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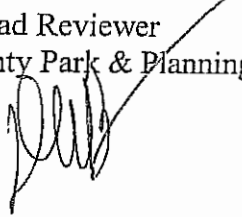
WRITER'S DIRECT DIAL

(301) 545-6105

DAVID W. BROWN

## MEMORANDUM

**To:** Grace Bodgan, Lead Reviewer  
Montgomery County Park & Planning

**From:** David W. Brown 

**Date:** June 20, 2019

**Subject:** Sketch Plan 320190100  
Threshold Zoning Issues for the JLB Realty Project, 8015 Old Georgetown Road

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## FACTS

JLB has submitted a sketch plan to develop 8015 Old Georgetown Road (the "Property"). The Statement of Justification (SOJ) states that the building will be up to 90' in height, with a gross floor area of up to 320,000 sq. ft., for an FAR of up to 2.92. SOJ at 19-20. The gross tract area (GTA) is represented to be 109,677 sq ft. The Property is zoned CR-2.5, C-0.75, R-1.75, H-120. Implicit in this planned density, JLB will be seeking an allocation of additional density from BOZ (Bethesda Overlay Zone) Density. § 59.4.9.2. The anticipated amount is 45,808 sq. ft., of which 28,811 sq. ft. will be allocated to MPDU's, which will be 15% of the units. That part of the allocation is thus expected to be exempt from the PIP purchase price of \$10/sq ft., § 59.4.9.2.C.3.c.i., and the resulting cost to JLB will be about  $(45,808 - 28,811) \times \$10 = \$169,970$ . § 59.4.9.2.C.2.b.ii.B. The SOJ also notes that while the Property was subject to a Development Plan approved when the property was rezoned from R-60 to PD-44, due to the Sectional Map Amendment implemented in connection with the Bethesda Downtown Plan, a new development approval under CR Optional Method zoning may be sought. § 59.7.7.1.B.5. Review of the sketch plan is step one in that process.

This memorandum discusses what I characterize as two "threshold" zoning problems with the sketch plan. They are "threshold" in the sense that they are fundamental problems with the plan that transcend and impair rational, detailed analysis of most of the key land use characteristics that are the subject of sketch and site plans, such as building layout, open space, compatibility with the neighboring single-family residences, parking, loading, and many more, including obtaining reliable commentary through the DRC process from other agencies. More specifically, as detailed below, the application seriously overstates the gross tract area (GTA) of the Property and even more substantially misstates the quantitative FAR constraints on its development, not just on

account of the GTA error, but also in ignoring the FAR limitations applicable to the Property in its CR designations. Until the sketch plan is corrected for these fundamental mistakes, there is simply no point to detailed DRC and staff review.

## ANALYSIS

### 1. The Gross Tract Area Is Substantially Overstated

The GTA for the Property was determined in connection with the Development Plan approved by the Council when the Property was rezoned to the PD-44 zone in LMA G-864. In the course of the LMA proceeding, it was determined that the GTA of the Property is 87,417 sq. ft. This is inclusive of two areas of public right-of-way that were abandoned by the Council in connection with approval of the Development Plan. **Exhibit 1.** Without those additions, the GTA was found to be 81,404 sq. ft. With the CR rezoning, the PD-44 Development Plan is no longer one that JLB is bound by ( i.e., its binding elements), but the size of the Property did not change with the rezoning.

The GTA of the Property was a contested issue in the LMA G-864 hearing before the Hearing Examiner. The applicant responded to questions about its GTA calculations with detailed evidence on this issue, including an ALTA/ACSM Land Title Survey. The Survey documented, parcel-by-parcel and lot-by-lot, that the GTA was 81,404 sq. ft. **Exhibit 2 (memo); Exhibit 3 (survey drawing).**<sup>1</sup> Later, this number was amended to add the abandonment areas, bringing the final total in Exhibit 1 to 87,417 sq. ft.

The owner of the Property, the Christ Evangelical Lutheran Church (CLEC), has been the owner of the Property at all relevant times in the rezoning/redevelopment process. While it has now switched a third time to a different contract purchaser for the Property, it cannot inexplicably sponsor a change in a fixed number like the size of the Property, and certainly not without a detailed explanation for why its earlier agent in the process was in error about the 81,417 sq. ft. number. Those representations were made in a hearing where the applicant was represented by the same law firm now representing JLB. On the sketch plan record there is no such explanation in any of the submitted materials for why the GTA has suddenly jumped to 109,677 sq. ft., a remarkable 25% increase in the size of the Property!

Examination of JLB's "Tract Area Exhibit," SK 507, reveals the source of much of the error in the magical Property enlargement. In that Exhibit, tracts 4-8 are identified as "previous takings" from Old Georgetown Road. Their GTA total, according to JLB, is 15,912 sq. ft. But in the LMA G-864 hearing, the applicant submitted a copy of Plat 407 from 1929, which is the only subdivision plat relating to the Property. **Exhibit 4.** It shows Old Georgetown Road with a 60' right-of-way and the Washington & Rockville Electric RR running down the middle of the ROW. Whether or not this Plat constitutes a dedication of Glenbrook Road and Rugby Avenue, it is

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<sup>1</sup> These are LMA-864 exhibits 302(a) and 302(c), respectively.

plainly not evidence of dedication on Old Georgetown Road. To the contrary, Plat 407 is indicative that Old Georgetown Road and the railway predated Plat 407. Furthermore, underlying the LMA G-864-introduced survey and also introduced into the LMA G-864 record (as Exhibits 304(c) through 304(j)), are the grantor-to-SHA deeds identified in SK507 for tracts 4-8, along with the deeds showing when the grantors acquired their properties. In every case, the grantor on the deed to SHA was the prior owner of the property from which the “previous takings” were assertedly made. Unless JLB has information not heretofore disclosed in LMA G-864, those deeds must necessarily be viewed as transfers for value, not dedications. As such, the land does not get added back into the GTA of the Property for development purposes. § 59.4.1.7.A.1.

That at best leaves only JLB’s tracts 2 & 3 at issue; they are claimed to total 6,633 sq. ft. to be added to the GTA. Again, however, there is in this record no documentation as to that amount, nor is there any evidence explaining why CLEC’s agents in the course of LMA-864 were presumably in error in excluding these two tracts from what its detailed survey concluded was the Property GTA. Absent a rational explanation for the omission, JLB should be bound by the determinations CLEC sponsored in obtaining Development Plan approval in LMA G-864.

In the end, while additional detailed examination might result in further amendment to the 87,417 sq. ft. GTA number used in LMA G-864,<sup>2</sup> no amount of fine-tuning that number with historical evidence is going to produce anything close to the wildly inflated 109,677 sq. ft. number represented in JLB’s Tract Area Exhibit SK507, which lacks any individualized certification from a Maryland licensed engineer. Unless and until this fundamental failing in the application is corrected, there is no point in its further processing.

## **2. The Allowed Maximum Residential Density Is Greatly Overstated**

As a PD-44 approved project, the contemplated gross floor area was 145,863 sq. ft. for the residential building and 53,000 sq. ft. for the church/community center, for a total of 198,863 sq. ft. MCPB Res. No. 16-062 at 11. The PD-44 zone survived the County-wide zoning rewrite process, although it was made a zone that could not be applied for in any future local map amendment proceeding. §§ 8.1.1, 8.3.1. Nevertheless, for reasons yet unknown, staff working on the Bethesda Downtown Plan later elected to recommend the rezoning of all seven PD-zoned properties in the Bethesda Downtown Plan area into either the CR or CRT zone—a recommendation that the Board apparently did not question or discuss during its extended worksessions reviewing the Plan. This conversion was allowed for the Property even though there had been no implementation of the already-Board-approved site plan when the rezoning took place.

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<sup>2</sup> In fact, in approving the site plan for the PD-44 Development Plan, the Board used 87,132 sq. ft. as the GTA, without explaining the discrepancy from the LMA number. See MCPB Resolution No. 16-062 at 11. This same number was used by JLB in its GTA Exhibit, SK507, to erroneously characterize 87,132 sq. ft. as the Property’s “net tract area.”

In the case of the Property, the initial rezoning designation in the Planning Board Draft Plan and the SMA was as follows: CR-1.5, C-0.5, R-1.5, H-120. This designation was not the final word, especially since neither the C (non-residential) nor the R (residential) designations of FAR were adequately high to implement the actual development approved as a PD-44 zoned property. The PD-44 project's density allowance was defined not as an FAR limit, but rather in terms of dwelling units per acre. But if the approved gross floor area were translated into an FAR density, the residential FAR would have been approximately 1.674 and the commercial FAR about .608, for a total of 2.282. In September 2017, ery near the end of the Sectional Map Amendment process that followed approval of the Bethesda Downtown Plan, staff sent the Council a correction memo that included changing the new zoning on the Property as follows: CR-2.5, C-0.75, R-1.75, H-120. This was said to be needed to avoid having the Property become non-conforming in light of, and to coincide with, the approved site plan for the church and residential building. **Exhibit 5.**<sup>3</sup>

In any case, what the rezoning means is that the CR mapped FAR is 2.5, consisting of up to .75 nonresidential and up to 1.75 residential FAR density. The .75 nonresidential density cannot go unused as a basis for converting it to an additional .75 residential density, even though, with such a conversion, the overall density would not exceed the overall CR density, set at 2.5. That manipulation would contravene § 59.4.5.2.A.2.c., which states, subject to certain exceptions not applicable here, that "[t]he number following the R is the maximum residential FAR allowed." Such use-switching is legitimate when the overall CR number and the R number are the same, but that is not the situation here. Thus, the SMA-corrected CR designations for the Property effectively captured what the earlier PD-44 development approval for the Property had wrought: both a substantial multi-family unit (for the "R") and a substantial, but subordinate in size and mass, church/community center (for the "C").

In JLB's latest iteration of the development of the Property, however, the church/community center is simply eliminated in favor of an all-residential project. JLB is perhaps free to take a pass on the "C" density, but it does not alter the maximum residential FAR mapped for the Property, i.e., 1.75. In terms of gross floor area, and assuming the correctness of the LMA-G-864 GTA, this translates to  $1.75 \times 87,417 \text{ sq ft} = 152,980 \text{ sq ft.}$  of gross floor area. And the unused commercial FAR is .75 FAR, or 65,563 sq ft.

From the foregoing, two straightforward conclusions are evident. First, JLB has greatly overstated--by  $(274,192 - 152,980) = 121,212 \text{ sq. ft.}$ , i.e., nearly 80%--the allowed residential density, **apart from seeking added density from the BOZ.** Second, JLB's expressed intention to add even more residential density from the BOZ cannot be squared with the limitations set forth

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<sup>3</sup> What the Bethesda Downtown Plan did not note or deal with, however, was the fact that the approved plan had height limits of 94' and 76' respectively, on the residential and church/community center buildings, which would have coincided with a height limit of 95' or perhaps 100', in the CR zone, rather than 120'. Why the last-minute Sectional Map Amendment change in the CR rezoning increased the height to "H-120" adjacent to single-family residences in the R-60 zone (when H-100 was adequate to cure the asserted nonconformity) remains unexplained.

in the BOZ itself. On this latter point, the statute reads as follows: “To qualify for BOZ density, a proposed development must use **all** gross floor area allowed by the mapped CR.” § 59.4.9.1.C.2.b.ii. (emphasis added).<sup>4</sup> Unless JLB uses all the mapped “C” in addition to all the mapped “R,” is hasn’t used all the mapped “CR,” because this is not a situation where, as detailed above, the CR zoning gives JLB the freedom to choose between C and R uses to fill out the mapped CR. JLB, like its predecessor on this Property, was not given any such freedom. Rather, a carefully planned project consisting of both a church/community center **and** a multifamily residential building were approved, and the CR rezoning, except for height, faithfully replicated that decision, even to the point of correcting an earlier CR designation that failed in this respect. I must also note that allowing JLB to acquire residential density with BOZ Program payments while foregoing all of the nonresidential density expressly contemplated by the allowed rezoning utterly defeats the purpose of the rezoning in this instance, which was (or surely should have been) to achieve the same agreeable mix of uses on this Property as had, after many years of struggle to resolve compatibility issues with its single-family residential neighbors, been finally approved by both the Council and the Board.

### 3. Conclusion

The sketch plan depicts an all-residential development at up to 320,000 sq. ft., whereas the above discussion reveals that the maximum allowable residential development is 152,980 sq. ft., a number possibly subject to minor upward adjustment on further evaluation of the Property’s GTA. The sketch plan submission thus seeks staff-level review and comment on a project **more than twice the size allowed under the Zoning Ordinance**. There is simply no point in putting this seriously flawed application through the process of development review and sketch plan hearing. After providing the applicant an opportunity to address the deficiency claims made here, the determination to accept the sketch plan for administrative review should be reversed forthwith. This recommendation, however, should not be interpreted as exhaustive of the deficiencies in the application. I have only discussed what must be viewed as fundamental, threshold problems that obviate wasting time and resources on a detailed and careful analysis of the sketch plan for other deficiencies.

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<sup>4</sup> Once one qualifies for added density from the BOZ, that added density may be used as either “C” or “R” density. § 59.4.9.1.C.2.b.i. Plainly, however, this does alter the fact that all of the mapped CR density must first be used to qualify for the added density.

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-  
WASHINGTON REGIONAL DISTRICT IN  
MONTGOMERY COUNTY, MARYLAND  
Office of Zoning and Administrative Hearings  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850  
(240) 777-6660

IN THE MATTER OF:  
CHRIST EVANGELICAL LUTHERAN CHURCH  
OF BETHESDA-CHEVY CHASE,  
Applicant<sup>1</sup>

Michael T. Foster<sup>2</sup>  
Phil Perrine  
Edward Wallington  
Michael Lenhart  
Marvin Tollefson  
Melanie Folstad  
Rebecca Wagner  
Kenneth Dye  
Susan Kirk  
Deborah Miness  
In Support of the Application

Stephen Kaufman, Esquire  
Yum Yu Cheng, Esquire

Attorneys for the Applicant

\*\*\*\*\*

Jim Humphrey, Montgomery County Civic Federation<sup>2</sup>  
Steve Teitelbaum, Battery Park Citizens Association  
Herbert Estreicher  
Kenneth C. Doggett  
William Doggett  
Sara Gilbertson  
Shawn Russell  
Ralph Schofer  
Geoffrey Uyehara  
Bernard Wolfe  
Patsy Wolfe

In Opposition to the Application

David Brown, Esquire

Attorney for Concerned Residents of Glenbrook  
Road and Rugby Avenue and Herbert Estreicher

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Report and Recommendation on Remand by: Martin L. Grossman, Hearing Examiner  
Pre- and Post-Remand Hearings held by: Françoise M. Carrier, Former Hearing Examiner

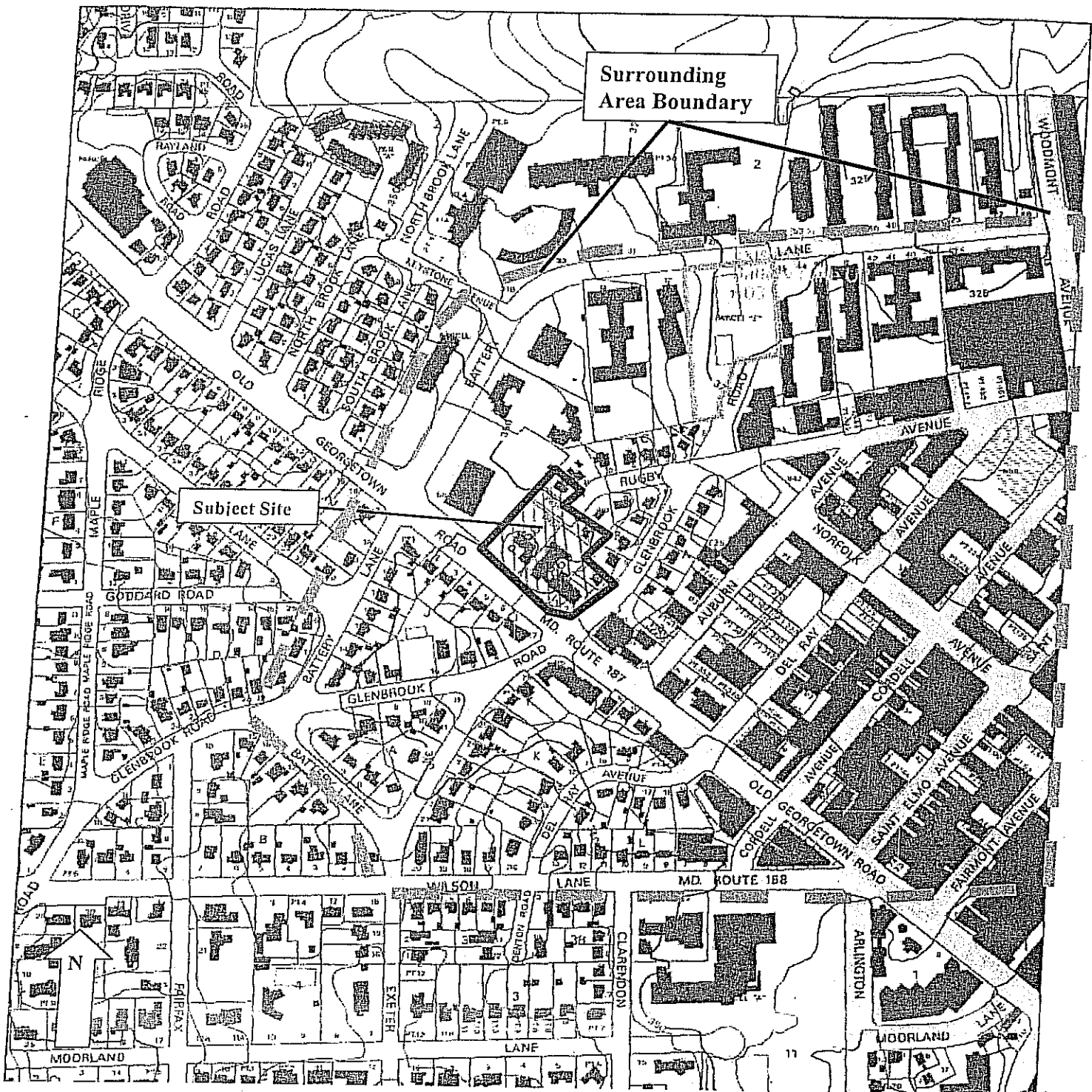
HEARING EXAMINER'S REPORT AND RECOMMENDATION ON REMAND

<sup>1</sup> The formerco-applicant, BA Old Georgetown Road, LLC, withdrew from the case following the remand. Ex. 363.

<sup>2</sup> Those who testified in the post-remand hearing are listed first; those who testified only in the pre-remand hearing are indented.

The general shape and location of the subject property, as well as the surrounding area, are shown on the following map from Attachment 1 to the Remand Staff Report (Ex. 385).

Vicinity Map, Attachment 1 to the Remand Staff Report (Ex. 385)



## PROJECT DATA TABLE FOR PD-44

	Zoning Ordinance Development Standards PD-44	Development Plan Proposed for Approval
<b>Net Lot Area (SF):</b>		
Gross Tract Area (SF)		81,404
Rugby Avenue Abandonment		4,043
Public Alley Abandonment		1,970
Gross Tract Area (Including Abandoned Area)		87,417
Less Dedications (Old Georgetown Road and Glenbrook Road)		6,659
Net Area =		80,758 SF
<b>Gross Floor Area (GFA):</b>		
Condominium Building		175,000
Church and Community Center		53,000
Total Gross Floor Area		228,000
<b>Green Space Requirement</b> (Based upon the Gross Tract Area plus abandoned areas (87,417sf).)	50% (43,708.5 sf)	52% (45,918 SF) *
<b>Maximum Density Calculation:</b>		
Maximum Base Density per Zone	44 du/ac	44 du/ac or 107 units**
<b>Number of Dwelling Units (DU):</b>		
Market Rate DU		90
Moderately Priced (MPDU) (15%)		17
Total Number of Dwelling Units		107
<b>Maximum Building Height (FT):</b>		
Condominium building		94'
Church Community Center		78'
<b>Number of Floors:</b>	Not Specified	8
<b>Minimum Building Setbacks (FT):</b>		
Front South (From Existing Face of Curb of Old Georgetown Road)		49'
Front East Side (From Existing Face of Curb of Glenbrook Road)		32'
West Side (From Property Line)		24.7'
Rear North (From Property Line)		56.4'
<b>Parking:</b>		
Residential Uses		
MPDU's - 17 units	@ 1.00 Spaces/Unit = 17	
One Bedroom & 1 Br w/ Den Units - 21 units	@ 1.25 Spaces/Unit = 27	
Two Bedroom & 2 Br w/ Den Units - 59 units	@ 1.50 Spaces/Unit = 89	
Three Bedroom Units - 10 units	@ 2.00 Spaces/Unit = 20	17+ garage
Total Residential Spaces (Including 2 HC accessible spaces)	153	174
Non-Residential Uses		
Church/Community Center	62	62 garage
Total Non-Residential Parking Spaces (Including 2 HC accessible spaces)	62	62***
Total Parking Spaces	215	236

\* Including the green areas on the roof, which comprise 4000sf of the proposed green space. 41,918 sf of the proposed green space is on the ground plane. Land area devoted to green area is approximate and subject to change based on final engineering and further revision based on subsequent subdivision and site plan proceedings provided a minimum of 50% of gross tract area is green area.

\*\* The maximum density is based on 2.006 acres which include the abandoned areas. (2.006 ac x 44 du/ac = 88 du (Base Density + 19 (22% Bonus Density) = 107 (90 Market Rate and 17, or 15%, MPDU's)

\*\*\* Total includes 5 HC accessible spaces in garage. Preliminary classification of number of bedrooms and number of parking space are subject to adjustment at the Site Plan Stage.



Loiederman  
Soltesz Associates, Inc.

# Memorandum

TO: Yum Yu Cheng, Linowes and Blocher

FROM: Kenneth L. Dye *KLD 6/4/08*

DATE: June 3, 2008

CC: Ed Wallington, Theresa Polizzi

SUBJECT: CELC Area Discrepancies

LSA No: 0990-18-00

Per the attached ALTA/ACSM Land Title Survey (American Land Title Association/American Congress on Surveying and Mapping) please note that LSA has performed an actual survey made on the ground on or about October 18, 2006, and the areas shown thereon and further shown on the Identification Plat filed November 22, 2006 are correct.

The area tabulation shown below is per the ALTA survey, please note SDAT Areas and Deed Area noted to the right of the tabulation.

## AREA TABULATION

	SDAT Areas	Deed/Plat
Parcel 1...(Lot 9, Block C).....5,592 Sq.Ft. or 0.1284 Acres	5,539	5,539 per plat
Parcel 2...(Lot 4, Block B).....5,998 Sq.Ft. or 0.1377 Acres	5,950	5,950 per plat
Parcel 3...(Lot 11, Block B).....5,765 Sq.Ft. or 0.1323 Acres	5,966	5,966 per plat
Parcel 4...(Lots 1-3, Block B)..... 8,531 Sq.Ft. or 0.1958 Acres	8,405	8,680 per plat
Parcel 5...(HN23,P869).....25,873 Sq.Ft. or 0.5940 Acres	31,212	31,212 per deed
Parcel 6...(HN23,P860).....25,847 Sq.Ft. or 0.5934 Acres	29,587	31,212 per deed
Parcel 7...(HN23,P859)*..... 388 Sq.Ft. or 0.0089 Acres	600	(none reported)
Parcel 8...(HN23,P816)*..... 3,410 Sq.Ft. or 0.0783 Acres	3,685	
Total.....81,404 Sq.Ft. or 1.8688 Acres		

\*Note: Deed descriptions overlap, therefore, Tax Assessor has counted area twice.

## PARCEL 1

Parcels 1 through 4 are platted lots shown on plat of subdivision entitled "PLAT OF, SAMUEL T. ROBERTSON'S ADDITION TO BETHESDA" dated November 1929 and recorded in Plat Book 5 as Plat 407. This plat's geometry is inconsistent in many instances. Beginning with Parcel 1 (Lot 9, Block C) the geometry shown on this lot works well, having an error of closure of 0.08 feet. However, the area resulting for the direct computations is 5,656 square feet, and the plat denotes an area of 5,539 square feet. However, together with field evidence and adjacent

property research it was discovered that there is an overlap between said plat (P.B.4 P.407) and the adjacent plat of subdivision entitled "Lot 56, NORTHWEST PARK" recorded in Plat Book 98 as Plat 10964. Said overlap is further disclosed in a conveyance of part of Lots 8 and 9 by deed from John J. McDonald to Bethesda-Chevy Chase Rescue Squad, Inc., dated August 19, 1974 and recorded in Liber 4578 at Folio 709. Further the tax map does not disclose that lots 8 and 9 are now part of lots. After review of field evidence and record information our final calculation for Lot 9 is 5,592 square feet as shown in the tabulation.

## **PARCEL 2**

Parcel 2 (Lot 4, Block B) The geometry shown on this lot works well, having an error of closure of 0.12 feet. However, the area resulting from the direct computations is 5,980 square feet, and the plat denotes 5,950 square feet. However, the geometry for the entire Block B does not work well. After review of field evidence and record information our final calculation for Lot 4 is 5,998 square feet as shown in the tabulation.

## **PARCEL 3**

Parcel 3 (Lot 11, Block B) The geometry for this lots is close to a simple rectangle and one triangle. A close estimate of the area can be calculated for the rectangular portion by (width x depth) and for the triangular portion (base x height divided by 2). Thus  $(60 \times 93.16) + (60 \times 6.8 / 2) = 5,794$  square feet, the actual area is slightly less because the southwesterly line deflects inward towards the rear of the Lot. The plat notes the Lot as being 5,966 a geometric impossibility.

## **PARCEL 4**

Parcel 4 (Lots 1-3, Block B) The discrepancies between the Tax Assessor and Plat is that Lot 3 is now a part of Lot 3 as shown on the Tax Map. 275 square feet was taken by SHA.  $8,680 \text{ sq. ft. by plat minus } 275 \text{ sq. ft.} = 8,405 \text{ sq. ft. as assessed.}$  After review of field evidence and record information our final calculation for Lots 1 thru 3 is 8,531 square feet as shown in the tabulation.

## **PARCEL 5**

Parcel 5 (HN23, P869) is not a platted parcel. The deed for the parcel is Liber 705 Folio 227 dated July 1, 1938 and was recorded before the SHA taking in Liber 3577 at Folio 350. However, Liber 3577 Folio 350 does not disclose the square footage taken by SHA. Therefore the Assessor would not adjust the area disclosed in the original deed. After review of field evidence it was discovered that there was approximately 44 feet by 125 feet of taking by SHA resulting in a surveyed area of 25,873 square feet.

## **PARCEL 6**

Parcel 6 (HN23, P860) is the same as Parcel 5 above, approximately 44 feet by 125 feet of taking (L.3575 F.505) however the deed reports an area of 1,625 tp SHA resulting in an assessed area of 29,587 square feet remaining from the original area of 31,212 square feet. However, SHA does not acquire the land within the prescribed right of way as they already have rights to use this land. After review of field evidence it was discovered that there was approximately 44 feet by 125 feet of taking by SHA resulting in a surveyed area of 25,847 square feet.

## **PARCEL 7**

Parcel 7 (HN23, P859) there was no area reported in the deed. The deed has several errors ranging from 50 to 100 feet, however, this was remedied by the bounding calls contain within the deed, resulting in a calculated and surveyed area of 388 square feet.

**PARCEL 8**

Parcel 8 (HN23, P816) overlaps Parcel 7 above, and is disclosed below the Area Tabulation and also note on the ALTA survey.

Based upon the ALTA/ACSM Land Title Survey and the above analysis on a Parcel by Parcel basis it is our professional opinion that the areas shown on the ALTA/ACSM and the Identification plat are correct.

## SURVEYOR'S CERTIFICATE

I hereby certify that information shown hereon is correct to the best of my knowledge, information and belief; that the boundary information shown hereon is based upon an actual field survey made on the ground in October, 2006 in Maryland State Plane Datum (NAD 83/91), and that it includes part of the property described in the following eight (8) conveyances to the CHRIST EVANGELICAL LUTHERAN CHURCH OF BETHESDA-CHEVY CHASE 1.) from FRANK C. EBAUGH and GERTRUDE EBAUGH by deed dated August 29, 1945, and recorded among the Land Records of Montgomery County, Maryland in Liber 980 at Folio 176, said property being part of Lot 9, Block C, as shown on a Plat of subdivision entitled "SAMUEL T. ROBERTSON'S ADDITION TO BETHESDA" and recorded among the aforesaid Land Records in Plat Book 5 as Plat 407, 2.) from GHAZALI OMMAYA by deed dated June 4, 2004 and recorded among the said Land Records in Liber 27662 at Folio 11, said property being all of Lot 4, Block B, as shown the aforementioned plat, P.B.5 P.407, 3.) from AGNES W. CORCORAN by deed dated November 30, 1964 and recorded among the said Land Records in Liber 3301 at Folio 470, said property being all of Lot 11, Block B, as shown the aforementioned plat, P.B.5 P.407, 4.) from SAMUEL T. ROBERTSON and MABEL M. ROBERTSON by deed dated September 11, 1982 and recorded among the said Land Records in Liber 1722 at Folio 391, said property being all of Lot 1, part of Lots 2 and 3, Block B, as shown the aforementioned plat, P.B.5 P.407, 5.) from ANN BROOKE KNIGHT by deed dated June 16, 1938 and recorded among the said Land Records in Liber 705 at Folio 227, 6.) from IRENE BRADLEY BARRETT by deed dated May 12, 1965 and recorded among the said Land Records in Liber 3359 at Folio 640, 7.) from SAMUEL T. ROBERTSON and MABEL M. ROBERTSON by deed dated December 1, 1968 and recorded among the said Land Records in Liber 3821 at Folio 107.


Kenneth L. Dye  
Property Line Surveyor  
Maryland Reg. No. 556

6/4/08  
Date



## NOTES:

- 1.) The property shown hereon appears on Tax Map HN123 as Lots 1, 2, Part of 3, 4 and 11 Block B, and Lot 9, Block C, SAMUEL T. ROBERTSON'S ADDITION TO BETHESDA and Tax Parcels P816, P859, P860 and P869 on Tax Grid HN23.
- 2.) The Area Tabulation information shown hereon is correct and is based upon an actual field survey made on the ground in October, 2006 and is further reflected on an ALTA/ACSM Land Title Survey prepared by Loiderman Soltz Associates, Inc. dated October 18, 2006.
- 3.) The property shown hereon is currently zoned R-60.

TAX MAP: HN 123	200 SHEET: 210 NW 5	ADC MAP: 33RD EDITION PAGE: 35 GRID: K-10
REVISIONS	VICINITY MAP	
		
TITLE	IDENTIFICATION PLAT	

PROPERTY OF  
**CHRIST EVANGELICAL LUTHERAN CHURCH  
OF BETHESDA-CHEVY CHASE**  
BETHESDA (7TH) ELECTION DISTRICT  
MONTGOMERY COUNTY, MARYLAND



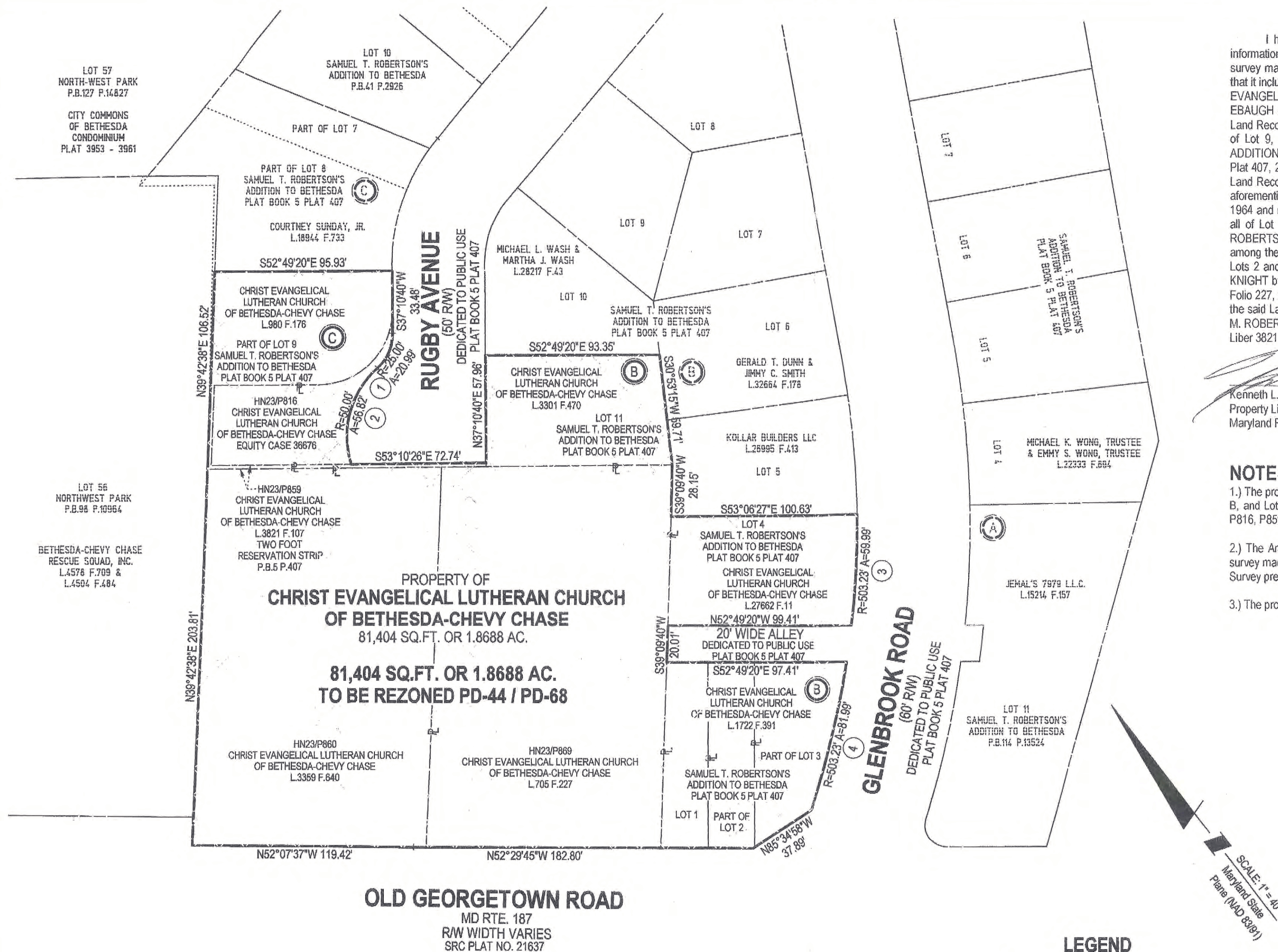
ROCKVILLE OFFICE  
2 Research Place, Suite 100  
Rockville, MD 20850  
t. 301.948.2750 f. 301.948.9067

Rockville  
Lanham  
Frederick  
Waldorf  
Leonardtown  
Chantilly

Engineering  
Planning  
Surveying  
Environmental Sciences

SCALE: 1" = 40'  
DATE: NOVEMBER, 2006

EXHIBIT 3



## LEGEND

 AREA TO BE REZONED

## AREA TABULATION

Lot 9, Block C.....	5,592 Sq.Ft. or 0.1284 Acres
Lot 4, Block B.....	5,998 Sq.Ft. or 0.1377 Acres
Lot 11, Block B.....	5,765 Sq.Ft. or 0.1323 Acres
Lots 1-3, Block B.....	8,531 Sq.Ft. or 0.1958 Acres
HN23, P869.....	25,873 Sq.Ft. or 0.5940 Acres
HN23, P860.....	25,847 Sq.Ft. or 0.5934 Acres
HN23, P859.....	388 Sq.Ft. or 0.0089 Acres
HN23, P816.....	3,410 Sq.Ft. or 0.0783 Acres
Total.....	81,404 Sq.Ft. or 1.8688 Acres

## CURVE DATA

No.	Delta	Tangent	Arc	Radius	Chord	Chord Bearing
1	48°06'30"	11.16'	20.99'	25.00'	20.38'	S 61°13'55" W
2	65°06'55"	31.92'	56.82'	50.00'	53.81'	S 52°43'43" W
3	6°49'49"	30.03'	59.99'	503.23'	59.95'	S 40°18'27" W
4	9°20'08"	41.09'	81.99'	503.23'	81.90'	S 50°41'19" W

40 20 0 40 80

PH 9-12-17  
H-122 B-044 Downtown MA



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

2017 SEP -6 AM 8:38

September 1, 2017

**MEMORANDUM**

RECEIVED  
MONTGOMERY COUNTY

**TO:** Montgomery County Council

**FROM:** Robert Kronenberg, Area One Division Chief  
Montgomery County Planning Department

**SUBJECT:** Bethesda Downtown Sector Plan  
Sectional Map Amendment – Recommended Corrections

5062377

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This memorandum is in response to recommended corrections that should be made to the Sectional Map Amendment change numbers 136, 150, 22, 15 and 16, 197 and 201. These recommended corrections are consistent with the approved Master Plan and Adopted Council Resolution.

**Corrections**

The following corrections are recommended to the Bethesda Sectional Map Amendment that was transmitted to the County Council on June 22, 2017:

**Change #136 (Bethesda Metro Center)** – The zoning line was moved west of its current location to align more closely with Edgemoor Lane at the direction of the County Council during the Sector Plan approval on May 25, 2017.

**Change #150, Lasko Manor**, owned by the Housing Opportunities Commission – A correction was made to the zoning on the Sectional Map Amendment from CR 1.75, C-0.25, R-1.75, H-60 to CR 2.75 C-0.25, R-2.75, H-60 as approved and documented in the County Council Resolution No. 18-835 dated May 25, 2017.

**Change #22, Christ Lutheran Church** – The Master Plan inadvertently zoned the property in such a way that it would be made non-conforming based on the recent preliminary plan and site plan approval. The current zoning designation of CR 1.5, C-0.5, R-1.5, H-120 needs to be corrected to reflect CR 2.5, C-0.75, R-1.75, H-120, which coincides with the Planning Board Resolution #16-061.

**Change #15 and 16** – It was discovered that the existing zoning map had inadvertently left out a portion of a property for a prior Local Map Amendment in 2012 that rezoned four properties (4857, 4858, 4890, 4900) to a PD-100 zone. The existing zoning map is showing 4890 Battery Lane as R-10 instead of PD-100. Since the Plan is currently going through the Sectional Map Amendment process, we recommend correcting this now so that the zoning is consistent with the Master Plan. The proposed zoning in the Bethesda Downtown Sector Plan Sectional Map Amendment should move the zoning line west of 4890 Battery Lane, to reflect the correct zoning of CR 3.5, C-0.5, R-3.5, H-120 for the entire property (4890/4900 Battery Lane) as outlined in the Council Resolution.

8787 Georgia Avenue, Silver Spring, Maryland 20910  
[www.MontgomeryPlanning.org](http://www.MontgomeryPlanning.org)

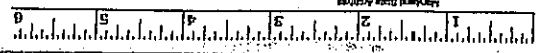
(21)

Change #197, The SMA inadvertently did not match the Council Resolution. Correct zoning on SMA from CR 1.5, C-0.5, R-1.5, H-70 to match the Council Resolution 18-835 with the proposed zoning of CRT 1.5, C-0.25, R-1.5, H-70.

Change #201, The SMA inadvertently did not match the Council Resolution. Correct zoning on SMA from CRT 0.5, C-0.5, R-0.5, H-70 to match Resolution 18-835 with the proposed zoning of CRT 0.5, C-0.25, R-0.5, H-70.

#### CONCLUSION

Once the County Council approves the recommended corrections stated above, the Sectional Map Amendment will be completed including updating the certification page with a new signature and date and will be reflected on the updated Sectional Map Amendment documents and on the Sectional Map amendment website at <http://mcatlas.org/sma/bethesda2017/>



**OWNERS' DECLARATION**

We, Samuel T. Robertson and Mildred M. Robertson his wife, owners of the property described in the Surveyors map, hereby adopt the plan of subdivision shown herein, establish the minimum building restriction lines, and dedicate the streets, alleys, walks, and parts to public use, however excepting from this dedication any lands designated "in part reservation," such lands to be dedicated and owned solely at such time as street extensions adjacent thereto are dedicated in adjoining property.

Witness my hand and seal of said County of Montgomery, Maryland, this 14th day of November, 1939.

*Samuel T. Robertson*  
*Mildred M. Robertson*

Plot No. 407

Subdivision

FILED  
 Nov - 9 1939

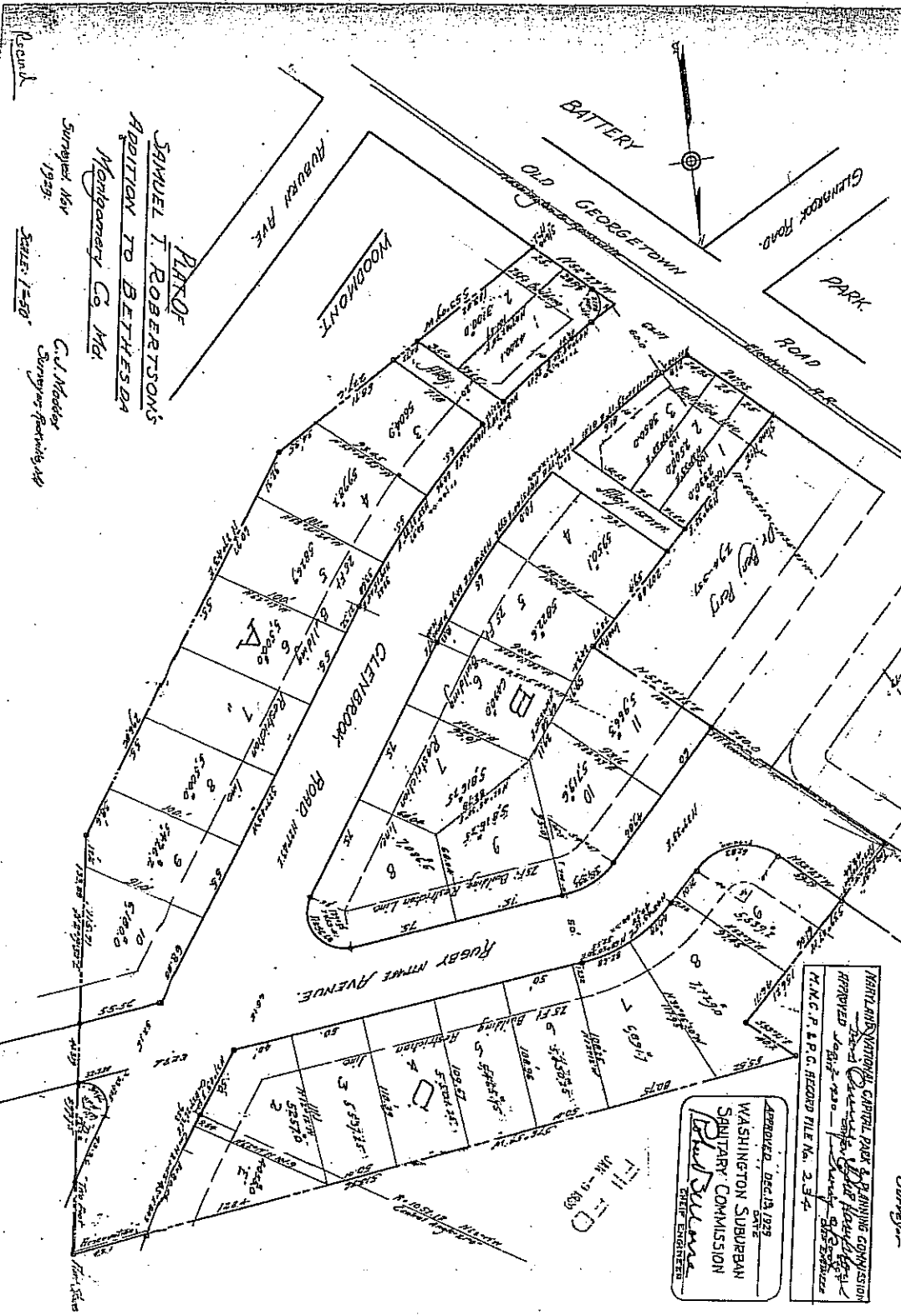
**SURVEYOR'S CERTIFICATE**

I hereby certify that the plat herein delineated is correct; that it is a subdivision of a part of the lands conveyed by Harry Grant Hopkins to Samuel T. Robertson by deed dated after day of April 1920, and recorded in the land records of Montgomery County, Maryland, in Liber 428, p. 458 of folios 221 to 231, and that status marked "Res" and "in part" have been placed as shown.

*C. J. Macdougall*  
 Surveyor

APPROVED, DEC 13 1939  
 WASHINGTON SUBURBAN  
 SANITARY COMMISSION  
*Paul S. Brown*  
 CHIEF ENGINEER

RECORDS AND MAPS DIVISION  
 APPROVED FOR FILING  
 M.C.C. RECORD FILE NO. 2,374



PLAT OF  
 SAMUEL T. ROBERTSON'S  
 ADDITION TO BETHESDA  
 MONTGOMERY CO. MD.  
 Surveyed May  
 1939.  
 C. J. Macdougall  
 Surveyor

LAW OFFICES OF

**KNOFF & BROWN**

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SUITE 206

ROCKVILLE, MARYLAND 20850

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WRITER'S DIRECT DIAL

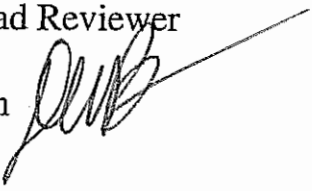
(301) 545-6105

DAVID W. BROWN

SOLE PRACTITIONER (2017)

## MEMORANDUM

To: Elza Hisel-McCoy, Area I Chief  
Grace Bogdan, Lead Reviewer

From: David W. Brown 

Date: August 23, 2019

Subject: Supplemental Memo on Sketch Plan 320190100  
8015 Old Georgetown Road

I have refrained until now from submitting a written response to Erin Girard's July 18<sup>th</sup> letter to you on the Sketch Plan because I wanted to include the results of additional research from an MPA request for Planning Board/Staff records on the Bethesda Overlay Zone and documents from SHA archives. I still await those materials, however, but will add them to the record if they arrive in time for the hearing, now set for September 5<sup>th</sup>. For now, however, I wish to respond briefly in the hope that my views as expressed in my June 20<sup>th</sup> Memo to you, as supplemented here, will be included in the staff report soon to be published. My view remains unchanged: the sketch plan must be rejected in its present form, as the reasons I have presented in my June 20<sup>th</sup> Memo are not in the least impeached or discredited by the assertions in the Girard letter.

### 1. Gross Tract Area (GTA)

While it may be correct that density per acre is measured on net tract area, as Girard asserts, but that is a red herring. In the prior PD-44 case, the issue resolved by the amount of gross tract area was not **density**, but rather the **green area**, which must be at least 50% of the GTA. Not only is this explicitly prescribed in the then-current zoning, § 59-C-7.16 "(Percent of Gross Area)," it is also exactly how green area compliance was evaluated by Planning Board staff earlier for this property. See Carlton Gilbert Memo on LMA No. G-864 at 10-11 (Jan. 25, 2010). Girard's citations to density calculation in the original hearing examiner's report and in Council Resolution No. 16-1540 are irrelevant for exactly the same reason. In fact, Resolution No. 16-1540 explicitly states (at p. 14) uses the following words to confirm that the green area requirement was met: "the development will meet

this requirement by providing 49,918 square feet of green area out of a gross tract area (including the abandonment areas) of 87,417 square feet.”

It is likewise of no moment that “the basis for calculating density in the Property’s current CR zone is different than in the Prior Rezoning.” Girard Letter at 1. The GTA presented by the applicant and property owner was 87,417 sq. ft., as my June 20 memo details. That did not change with the rezoning. The matter was contested in LMA G-864 and was resolved. The property owner cannot now take an inconsistent position on the same matter—GTA-- in a subsequent administrative proceeding. In other words, the doctrine of judicial estoppel also applies in contested administrative proceedings. See *Garrity v. Md. State Bd. Of Plumbing*, 447 Md. 359, 380 135 A.3d 452,465 (2016) (“[A]gency findings made in the course of proceedings that are judicial in nature should be given the same preclusive effect as findings made by a court.”) Girard’s claim that this case involves “different parties and a different project engineer” also rings hollow. There may be a different contingent developer purchaser of the property, but it is the same property and the same owner—Christ Evangelical Lutheran Church of Bethesda-Chevy Chase. And changing engineers to seek a more favored result is completely spurious justification for not being bound by the representations made in the prior proceeding.

Finally, even if the property owner could overcome the administrative estoppel to re-litigate the issue, the claim of 109,677 sq ft of GTA would surely fail. The absence of a report of the actual consideration paid to the property owner in the 1966 deeds where SHA took Church land to widen Old Georgetown Road—again, the same property owner as today—and the absence of treasury stamps on those deeds, is hardly conclusive. The land referenced in the deeds was sold to SHA by the Church in fee simple, and the deeds say nothing of a dedication, which is generally not a fee interest in any event. I am researching SHA archives to find the exact consideration paid. Another land use attorney with in-depth experience with SHA in determining GTA for nearby Bethesda development expressed to me confidence that it is very unlikely the owner simply gave the land away to SHA, and Girard has presented no sworn testimony or documentation from the Church’s business records to confirm such a giveaway.

## **2. Disqualification From BOZ Density Purchases**

Girard’s arguments for claiming entitlement to make purchases of density from the BOZ fail to respond to the simple, straightforward wording of the statute. The language is clear: “To qualify for BOZ density, a proposed development must use all gross floor area allowed by the mapped CR.” § 59.4.9.1.C. 2. b. *ii*. That is not happening in this case, as the project contemplates abandoning use of any of the specified “C” density and replacing it with “R” density purchased from the BOZ, effectively negating the requirement to first “use all gross floor area allowed.” Girard’s convoluted argument about the “sub-classifications” of C and R densities within the overall mapped CR amounts to the following: so long as BOZ density is sought to exceed one of the sub-classifications, it does not matter that the specified allowed density of the other is not fully met. But no one would be seeking BOZ density in the first place if this were not true. So she has improperly interpreted the requirement in § 59.4.9.1.C.2.b. *ii*. as a meaningless restriction, i.e., as surplusage.

*Washington Gas Light Co. v. Maryland PSC*, 460 Md. 667, 682, 191A.3d 460, 469 (2018) ("We begin our analysis by looking to the normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory."). In this case, the C designation fulfills a clear purpose: allowing the density necessary for the nonresidential church building approved by the Council in LMA G-864.

Girard also references the flexibility of use of the BOZ density. But as I previously made clear, the fact that the BOZ density, once one is eligible for it, may be added as either C or R density does not alter the sub-classification standards established at the particular CR zoned property. Allowing BOZ density where the applicant has not used all available C **and** R density within the overall mapped CR would be especially problematic here. The whole rationale for the original conversion of this R-60 zoned property to PD-44 was to allow the Church to monetize its real estate holdings with a multi-family building on the property, generating the missing resources that would enable it to rebuild the Church in its current location with a modern building to serve not only Church members, but also the larger community with meeting rooms, indoor recreation facilities and the like. Now, suddenly, the new church that was the fulcrum of the rezoning and the development approval, and was to be a welcome community asset, has vanished in a swirl of legal nonsense.

Whether Girard is correct in her claim that her interpretation of the BOZ eligibility standards "is consistent with the Planning Department's practice and current position," Girard Letter at 4, I cannot say. But I can say that it is of no moment. The language of the statute is clear. It is no excuse to proper interpretation that it has been interpreted incorrectly in the past. *Montgomery County v. Buckman*, 333 Md. 516, 530 636 A.2d 448, 455 (1994)("[A]dministrative interpretation contrary to the clear and unambiguous meaning of a statute is entitled to no deference by a reviewing court.>").