code.

(2) The density for the remainder of the property shall not exceed the density permitted under the density category requested.

(3) In approving such density increase, the district council must find that the proposal satisfies the following:

- (a) That the total area of the planned development under application is at least 3 acres in size;*
- (b) That the site has adequate accessibility to public or private transportation, medical services, shopping areas, recreational and other community services frequently required by senior adults and persons with disabilities;*
- (c) That housing for the senior adults or persons with disabilities will be situated on not more than one-third of the total site under application;*
- (d) That the compatibility requirements of Section [59-C-7.15](#) are satisfied; and*
- (e) That the increased density to accommodate such housing is found to be in the public interest, taking into account the increased size and bulk of buildings and the impact on public facilities.*

Not applicable, as no independent living facility for seniors or persons with disabilities is proposed by this Amendment.

(4) A copy of the application and pertinent information submitted by the applicants in support of the request for increased density for housing for senior adults or persons with disabilities must be transmitted to the Department of Health and Human Services and to the Department of Housing and Community Affairs by the Hearing Examiner's office, within 5 days after the zoning application is filed, for their recommendation to the Hearing Examiner.

Not Applicable. This DPA is not requesting a density increase to provide housing for senior adults or persons with disabilities.

(5) The table in Section [59-C-7.13](#), containing the minimum requirements for the mixture of residential housing types within a planned development, shall not apply to housing for the senior adults or persons with disabilities approved in accordance with this section.

Not Applicable, the residential housing types remains unchanged under DPA 2017-01 and no housing for senior adults or persons with disabilities is proposed for the Project.

(6) The parking requirements of [Article 59-E](#) applicable to housing for the senior adults or persons with disabilities may be increased if the development plan proposes a project primarily concerned with providing facilities for independent living.

Not Applicable, as the subject DPA is not proposing this type of housing.

(e) The District Council may approve a density bonus of up to 10% above the maximum density specified in the approved and adopted master plan for the provision of TDRs, if the use of TDRs is recommended for the site.

Not applicable. No TDRs were recommended or used in the development of this Property.

59-C-7.15. Compatibility.

(a) All uses must achieve the purposes set forth in section [59-C-7.11](#) and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.

As approved in previous Development Plan and Site Plan applications, the subject DPA continues to achieve the purposes under Section 59-C-7.11 of the Zoning Ordinance, and to be compatible with the other uses existing or proposed adjacent to or in the vicinity of the area.

(b) In order to assist in accomplishing compatibility for sites that are not within, or in close proximity to a central business district or transit station development area, the following requirements apply where a planned development zone adjoins land for which the area master plan recommends a one-family detached zone:

- (1) No building other than a one-family detached residence can be constructed within 100 feet of such adjoining land; and*
- (2) No building can be constructed to a height greater than its distance from such adjoining land.*

Not applicable. The Sector Plans recommended the adjoining land to be developed under the Central Business District (CBD) and Planned Development (PD) Zones. To the north of the subject Project, the properties are zoned R-60 and are part of the NIH campus. The Sector Plan did not recommend that NIH be redeveloped under any residential detached zones.

(c) A waiver of the requirement of paragraph (b) (1), may be permitted if:

- (1) The area master plan recommends other than a one-family detached use for the property immediately adjoining the area where the waiver is to occur; and*
- (2) The immediately adjoining property will not be adversely affected by the waiver for present or future use.*

Not applicable, no request for a waiver is sought under DPA 2017-01.

(d) A waiver of subsection (b) may be permitted if:

- (1) The site is within or in close proximity to a central business district or transit station development area and reduced setbacks are recommended by the master or sector plan, and the Planning Board finds that the reduced setbacks are compatible with existing or proposed development in the adjoining or confronting one-family detached zones; or*
- (2) The site is within or in close proximity to a historic district and the Planning Board finds that reduced setbacks or increased building height will facilitate the preservation, reuse, or redevelopment of*

a designated historic district and the immediately adjoining property will not be adversely affected by the waiver.

Not applicable, no waivers are sought under this Amendment application.

(3) The maximum building height under this waiver must not exceed 50 feet.

Not applicable. Under the requested DPA, there is no change in the building height. Under DPA 2010-02, the District Council increased the maximum height from 79.4 feet to 90 feet to accommodate a higher number of MPDUs (9 units or 19%) on the Property.

(e) Compliance with these requirements does not, by itself, create a presumption of compatibility.

Not applicable, as a finding of compatibility was made during previous approvals for the Project. The subject DPA continues to be compatible with the surrounding uses and area.

59-C-7.16. Green area.

Green area must be provided in amounts not less than indicated by the following schedule:

Density Category Green Area (Percent of Gross Area)

Urban High

PD-75 30¹

¹Green area may be reduced to 35 percent for "Medium High" and "High" densities and to 20 percent for "Urban High" densities to allow the construction of all workforce housing units on site.

Not applicable, as the subject DPA continues to meet the density of the PD-75 Zone and the green area requirement of 30% for the gross tract area of the subject Site.

59-C-7.17 Dedication of Land for Public Use

A property owner must dedicate land for public streets, parks, schools, and other public uses as required by Chapter 50, the general plan, master plans, and other applicable plans. The lands to be dedicated must be identified on any development or site plan required under Section [7.3.4](#).

Not applicable. No dedication of land public use was required under previous Development Plans or Site plan approvals.

59-C-7.18 Parking facilities

Off-street parking must be provided in accordance with the requirements of [article 59-E](#).

Not applicable. The DPA continues to meet the residential off-street parking requirements and the commercial parking requirements were waived by the Planning Board under approved Site Plan Amendment 82009001A.

59-C-7.19. Procedure for application and approval.

(a) An application and a development plan must be submitted and approved under Division [59-D-1](#).

This DPA has been submitted and recommended for approval in accordance with Division 59-D-1 of the Zoning Ordinance in effect on October 29, 2014.

(b) Site plans must be submitted and approved under Division [59-D-3](#); however, the installation of a fence, not including a deer fence, on the property of a Private Educational Institution is permitted without a site plan or a site plan amendment, if the fence does not cross a public trail, path, or roadway.

Not applicable. Site Plan No. 820090010 and subsequent amendment Site Plan No. 82009001A were approved for this Project in accordance with Division 59-D-3 on July 23, 2009 and May 6, 2013, respectively. If the subject DPA is approved the Applicant will need to amend Site Plan No. 82009001A.

59-D-1.6 - Approval by District Council

59-D-1.61 - Findings

Before approving an application for classification in any of these zones, the district council must consider whether the application, including the development plan, fulfills the purposes and requirements set forth in article 59-C for the zone. In so doing, the district council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification:

(a) The proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies. However:

(1) To permit the construction of all MPDUs under Chapter 25A, including any bonus density units, on-site in zones with a maximum permitted density more than 39 dwelling units per acre or a residential FAR more than .9, a development plan may exceed:

(A) any dwelling unit per acre or FAR limit recommended in a master plan or sector plan, but must not exceed the maximum density of the zone; and

(B) any building height limit recommended in a master plan or sector plan, but must not exceed the maximum height of the zone.

The additional FAR and height allowed by this subsection is limited to the FAR and height necessary to accommodate the number of MPDUs built on site plus the number of bonus density units.

(2) To permit the construction of workforce housing units under § [59-A-6.18](#) and Chapter 25B on site, the District Council may permit:

(A) any residential density or residential FAR limit of the applicable zone to be exceeded to the extent required for the number of workforce housing units that are constructed, but not by more than 10 percent.

(B) any residential density or residential FAR limit recommended in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum density and FAR of the zone, except as provided in paragraph (1); and

(C) any building height limit recommended in a master or sector plan to be exceeded to the extent required for the number of workforce housing units that are constructed, but not to more than the maximum height of the zone.

The proposed DPA is consistent with both the *Bethesda CBD Sector Plan* and the *Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. The *Bethesda CBD Sector Plan* recommended the PD-75 Zone for this Property. The Sector Plan also recommended creating new housing in this area, including affordable housing. The *Woodmont Triangle amendment* also supported street-activating first floor uses in this

area. Under DPA 2010-01, the County Council approved a height increase from 79.4 feet to 90 feet for this Project to include 19% MPDUs or 9 units on-site. The proposed Development Plan Amendment continues to be in substantial compliance with the use and density requirements as well as the land use recommendations of both Sector Plans. No workforce housing is proposed under the subject DPA.

- (b) *That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.*

This DPA Application continues to be consistent with the purposes, standards and regulations of the PD 75 Zone as found in previous approvals for this Project. The Project will continue to provide for the maximum safety, convenience and amenities for future residents and will be compatible with adjacent development in this area.

- (c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient*

The external vehicular access points along both roadways are safe, adequate and efficient for movement and circulation patterns. Sidewalks along Woodmont Avenue and Battery Lane provide safe, adequate and efficient access for pedestrians to move from the site to the surrounding area.

- (d) *That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The site is exempt from the forest conservation requirements under Chapter 22A due to its size. The appropriate approvals for stormwater management were made under the previous site plans approvals for this Project.

- (e) *That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

As included under the previous approvals, the Homeowner's Association (HOA) documents will establish a mechanism for perpetual maintenance of the common areas.

CONCLUSION

The proposed Development Plan Amendment complies with the provisions for the PD-75 Zone of the 2004 Zoning Ordinance and the applicable sector plans recommendations. Staff recommends approval of DPA 2017-01. Furthermore, Staff recommends that the Amendment be placed on the first available District Council agenda without the necessity of a public hearing by the Hearing Examiner.

ATTACHMENTS

ATTACHMENT A – Approved Development Plan Amendment 2006-01

ATTACHMENT B - Council Resolution No. 16-98 for DPA 2006-01

ATTACHMENT C – Proposed Development Plan Amendment 2017-01

ATTACHMENT D - Master Plan Comments

ATTACHMENT E– Transportation Memo

Resolution No.: 16-98

Introduced: April 24, 2007

Adopted: April 24, 2007

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

By: County Council

SUBJECT: APPLICATION DPA 06-1 FOR DEVELOPMENT PLAN AMENDMENT OF G-808, Previously Approved by the Council on March 30, 2004; Stephen Z. Kaufman, Esquire, Heather Dlhopsky, Esquire, and Debra S. Borden, Esquire, Attorneys for the Applicants, Laurence Lipnick and Battery Lane, LLC; OPINION AND RESOLUTION ON APPLICATION; Tax Account Nos. 03379057 and 03379068.

OPINION

Applicants Laurence Lipnick and Battery Lane, LLC (a/k/a "Woodmont View"), filed Development Plan Amendment 06-1, on July 20, 2005, seeking to amend the development plan approved by the Council on March 30, 2004 in LMA G-808. That Council Resolution (No. 15-563) reclassified 21,101 square feet of land located at 4811 Battery Lane, Bethesda to the PD-75 (Planned Development) Zone and accepted Applicants' former plan to develop the property with 10 townhomes and an existing single-family, detached home. Applicants' present plan (*i.e.*, DPA 06-1) would instead develop the subject site with an eight-story (79 feet, 4 inches in height), 46 unit, mixed-use condominium, including eight moderately priced dwelling units (MPDUs) and a restaurant. The existing single-family, detached home on the northern end of the property (Mr. Lipnick's residence) would also be retained, but the existing four-story office building on the southern extreme of the property would be demolished.

The subject property (designated the "Trunnell property" in the *1994 Bethesda CBD Sector Plan*) is part of Lot 48, Block 2, Northwest Park, Plat No. 134, and is bounded by Woodmont Avenue to the east,

Battery Lane to the south, the "Aldon" property¹ (Lot 22, Block 2) to the west, and the National Institutes of Health to the north.

The application for the development plan amendment was reviewed by the Alternative Review Committee (ARC), pursuant to Zoning Ordinance §59-D-1.61(a), and the ARC found that it was not financially feasible to develop the property with eight MPDUs on site, unless bonus height and density were permitted, as requested by Applicants. Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery County Planning Board ("Planning Board") considered the application and both recommended approval, including the bonus height and density sought by Applicants. Because the changes to the development plan sought by Applicants were substantial, the Planning Board forwarded the matter to the Office of Zoning and Administrative Hearings (OZAH) for a public hearing.

That hearing was held on January 29, February 23 and March 9, 2007. The only opposition was presented by Jim Humphrey, Chair of the Planning and Land Use Committee of the Montgomery County Civic Federation (MCCF). The primary basis for MCCF's opposition was the request for height 14.3 feet above the 65 foot height limit recommended in the *1994 Bethesda CBD Sector Plan* for the Battery Lane District. On April 6, 2007, the Hearing Examiner filed his Report and Recommendation, recommending approval of the development plan amendment. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, is incorporated herein by reference. Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested development plan amendment, for the reasons set forth by the Hearing Examiner.

The subject site has approximately 60 feet of frontage with Battery Lane and 340 feet of frontage along Woodmont Avenue. The site has a gross tract area of 22,618 square feet (52% of an Acre) because Applicants acquired 1,517 square feet of excess Woodmont Avenue right-of-way (ROW) from the County

¹ The Aldon property is called that because it is run by Aldon Management, but it is referred to as "Site 1" in the 1994 Sector Plan and occasionally as the "Brown" property, because that is the surname of the current owners.

on September 13, 2004, *i.e.*, prior to this application. Applicants dedicated 596 square feet of Battery Lane ROW to the County on July 24, 2002. The site is rectangular in shape, and the topography slopes down from east to west. There are no natural resources (wetlands, streams, flood plains or forest) on the property. The public utilities (water and sewer) serving the property have adequate capacity to handle the proposed development. There is also an existing public storm drain on the adjoining property, which has adequate capacity to take storm water runoff away.

In the 1954 Regional District zoning, this area was zoned R-60. In 1958, the R-60 Zone was reaffirmed as part of the countywide comprehensive zoning. On December 6, 1977, SMA G-20 reaffirmed the R-60 Zone. On December 12, 1989, Local Map Amendment G-636 changed the R-60 Zone to the C-T Zone. That change was reaffirmed on October 11, 1994, in SMA G-711. On March 30, 2004, Local Map Amendment G-808 reclassified the subject site to the PD-75 (Planned Development) Zone in Council Resolution No. 15-563.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" takes into account those areas that would be most directly affected by the proposed development. In the present case, the Hearing Examiner appropriately adopted the definition of the surrounding area accepted by the Council in LMA G-808:

extend[ing] out from the intersection of Battery Lane and Woodmont Avenue to the Battery Lane Urban Park to the west, Norfolk Avenue and Cheltenham Drive to the south, Wisconsin Avenue to the east and the National Library of Medicine on the National Institutes of Health (NIH) campus to the north.

Surrounding the subject site are properties zoned R-60, R-10, R-10/TDR and CBD. The land use and zoning pattern for the area reflects a mix of residential, commercial and institutional land uses. North of the subject property is R-60 zoned land surrounding the Library of Medicine on the grounds of NIH. Confronting to the east and southeast are uses in the CBD-1 Zone, including a hotel on the site of a proposed 200 unit condominium building, known as 8400 Wisconsin Avenue (owned by "Crimson 8400 Bethesda,

LLC"). Confronting to the south and adjoining to the west are multi-family residential buildings in the R-10 and R-10/TDR Zones. These buildings range in height from three to five stories. Further to the west is the Battery Lane Urban Park operated by M-NCPPC. There is also a parking garage south of Battery Lane, within this area.

Pursuant to Code § 59-D-1.11, development in the PD-75 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-75 Zone or upon approval of an amendment to that development plan pursuant to Code §-D-1.7. The land use plan (Exhibit 78(b)) is a required part of the development plan, and it is entitled "Alternative Amendment To Development Plan" in this case. It shows the proposed locations of all structures, as well as additional information regarding the planned development, both in diagram and textual form. The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicants except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for an additional development plan amendment.

Binding Elements{ TC "B. Development Plan & Binding Elements" \f C \l "2" }

The textual binding elements here include the following:

1. The maximum number of dwelling units will be 47, including 17% MPDUs (or 8 MPDUs).
2. The building height is proposed for 79 feet 4 inches measured from the adjoining curb grade along Woodmont Avenue to the highest point of the main roof slab (the roof area covering the major area of the building excluding mechanical, access, elevator penthouses, and decorative gables) with final height measurement subject to review and adjustment by the Planning Board at site plan approval.
3. The minimum setbacks will be 0 feet for the front yards on Woodmont Avenue and Battery Lane, 11.5 feet for the side yard to the west, and 40.5 feet for the rear yard from the existing building at the north property line.
4. The minimum green space will be 30% of the gross tract area.

5. All green areas (including the active/passive recreation rooftop green area) for the condominium building will be accessible to all residents of the condominium building.
6. The maximum building coverage will be 60% of the site area.
7. The minimum number of parking spaces for the residential units will be 54, and the number of parking spaces required for the commercial use will comply with the Zoning Ordinance.
8. This property is subject to a Common Driveway Agreement recorded at Liber 26425, Folio 122 among the Land Records of Montgomery County. The Common Driveway Agreement sets forth the agreement between the applicant and the adjacent property owner to share certain portions of their respective properties for mutual ingress and egress from Battery Lane in order to achieve more efficient, convenient, and safer access to both properties.
9. Applicant shall submit a revised Stormwater Management Concept Plan to be approved prior to site plan.
10. The Street commercial space in the planned building will be occupied by a "Quality Restaurant" as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (*i.e.* one producing more peak hour traffic).

The District Council finds that the development plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with master plan and other County policies.

There are two applicable Master Plan documents, the *July 1994 Bethesda CBD Sector Plan*, and the *March 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan*. As observed by M-NCPPC's Community-Based Planning Division (Exhibit 25, Attachment 4):

... The current proposal meets several of the objections and recommendations of the 1994 Sector Plan in that it increases the amount of housing near Metro and helps provide a northern gateway to the Woodmont Triangle. Together with the proposed development across Woodmont Avenue, the 8400 Wisconsin project, two high-rise residential developments would frame the northern entrance to Bethesda along Woodmont Avenue. The proposal provides eight moderately priced dwelling units on site, adding to the 25 proffered by the 8400 Wisconsin Avenue project, and furthering one of the main goals of the Woodmont Triangle Amendment to the 1994 Sector Plan.

Technical Staff notes that the proposal also conforms to many of the urban design guidelines in the Sector Plan (pp. 92-94), including streetscape development, building orientation towards both Woodmont Avenue and Battery Lane, vehicular access and off-street parking, hidden underground. The proposal offers attractive architectural features, including rooflines that are compatible with adjacent development and the existing dwelling on the property. Exhibit 25, p. 6.

The Land Use Maps on page 27 of the 2006 Amendment propose a land use of "High-rise or Garden Apartments" for the subject site, evidencing the fact that the Sector Plan Amendment did not intend to preclude an eight-story residential building on the site, as long as it qualifies for the bonus height by the inclusion of on-site MPDUs. Code §59-C-7.14(c)(3) requires projects in the PD Zones with a residential density of more than 28 dwelling units per acre to have a minimum of 12.5% MPDUs, and Section 59-C-7.14(c) permits a development in the PD Zone to exceed the density specified for the PD density category (in this case PD-75) "to accommodate the construction of Moderately Priced Dwelling Units."

Although a 65 foot height limit is recommended for the area of the subject site by the Sector Plan and its 2006 Amendment, the 2006 Amendment also expressly recognizes that recommended height limits may be exceeded to allow the inclusion of MPDUs. As stated on page 10 of the 2006 Amendment,

Mixed-use projects with moderately priced dwelling units (MPDUs) on-site can achieve the greater height and density allowed in the respective zones as specified in this Amendment, but at a FAR no greater than the maximum allowed in the Zoning Ordinance.

The almost identical statement can be found on page 21 of the 2006 amendment:

Mixed-use projects with MPDUs on-site may achieve a greater height and density than allowed in the 1994 Sector Plan as specified in this Amendment, but no greater than the maximum in the Zoning Ordinance.

The Zoning Ordinance also expressly permits additional height and density in proportion to the MPDUs provided on site, as long as the ARC determines, as it has here, that the addition of MPDUs would not be financially feasible within the base limits prescribed by the Zoning Ordinance. Code §59-D-1.61(a).

Since Applicants are providing 17% MPDUs, they are permitted by Code §25A-5(c)(3) to obtain a bonus density and height of 22%. Applying that bonus percentage to the height and density limits, yields a permitted height of 79.3 feet and a permitted density of 47 dwelling units, exactly what Applicants seek in the subject case. The District Council therefore finds that the 65 foot height limit contained in both the 1994 Sector Plan and its 2006 Amendment for the subject site does not prohibit the 79.3 foot structure proposed here.

The 2006 Woodmont Triangle Amendment also encourages the location of first-floor retail in the Woodmont Triangle area. This sentiment is reiterated explicitly in one of the "Urban Design Guidelines" on page 15 of the Plan Amendment, which recommends that developments:

- Provide street-oriented retail, restaurants, and other street animating uses on the first floor of buildings located along streets such as Norfolk Avenue and Cordell Avenue.

Thus, the inclusion of a street-level restaurant, as planned for the eight-story building in this case, is perfectly consistent with the amended Sector Plan.

The County's Annual Growth Policy (AGP) and the Adequate Public Facilities Ordinance (APFO) require a review of the availability of adequate public facilities for any proposed development. The evidence is that the subject site will be supplied by ample water and sewer service; that there is adequate school capacity under the AGP schools test; and that the development comports with Local Area Transportation Review standards.

The District Council concludes that the proposed development plan will be in substantial compliance with the use and density indicated in the Master Plan and will not conflict with any other applicable county plan or policy.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The requirements for the PD-75 Zone are found in Code §59-C-7.1. PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings, all of which must be spelled out on a development plan.

The lengthy purpose clause for the PD-75 Zone (as well as the other PD Zones) is found in Code §59-C-7.11. Generally, it is the purpose of the Zone to implement the general and master plans by permitting “unified development consistent with densities proposed by the master plans.” Development in the PD Zones should be “so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development.” It is intended to produce a “coordinated mixture of residential and convenience commercial uses . . . and encourage a broad range of housing types....” It is also a purpose of the PD Zones to take advantage of open space and trees, enabling them to function “as places for relaxation, recreation and social activity.” The purpose clause also encourages large scale developments and creation of “pedestrian circulation networks, separated from vehicular roadways . . . [which will] minimize reliance upon the automobile as a means of transportation.” Finally, it is the purpose of the PD Zones “to achieve a maximum of safety, convenience and amenity for both the residents ... [and their neighbors], and to assure compatibility and coordination of each development with existing and proposed surrounding land uses.”

As discussed above, the proposed development will be in substantial compliance with the *Bethesda CBD Sector Plan, as Amended*. Accordingly, the application will comply with the first element of the

purpose clause by allowing implementation of applicable Master Plan objectives. However, the small size of the intended development makes it virtually impossible for the builder to satisfy each element of the purpose clause unless one evaluates this development as part of the larger neighborhood.

Typically, developments in the PD Zone are, as mentioned in the “purpose clause,” large in scale, a characteristic which enables the developer to employ the kinds of pedestrian circulation networks, open spaces and recreational areas which are goals of the Zone. The small size of this project limits the use of extensive common areas and pedestrian circulation networks. Nevertheless, Zoning Code §59-C-7.122 does recognize that a PD Zone may be applied to small developments, and this project’s location near the heart of Bethesda allows it to achieve the PD Zone’s social interaction goals in the context of the surrounding area. The development will be close enough for people to walk to nearby restaurants, shops and entertainment.

Moreover, the new development plan calls for a much larger project than originally planned (*i.e.* the original plan called for 10 townhouses, while the plan amendment would allow a 46 unit building to be added to the site). The additional size allows Applicants to supply additional amenities, such as a restaurant and roof-top common areas. Thus, the present application is more in keeping with the purposes of the PD-75 Zone than the original proposal approved by the Council in LMA G-808. More importantly, it will provide a diversity of housing types, called for in the “purpose” clause, but not provided under the G-808 townhouse plan.

Visually, the planned structure will be an improvement over the present office building and gravel parking lot. As noted by the Technical Staff, the new building will front on both Woodmont Avenue and Battery Lane to activate the streetscape. The architecture was designed to blend well with the existing single-family home on the site, and it will provide an interesting gateway to Woodmont Triangle from the north.

In addition, the proposed development would provide the “maximum of safety, convenience and amenity” for both the residents and their neighbors, another stated purpose of the PD Zone. The eight-story structure will have safe vehicular access via the recessed drop-off area on Woodmont Avenue and the existing single driveway on Battery Lane. Parking will be in a two-level underground garage, except for the service court parking and the existing two-car garage attached to the Lipnick residence. The uncontradicted record in this case establishes that vehicular and pedestrian access and circulation will be safe and efficient. Moreover, living within easy walking distance of a Metro station and having the numerous Bethesda retail establishments as well as the Battery Lane Local Park in the neighborhood will be great conveniences. Residents and the public will also benefit from the 30% green area proposed for this project, although the roof-top green space will not be available to the general public.

The goal of visual compatibility will be achieved by designing the proposed building to mesh architecturally with the existing detached, single-family home, and by the similarity of the proposed eight-story building to other structures existing and planned in the surrounding area. In fact, the new development plan calls for a structure that is more in keeping with its surrounding area than the townhouse proposal approved in G-808. Land use compatibility is provided by the fact that the proposed residential use fits in well both with the nearby residential uses and with the variety of local amenities available in Bethesda within walking distance. It is also consistent with the Land Use Plan provided on page 27 of the 2006 Woodmont Triangle Amendment.

Technical Staff correctly observes that “the building height provided will be compatible with adjacent development and will integrate mutually compatible uses,” because “[t]he proposed height is higher than adjacent mid-rise residential development to the west, but it is lower than adjacent residential development at 8400 Wisconsin Avenue, which is 100 feet.” Also, “[t]he residential use is consistent with existing and planned land use in the surrounding area ... [and t]he commercial use . . . [will] fit into the fabric of the urban environment of the Bethesda CBD.” Exhibit 25, p.6. It should also be noted that the

Amended Sector Plan allows heights up to 110 feet directly across Battery Lane to the south (Diagram on Page 12 of the Sector Plan Amendment); and the property to the north is NIH, an institutional use with large buildings.

The proposed use of the subject site as a mixed-use, multi-family dwelling is also consistent with the planned use across Woodmont Avenue and with the other existing uses on Battery Lane, almost all of which are multi-family structures. Finally, the proposed building is compatible with the more urban style of development that is planned for the Woodmont Triangle area under the Sector Plan Amendment. The District Council finds that the new proposal for a mixed-use, eight-story condominium, would be more compatible with the surrounding area than the initial plan of ten townhouses for the subject site.

In sum, the proposed development is consistent with the intent and purposes of the PD-75 Zone. We next look to the “standards and regulations” of the PD-75 Zone, which are spelled out in Zoning Ordinance §§59-C-7.12 through 7.18.

Code Sections 59-C-7.121 and 59-C-7.122 are inapplicable because this application does not seek a reclassification of the zone, but only a development plan amendment.

Pursuant to Code §59-C-7.131, all types of residential uses are permitted in the PD-75 Zone except detached, single-family homes. The existing detached, single-family house on the site is permitted to remain because it predated the rezoning, approved by the Council in G-808. The Council determined at that time that it is a nonconforming use subject to the restrictions contained in Division 59-G-4 of the Zoning Ordinance.

Code Section 59-C-7.132(b) permits commercial uses in the PD-75 Zone under specified circumstances. Applicants seek to include a small amount of restaurant commercial space (3200 square feet of gross floor area) on the first floor of their proposed eight-story building. The District Council finds that such commercial space is permitted under Section 59-C-7.132(b) because the *Bethesda CBD Sector*

Plan endorses such uses for the area. This application also satisfies the alternative prong of this section because a restaurant use would achieve the purpose of the zone by adding an additional and compatible amenity.

Section 59-C-7.14 determines the appropriate density category for the zone when reclassification is sought. That is not the case here, so this section is inapplicable.

Code Section 59-C-7.15, addresses compatibility, a subject which has already been discussed in the context of the Zone's purpose clause. Based on the preponderance of the evidence, the District Council concludes that the development proposed on the subject property would be compatible with and would not adversely affect the character of adjacent development.

Section 59-C-7.16 requires 30% green area for the PD-75 Zone. Textual Binding Element #4 of the Amended Development Plan calls for a minimum of 30% green area, thus meeting the 30% green-area requirement under the PD-75 density category.

Section 59-C-7.17, discusses dedication of land for public use. Applicants previously dedicated of 596 square feet of right-of-way along Battery Lane. No additional dedication is planned.

Section 59-C-7.18 specifies that off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. In this case, eighty-eight (88) parking spaces are required for the site, including both the residential requirements (54 spaces)² and commercial requirements (34 spaces). Applicants will provide the required 88 spaces on site in a two-level underground garage (75 spaces); in the service court (11 spaces); and in the exiting garage attached to the Lipnick single-family home (2 spaces).

² The number of residential parking spaces required in this case is reduced by 17% (from 65 to 54) pursuant to Zoning Ordinance §59-E-3.33(b)(3) because Applicants will be providing 17% of their dwelling units as MPDUs.

In sum, the District Council finds that Applicants have complied with all of the purposes, standards and regulations of the PD-75 Zone, as set forth in Article 59-C of the Zoning Ordinance.

The next finding required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-75 Zone, it has been discussed in that context, above. As noted there, Applicants have provided the maximum in safety, convenience and amenities for the future residents of this development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The development plan provides an improved pedestrian circulation network with wider sidewalks and better access for residents and the public traveling through the area. As noted previously, the project is designed to provide safe, adequate, and efficient access for vehicles and pedestrians. Vehicular points of access will be provided on both Woodmont Avenue and Battery Lane. The Applicants have negotiated a common driveway agreement with the owner of the adjacent multi-family development to accommodate a shared driveway. The overwhelming evidence is that the site will provide safe, adequate and efficient pedestrian and vehicular access. Accordingly, the District Council finds that the proposed circulation systems and site access would be safe, adequate and efficient.

§59-D-1.61(d): preservation of natural features

There are no forests, specimen trees or natural features existing on the site. The site, which is mostly impervious at present, was significantly graded to construct the existing office building and parking lot. Applicants submitted a Natural Resources Inventory and Forest Stand Delineation (NRI/FSD), and received an exemption from the M-NCPPC as to forest conservation requirements in connection with LMA G-808. That exemption is still in effect. A Preliminary Storm Water Management Concept and Sediment Control Plan was also approved by the Department of Permitting Services in conjunction with LMA G-808;

however, Technical Staff determined that an amended plan must be filed prior to site plan review in the current case. Applicants agreed to add a textual binding element stipulating that a revised stormwater management concept plan will be submitted and must be approved prior to site plan. It is now Textual Binding Element #9.

In sum, the District Council finds that Applicants have demonstrated the environmental controls required by "Finding (d)."

§59-D-1.61(e): common area maintenance.

The property is owned by Co-Applicant, Laurence Lipnick, as demonstrated by the deed to the property filed as Exhibit 75. According to Applicants' counsel, Applicants will form a condominium association, which will be responsible for maintenance of common and quasi-public areas. He submitted a sample "Declaration of Condominium" of the kind which will be used for this development (Exhibit 76). It includes a provision (Article 2, Section 2.1(b)) for maintenance of common elements by the "Council of Unit Owners."

The District Council finds that Applicants have sufficiently demonstrated both ownership of the property and their commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The final finding which is required under Maryland law is that the proposed Development Plan Amendment will be in the public interest. The proposed development will promote the "health, safety, morals, comfort, and welfare of the inhabitants of the regional district" (i.e., the public interest) by providing the kind of residential development called for in the 1994 Bethesda CBD Sector Plan, and the affordable housing which is a goal of the 2006 Woodmont Triangle Amendment, without any adverse effect on public facilities. It will offer an attractive transition from the north into the denser portions of

Bethesda and will bring more residents within walking distance of Metro and a variety of convenience retail establishments in Bethesda. In sum, the District Council finds that the proposed Development Plan Amendment is in the public interest.

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the PD-75 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested development plan amendment has been shown to be in the public interest. The District Council also finds that the legal issues raised by the People's Counsel and MCCF were appropriately decided by the Hearing Examiner, as detailed in his report. For these reasons and because approval of the instant application for a development plan amendment will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

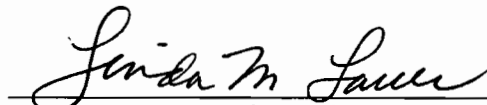
ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

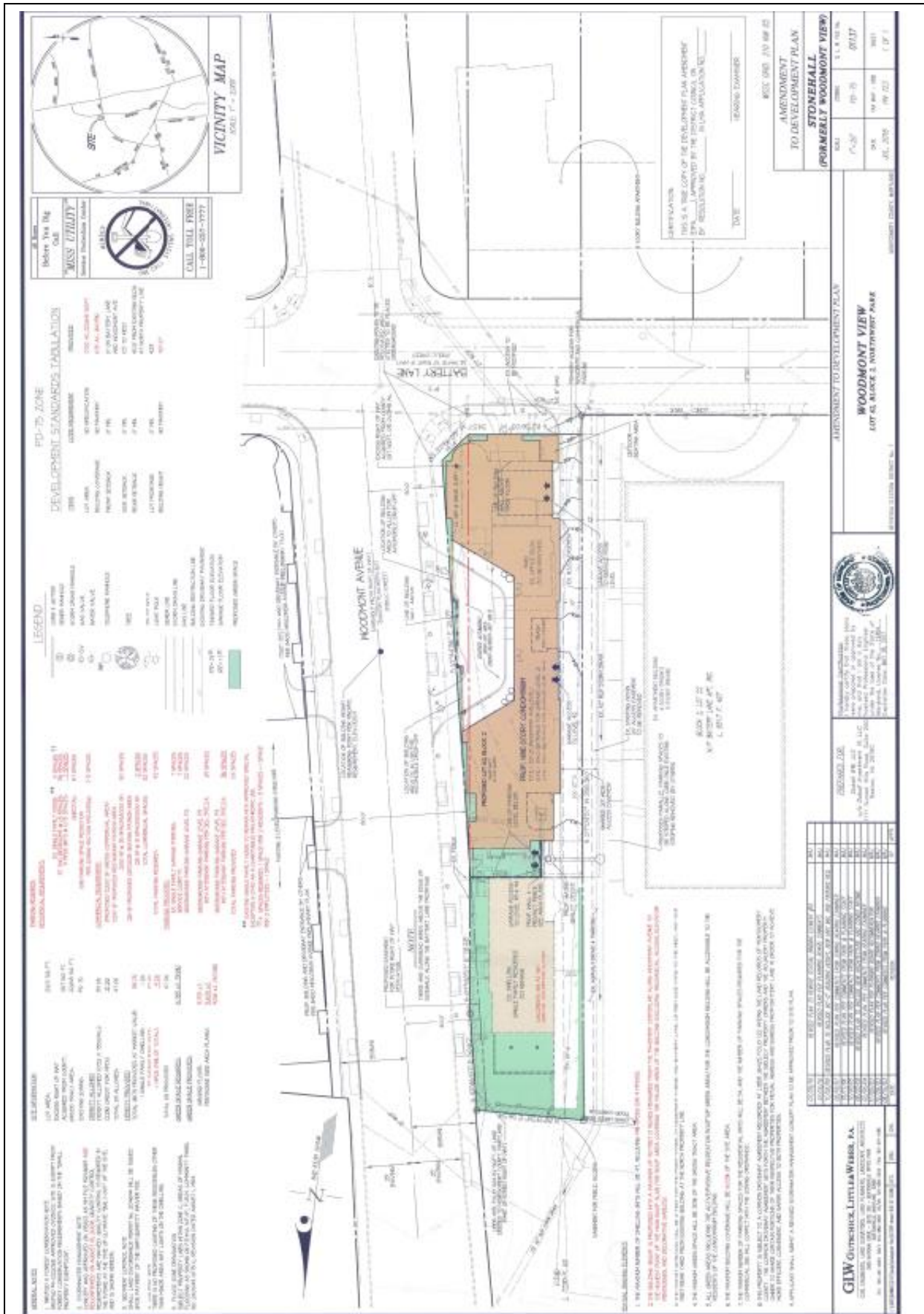
Development Plan Amendment (DPA) 06-1, requesting amendment of the Development Plan approved by the Council on March 30, 2004, in Local Map Amendment (LMA) # G-808, regarding the property located on part of Lot 48, Block 2, Northwest Park Subdivision, Plat No. 134, in the Seventh Election District, at 4811 Battery Lane, in the northwest quadrant of Woodmont Avenue and Battery Lane, in Bethesda, is approved subject to the specifications and requirements of the Development Plan

Amendment, Exhibit 78(b), provided that the Applicants submit to the Hearing Examiner, for certification, a reproducible original and three copies of the approved Development Plan Amendment within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



Reilly, Kathy

From: Howerton, Leslye
Sent: Tuesday, September 13, 2016 7:53 AM
To: Reilly, Kathy
Subject: DPA 2017-01

Kathy,

Master Plan Conformance Review – The applicant’s request to remove the Textual Binding Element #10 is in conformance with both the Bethesda CBD Sector Plan and the 2006 Woodmont Triangle Amendment to the Bethesda CBD Sector Plan. Staff would recommend that the applicant fill the space with some type of commercial space that includes “street-oriented ground floor activating uses” which is more in keeping the master plan recommendations for the area.

Leslye

Sent from my iPhone



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 9, 2016

MEMORANDUM

TO: Kathy Reilly, AICP
Area 1 Planning Division

FROM: Matthew Folden, AICP
Area 1 Planning Division

SUBJECT: Stonehall (Formerly Woodmont View)
Development Plan Amendment (DPA) 17-01
Bethesda Central Business District Policy Area

This memorandum summarizes transportation planning staff's review of the subject Development Plan Amendment requesting to remove Textual Binding Element #10, which states:

"The street commercial space in the planned building will be occupied by a 'Quality Restaurant' as described in the Institute of Transportation Engineers (ITE) Trip Generation Manual, 7th Edition, page 1703, not by any more intensive commercial use (i.e., one producing more peak hour traffic)."

Analysis

The intent of Binding Element #10 was to establish a maximum number of estimated peak hour vehicular trips for the Subject Property to ensure that the proposed development did not exceed capacity limits of intersections within close proximity to the Site (i.e. a local area transportation review). Binding Element #10 references a specific trip generation rate, in the 7th Edition of the ITE Trip Generation Manual, that equates to three morning peak hour trips and 24 evening peak hour trips.

The Subject Application requests that the Binding Element be eliminated in order to provide flexibility in implementing the Development Plan. Specifically, the Applicant no longer believes that a "Quality" restaurant¹ can be successful in this location and therefore requests that the Site be improved with any retail/ service establishment, currently defined by 59.3.5.11.B.1 of the Zoning Ordinance, within the previously approved ground floor commercial space. Under the 2013 Local Area Transportation Review (LATR) Guidelines, ground floor retail and restaurant uses in the Bethesda Central Business District generate the same number of trips, therefore, the estimated number of peak hour trips for either a restaurant or retail use would be two morning trips or eight evening trips. Under the revised approach using LATR rates, vehicular trips generated by a restaurant or retail use would remain within the previously approved trip cap. Table 1 provides a comparison of the previously approved Quality Restaurant and proposed LATR trip generation.

¹ The "Quality" restaurant land use code is used to specify restaurant uses that are full service where patrons commonly make reservations or wait to be seated and are served by a waiter or waitress.

Table 1: Peak Hour Trip Generation Comparison

Trip Generation	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
3,200 SF Quality Restaurant ²	2	1	3	16	8	24
3,200 SF Bethesda CBD Restaurant/ Retail ³	1	1	2	4	4	8
Net New Trips	(1)	0	(1)	(8)	(4)	(16)

Conclusion

Modifying the Binding Element to allow a retail/service establishment use that does not exceed more than three (3) morning peak hour vehicular trips and twenty-four evening peak hour vehicular trips. Staff recommends approval of the Development Plan Amendment.

² Institute of Transportation Engineers Trip Generation Manual, 7th Edition (AM: 0.81/1,000 SF; PM: 7.49/1,000 SF)

³ Montgomery County Local Area Transportation Review Guidelines, January 2013 (AM: 0.65/1,000 SF; PM: 2.60/1,000 SF)