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Testimony before Hearing Examiner - Limited Map Amendment Application No. G-892

I am Jim Humphrey, a volunteer advisor to individuals and neighborhood groups in Montgomery County on a range of land use matters including master planning, development review and rezoning. I am not a lawyer and have no formal education in land use planning, but have learned quite a bit in my 9 1/2 years as an unpaid activist in this field.

I urge the Hearing Examiner to recommend the District Council disapprove the application for rezoning of the Chelsea School site, located at 630 Ellsworth Drive in Silver Spring, from the R-60 to RT-15 zone. This position stems from my view that the 2000 North Silver Spring Master Plan recommends against rezoning of this R-60 property. And I believe that it is only when government decisions are consistent with County master and sector plans that these plans have any degree of reliability for prospective purchasers of property, for developers, and for neighborhood residents.

When a Special Exception use on a property is no longer desired and is vacated, as is the case with the Chelsea School, then the development standards for the property revert to those allowed by the zone in place--the R-60 Zone, in this instance.

In order to approve a Limited Map Amendment under the optional method of application and apply the RT-15 Zone to this property, as requested by the Applicant, the District Council must find that the application is "in accordance with the requirements of the purpose clause and all other requirements applicable to the requested zone." (County Code, Sec.59-H-2.51) I strongly disagree with the assertion of the Planning staff and the Board that the Applicant's proposed project satisfies the purpose of the RT-15 zone.

As stated in the Zoning Ordinance [County Code Sec.59-C-1.721],  
"The purpose of the R-T Zone is to provide suitable sites for townhouses:

- (a) In sections of the County that are designated or appropriate for residential development at densities allowed in the R-T Zones; or
- (b) In locations in the County where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses."

- Is the subject site "designated" for RT zoning in the master plan?

No. This fact is indisputable. The 2000 North and West Silver Spring Master Plan "reconfirms the existing R-60 Zone for virtually all of North Silver Spring with a few exceptions..." Those exceptions include recommendations for:

- townhouse zoning along Georgia Avenue outside of the Silver Spring Sector Plan Area,
- the Special Exception commercial use in the R-60 zoned single-family home structures on Cedar Street from Ellsworth Drive to Pershing Drive,
- and R-60 cluster zoning on the 3 acre Watts property.

The Chelsea School site was not one of those exceptions and, whether it was specifically mentioned or not, the Master Plan pointedly reconfirms the R-60 zoning for the subject site.

- Is the subject site "appropriate for densities allowed in the RT Zones"?

No, because of the use of the plural--"densities"--in this section of the purpose clause. The townhouse zones are composed of five different density levels allowing 6, 8, 10, 12.5 or 15 dwelling units per acre. I believe the subject site is appropriate for one of the density levels allowed in the RT Zones, the RT-6 Zone, because this is the level of density allowed by the R-60 Zone in the surrounding single-family home neighborhood-- 6 dwelling units per acre. But the Applicant could build townhouses on the site under the existing R-60 zoning at a 6.1 dwelling unit per acre density, in certain circumstances, without rezoning. I do not believe the site is appropriate for the greater densities allowed in the RT Zones of 8, 10, 12 1/2 or 15 du per acre.

The North Silver Spring Master Plan neighborhood that surrounds the subject site contains primarily R-60 single-family detached homes, with the notable exceptions of the multi-family residential high-rise building on the east side of Colesville Road at Cedar Street and the Springvale Terrace Retirement Community on the west side of Wayne Avenue at Springvale Road. These developments existed at the time of the 2000 Plan, yet the Plan still "reconfirms R-60 zoning for virtually all of North Silver Spring..." And using the existence of these developments as justification for rezoning the subject site requires a leap of imagination not envisioned by the District Council when they approved the North Silver Spring Plan in 2000.

Because the vast majority of the surrounding neighborhood has a density less than one-half of the level requested by the Applicant, we find the density of the requested RT-15 Zone to be inappropriate.

Some might believe that the subject site is appropriate for townhouse development at 15 dwelling per acre density because of its proximity to the Silver Spring Central Business District and Metro station. In this case, I assert that "close" doesn't count. The fact is that this site is not located in the Silver Spring Central Business District or the Silver

Spring Metro Station Policy Area (see MSPA definition in Attachment 1). It is on the other side of the Cedar Street boundary line from the CBD and the MSPA. And in zoning, lines are established on maps for a reason--certain things are allowed or encouraged on one side of a boundary line which are not allowed or encouraged on the other side of that line. While the County may "pursue a goal of encouraging development in areas well-served by existing transit facilities" (i.e., Metro Station Policy Areas), it has no policy that I am aware of that encourages development within the stable, well-maintained, existing residential neighborhoods surrounding transit station areas.

- Is the subject site one of the "locations in the county where there is a need for buffer or transitional uses between commercial, industrial, or high-density apartment uses and low-density one-family uses"?

No. As Planning staff noted in their May 14 packet, "a row of one-family detached houses, all with a Master Plan recommendation for special exception office uses, is located directly south of the subject property along Cedar Street." [pg. 3, Staff packet] The 2000 Master Plan strongly recommends that "the existing residential structures be retained" as well as their R-60 zoning. These Cedar Street structures serve as a very effective buffer between the Silver Spring CBD and the Evanswood residential neighborhood. Rezoning the subject site would be a transition in the wrong direction, and would allow greater density of development further into this neighborhood than exists, by master plan design, at the edge of the neighborhood.

#### Compatibility

During discussion of this G-892 rezoning application at the May 19 meeting of the Planning Board, Board Chair Françoise Carrier remarked that to insure compatibility of the proposed townhouse project with the surrounding single-family detached home neighborhood, the townhouses should keep to the height limit and the setbacks required in the R-60 Zone. She failed, however, to address a third standard that is applied when one assesses compatibility, that of the mass. Is the mass of the proposed structures compatible with the single-family home structures that comprise this neighborhood?

In my opinion, compatibility in this case is not so much a question of the mass of a single townhouse stick (row) compared to a single-family detached home. Yes, the mass of a stick of townhouses is significantly larger than that of the single-family detached homes allowed in the R-60 Zone. But in this case, I believe compatibility must be assessed from the perspective of the cumulative effect of the twelve sticks of townhouses proposed by the Applicant for the site.

I believe to achieve compatibility of townhouses with the surrounding neighborhood in this case, it is first necessary to allow no greater density than is allowed for detached homes in the R-60 Zone--6 dwelling units per acre, or in the case of clustering or Optional Method with MPDUs 6.1 du per acre. It is also critical to impose greater setbacks than those required in the R-60 Zone, and to make greater use of landscaping and other buffers and carefully site the townhouse sticks to minimize the visual impact of

their mass on nearby neighbors. In my opinion, this will not be possible at the 14.67 dwelling unit per acre density proposed by the Applicant.

Change or mistake?

The only other legal justifications for District Council approval of such a rezoning request that I am aware of might be provided by the Maryland State "change and mistake" law. But there has been no change in the neighborhood surrounding the subject site that was unforeseen in the applicable master plan which would justify application of a new zone. And no party has asserted a mistake in the original site zoning as a rationale for the requested rezoning to the RT townhouse zone.

If it is approved by the District Council, this rezoning would constitute the first change in this North Silver Spring community that was not anticipated in the 2000 Master Plan. It would qualify as the "change" in the neighborhood that could be used to justify approval of future rezoning requests of R-60 properties to the RT townhouse Zone. The danger for nearby homeowners is that this rezoning could be the first step down a slippery slope of multiple changes in this Master Plan that would render that Plan unreliable as a blueprint for the future of this area.

Conclusion

It is my belief that the rezoning requested by the Applicant in Limited Map Amendment No. G-892 is not justified. The RT-15 Zone is not recommended for the subject site in the applicable master plan, 15 du per acre is not an appropriate density for the site, and townhouse zoning is not needed in this location to buffer the neighborhood from nearby higher density uses. The rezoning would in fact create a buffer in the "wrong direction" allowing greater density further into the neighborhood than at the existing buffer of single-family home structures along Cedar Street, which have been retained as a result of master plan recommendation.

I respectfully urge the Hearing Examiner to support adherence to the 2000 North Silver Spring Master Plan, and help insure the continued validity of the Plan, by recommending the District Council disapprove this rezoning application. Thank you.

## ATTACHMENT 1

(recreation from FY2003 Annual Growth Policy, pages 66 and 68)

### **Glossary and Definitions of Key Variables**

In some cases, terms used in the Annual Growth Policy were developed specifically to express a concept or a procedure that is unique to Montgomery County. In other cases, standard terms (such as "job") have a very specific meaning when used in the AGP. The following glossary was compiled to give more of an explanation to those terms than is possible in the AGP resolution.

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**Metro Station Policy Areas:** One of the compact policy areas atop Metro stations. Creation of these policy areas enables the County to pursue a goal of encouraging development in areas well-served by existing transit facilities. For AGP purposes, development in "Metro station policy areas" is eligible for special approval procedures because the location of development near high-quality transit has less impact on the overall transportation network. The most notable of these provisions is the *Alternative Review Procedure for Metro Station Policy Areas*. Metro station policy areas are: Bethesda CBD, Friendship Heights, Glenmont, Grosvenor, Shady Grove, Silver Spring CBD, Twinbrook, White Flint, and Wheaton CBD.