

MCPB 05/15/08

Item #9

(Public Testimony Documents received prior to Public Hearing)

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

May 2, 2008

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

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

Dear Planning Board Members:

On behalf of my family, I am submitting the following testimony into the record on the proposed limited “amendment” to the Wheaton Sector Plan as recommended in the Public Hearing Draft dated April 2008.

My family owns the property located at 2401 Blueridge Avenue in Wheaton, Maryland. We have a 5,500 square foot property with an existing four-story office building. We have operated our business, Miles Realty Company, from this location for more than 40 years. We and our 15 business tenants have a long-term commitment to Wheaton. Our building will be surrounded on three sides by the AvalonBay development, and we and our tenants will be profoundly impacted.

As recommended by staff, the limited “amendment” will: (1) move the Central Business District boundary; and (2) recommend rezoning. These actions are intended to accommodate one project – the proposed development of Lots 5, 6, 7 and Parcel C (“AvalonBay Property”). For the reasons summarized in this letter, we ask that the Planning Board suspend its consideration of this matter and instead take it up in the context of the Wheaton Sector Plan amendment, which already is underway.

First, although this process is entitled a “limited” amendment to the Wheaton Sector Plan, in reality it is an attempt to spot zone the AvalonBay Property, which is the sole beneficiary of this “limited” amendment. If approved, any rezoning associated with this process will constitute – at a minimum - illegal spot zoning and special legislation.

Second, from a planning perspective, this pre-emptive rezoning of the AvalonBay Property in advance of decisions in the current Wheaton Sector Plan Amendment process will have the practical consequence of excluding the AvalonBay Property from consideration. Who is going to spend any time making master plan recommendations for a site that was rezoned while the master plan was underway? The AvalonBay Property will become a “hole in the donut” – it will affect the final shape of the Wheaton Sector Plan vision but will not be a part of it, since it will have been reviewed in isolation rather than in the context of the entire planning area. This is particularly disturbing because the proposed rezoning is not simply a change in density (to allow more commercial office space than allowed under the current zone). It will effect a profound change in **use**, from a commercial office zone to a zone that will allow predominantly residential development. This makes even more important a comprehensive look at the impact on this change in use will have on the entire spectrum of land use implications, including impacts on schools, traffic, circulation and parking. Instead of comprehensive rezoning, this effort appears to be classic piecemeal zoning – an ill advised approach to planning and an illegal approach to rezoning.

I spent Wednesday evening at the “kickoff” meeting for the Wheaton Sector Plan Amendment process, and listened to staff explain in clear and persuasive terms how Wheaton needs to find a unified and comprehensive “vision” for how it will develop. I do not understand how a comprehensive vision can be achieved if the master plan can be fragmented for the purpose of facilitating a particular development. The uses recommended for one property have a very real impact throughout the planning area, creating a domino effect on planning efforts in the broader Sector Plan. For example, a rezoning of the AvalonBay Property– if implemented – is intended to relocate the existing Safeway to the AvalonBay Property. This will leave the current Safeway site vacant. Because the AvalonBay Property will have been carved out of the plan for all practical purposes, comprehensive planning recommendations that address both the existing Safeway site and the AvalonBay Property during the Sector Plan Amendment will be impossible.

The piecemeal approach to this site is underscored by the fact that our property – which is surrounded by the AvalonBay Property on three sides – will be profoundly impacted by the AvalonBay rezoning. Those impacts will not be considered in the broader context of the overall Sector Plan. The need for a unified look at traffic, circulation, parking, building height, open space, sustainability and schools was repeated a number of times during the Wheaton Sector Plan kickoff meeting. To point to just one example of how this comprehensive planning effort will be compromised – with a direct effect on our property -- we need only to look at the road network. The AvalonBay Property has significant frontage on Georgia Avenue and is located only two blocks from University Boulevard. These are two of the three state roads that intersect within the Wheaton Sector Plan boundaries. At the kickoff meeting, community members and Park and Planning staff commented numerous times on the need

to have a unified approach to this road network. Residential uses have a very different dynamic from office uses. A preemptive decision with respect to land use on the AvalonBay Property will preclude any meaningful unified land use analysis within that vicinity. Our property, which stands alone in the middle of the AvalonBay Property, will suffer from the fact that it will be impossible to later implement any meaningful changes to the AvalonBay Property frontage along Georgia Avenue through recommendations that otherwise would be made during the larger Sector Plan review process.

Finally, the master plan process is a call for community involvement, engagement and participation. The Planning Board has a stated goal of transparency in the land use and development process. This truncated "master plan" circumvents all of these goals. It is simply the third attempt to achieve what AvalonBay has been unable to achieve to date, *i.e.*, a rezoning of its property. AvalonBay filed an application to rezone its property. The County Council denied that rezoning, at least in part because it did not conform to master plan recommendations. AvalonBay then sought a zoning text amendment (ZTA 07-13) to eliminate the statutory master plan conformance requirement. That zoning text amendment has been sidelined. Now AvalonBay seeks to eliminate the master plan itself as an impediment. A vote to approve the Staff Draft is a vote to bypass the overarching goals of community involvement and transparency in favor of AvalonBay's special interests.

For these legal, practical and policy reasons we ask that the Planning Board defer action on this matter until it can be properly reviewed comprehensively along with, and as part of, the Wheaton Sector Plan Amendment process.

Sincerely,

/s/

Harold Weinberg

Cc: Fred Boyd