

Item 1C - Correspondence

From: [Richard Tustian](#)
To: [MCP-Chair](#)
Cc: [Bogdan, Grace](#); [Dickel, Stephanie](#); [Hisel-McCoy, Elza](#); [Wright, Gwen](#)
Subject: Testimony for Montgomery County Planning Board Public Hearing, December 16, 2021
Date: Wednesday, December 15, 2021 8:11:16 AM
Attachments: [Bethesda Metro Center Brookfield Project .eml.msg](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Re: Agenda Item 1C, Other Consent Items,
4 Bethesda Metro Center,
Sketch Plan Amendment 32018011A

Dear Mr. Chairman and Members of the Planning Board,

This is a request for this letter, and all its attachments and referenced documents, to be entered into the record of this coming Thursday's Planning Board meeting (by citation reference to reliable documentary records, if this is most efficient), together with all other documents, that are relevant in any way to this site's previous applications for development approval (including those of the litigation that challenged the Planning Board's approval of the Sketch Plan for this project).

My particular reason for this action is to nullify the potential (probably very remote) of any argument being made (at whatever time the applicant returns to the Planning Board for approval of a Final Site Plan) to the effect that any portion, of the full historical record of this project, is no longer admissible as relevant evidence at that time.

My broader reason is my understanding that, although the Board's earlier approval of the Sketch Plan was contested in court, and allowed to stand by the relevant judge, this same judge made it clear, in his written opinion, that his decision was based entirely on procedural questions.

As I understand it, he made it clear that his decision was not a decision on the substantive merits of the issues raised at the Sketch Plan hearing - and that the still pending Final Site Plan would be the appropriate venue in which such issues, and new ones if they arose, could be revisited (which, of course, would have the effect of making the entire project proposal eligible for re-litigation, should anyone choose to appeal the Planning Board's decision at that time).

In the interest of full disclosure, I am attaching a letter I sent to Robert Harris, the local attorney representing the applicant, a little more than a year ago. In this letter, I tried to outline, as simply as I could manage, the fundamental rationale behind the testimony that I had given to the Planning Board up to that date.

I also proffered my services, pro bono, towards exploring whether some kind of coordinative effort might be worthwhile, with the objective of seeking an amended design that could better approach the high level of excellence intended for this special site, as outlined in the goals and objectives laid down by the Council-adopted master plan for this site.

Mr. Harris told me that this letter was passed on to the applicant, but I have had no further communication from him or the applicant.

In closing, I would like to reiterate that I have absolutely no acquisitive interest in this matter. I am not, nor ever have been, part of any corporation, or faction, or any other organized group with a partisan interest in this site. I seek no money, no employment, no recognition - indeed no involvement whatsoever, beyond whatever I might contribute towards "leaving the campsite better than it was found", to quote the universal rule of Scouts and campers around the world.

At ninety years of age, I may not live to testify at this project's Final Site Plan hearing, if the Planning Board decides on Thursday to approve the requested extension. But if I do, it will be still my hope that it won't be too late to "leave this campsite better", for the benefit of future generations - not just another high rise condo "slab in canyons" (see letter to Harris below) - but, truly "all that it can be".

I know that serving the public interest on this board is no easy task. I wish you all the very best of health and peace of mind. Be well!

Sincerely,

Richard Tustian
Former MC Planning Director (1969-90)

P.S. Given my aging situation, I am wondering if a friend of mine could be sent notice of future board hearings on this project, in addition to whatever notice is sent to me. Her name is Patricia Stocker, with email address: < patstocker@aol.com >.

I believe she has not testified on this project previously, and might, therefore, not be included already in whatever routine file is kept for the sending of such notices. She lives in a building adjacent to the Metro site; has been a long time active resident of our community; and has expressed to me her desire to be kept informed.

From: [Richard Tustian](#)
To: [Robert Harris](#)
Subject: Bethesda Metro Center Brookfield Project
Attachments: [Development ScenarioX.pdf](#)
[Bethesda Metro RT 716.18.pdf](#)

Hello Bob,

Thanks for taking my phone call so promptly the other day. I appreciate your willingness to pass on my ideas to Brookfield, as we discussed some time ago by phone, and apologize for allowing the Covid-19 quarantine to prevent me from following through with a follow up letter until now.

It does seem appropriate, however, to begin by recognizing how much the real estate landscape may have changed since this pandemic began. We seem to be entering a whole new situation with regard to urban development, with great uncertainty about how things will play out. So, it well may be that the Bethesda Metro project will simply need to lie dormant for a good long time.

A recent article in the Washington Post talked about a great “exodus from cities”. My own assessment supports the trends outlined in this article. I don’t claim any special insights into the future, but I am attaching a letter on this topic, that I sent to a friend last month, in case it might be of any interest to you. Criticisms and comments welcome, should you have any interest in further communication on that general topic.

Nevertheless, the purpose of this current letter to you is simply to follow through with communicating some ideas for your consideration, in the event that Brookfield might decide to proceed to Site Plan application on its previous design for this project - which, of course, if it happens, will resurface all the issues that were not settled by the court’s decision on the Clark appeal.

Specifically, the thrust of my approach is simple, and not thematically different from the testimony I gave to the Planning Board back in 2018 (see copy attached below) - namely to shift the proposed project from a “slab-in-canyons” format to a “tower-in-plaza” format.

The new idea, that I believe could come to life with proper support, is rooted in my sense that the rest of the site could be developed in some low scale arrangement of public and private uses across the site, at multiple levels - without getting hung up on arguments about the need for a large open-air public space at the north-east corner of the site.

I have specific ideas about this, but they are probably best saved for discussion, should that be desirable, since each one is contingent on another - except to say that I can see opportunities to build on a general branding theme of celebrating “sustainability”, and including concepts such as a “Nurture-Nature Children’s Center”, a “Farm-to-Fork Visitor’s Center”, incorporating the presence of the Bethesda Urban Partnership, etc..

I recognize the significance of the financial aspects of such a project, and their linkage to volume of private useable floor space. Even with a special exception to increase the height of a pencil tower to 400-450 feet (for which I believe I can make a persuasive argument), the total private floor space in my suggested design format seems likely to require a certain degree of volumetric “hair cut”, compared to the 500,000 square feet contemplated by the approved Sketch Plan.

But I am reminded of a not-too dissimilar situation that prevailed on the Bergdoll tract in the 1980’s, when I helped to broker a change to the original design scheme proposed by the developer, which generated widespread opposition because of the number and bulk to buildings crowded onto the site.

In that situation, Albert Small recognized that, by switching his marketing approach from middle/high income level to luxury level condo’s, the volume of his buildings could be reduced enough to satisfy the Somerset opposition, while still satisfying his financial expectations (higher rent per square foot = fewer, larger condo units = lower total volume).

Of course, 2020's-Pandemic-Times are different from 1980's-Reagan-Times. Whether there remains a possibility of marketing luxury condo's, in a prestige US Capitol address, to a combination of American plus international clientele, seems like an interesting question - part of the general post-pandemic hazy future.

But if ever this site becomes financially viable again, its value may lie in whatever "extra- prestige-specialty-quality" dimension it can demonstrate, beyond being just another 300 foot slab in suburban Montgomery County. My perspective is that only a higher-than-surroundings pencil tower can provide the beacon-like distinction, from the rest of the business area, that the plans call for, and the site deserves.

Well, the above is the central thrust of my thinking on this situation. As mentioned, I have no affiliation with any parties of interest to this project, and I seek no personal gain. Indeed, I am happy to stay incognito, if that would help Brookfield to achieve a good private-public outcome. In short, I simply care about seeing the best win-win development come to pass - and am willing to spend time and effort to help that come to be.

With all best wishes for continuing health and welfare,

Dick

September 16. 2020

Dear (XXXX),

Your question was: “I would like to hear informed consideration of the prospects for local and state development, in light of the pandemic, economic downturn, local politics and failure of purple line, which I assume was to be a model for other joint public-private projects (Like the beltway and I-270 widening??).”

As with most things these days, I have far more questions than answers - but here is an effort to respond to your question (since you directed it towards me among others).

Simplistic Overview

But first, to give a simple overview in advance: I think the odds are that we probably are in for a decade or more of economic turmoil and depression, in which private sector real estate development will seriously decline.

Whether public sector development (i.e. infrastructure) will languish similarly, probably will depend on the outcome of current and future political battles, which remain relatively inscrutable to me so far.

In short, we probably will experience a decade like the 1930's, only more so. The “more so” component seems driven by at least three factors that I think are inadequately talked about in the current mainstream-media conversation, namely Technology, Macro-Economics, and Climate Change.

I will touch on the first two in my comments below, but leave the third one (Climate Change) to another time, largely because it is so “humongous”, in both scale and scope, as to seriously challenge all efforts to adequately specify and quantify its component parts, and their complex relationships to each other.

Today, we are seeing dramatic pictures of California/Oregon forest fires on the nightly news. Tomorrow, it seems likely that we will be presented with even more such natural-environment problems (e.g. coastal city flooding, rainforest depletion, animal species reduction, etc.). This tidal wave has been a long time building - a very slow arithmetic progression over 10-15,000 years, only turning geometric since 1800. (?)

Whether our society can collectively learn enough, to sail through this probable “perfect storm” with relatively little damage, is something that, to me, seems veiled from sight, concealed behind the curtains of future events.

Land Use Development

The combination of advancing technology and the pandemic probably will do serious harm to what has heretofore been considered to be one of the most attractive and existentially basic categories of the human use of land - namely spatial locations for the retail-scale distribution of manufactured goods.

Space on the ground, for occupancy by spatially-static sellers to spatially-dynamic buyers - in short: commercial retail land use - seems to have been an observable phenomenon for as long as people have lived in urban places (c.f. "residential, commercial, and industrial" - the holy trinity of land use zoning).

Historically, we can see the footprint, of this particular category of land use, change its size and configuration, from classic antiquity through until today, rising and falling with the ebb and flow of urban civilization and technology, especially as modes changed in production, transport, and communication.

A simple glance back, over about 1,500 years of history, reveals evolutionary changes in patterns for this land use category, from:

- Greco-Roman "Craft Shops" along walled streets in walled cities,
- to seasonal "Market Fairs" in meadows, in the feudal middle ages
(when volume of human travel was drastically reduced from preceding times),
- to village-scale “High Streets” in the Renaissance,
- to town-scale “Main Streets” in the eighteenth century,
- to urban-scale “Department Stores” in the nineteenth century,
- to suburban-scale “Shopping Malls” in the twentieth century,
- to metropolitan-scale “Mixed Use Centers” in the twenty-first century,
the latter being a kind of retail/residential/walk-to-convenience-goods “village”,
inserted like raisins in a pudding, into an amorphous sea of sprawling low
density land uses, mostly residential (c.f. Cabin John Shopping Center in
Bethesda, built by Carl Freeman in the 1960’s as a neighborhood center
anchored on a food store and a drug store, that is currently converting its
parking lots into townhouses - and relabeling itself as a “village”).

The beginnings of the distribution-mode shift, from buyer-traveling-to-goods (in a shop) to goods-traveling-to-buyer (in a residence), can be seen in the pioneering use of catalogue shopping by Sears Roebuck.

Initially, this method of goods distribution had a relatively small effect on the other trend that built during the nineteenth and twentieth centuries - the enrichment of the range and diversity of goods in stocks assembled in one venue.

But gradually, the ability to shop “from a distance” (with speedy-delivery of the chosen product to buyer residence), began to chip away at the advantage of the ability to shop “in one place” (with buyer take-home of the chosen product),

Initially only some kinds of goods were a fruitful match for “digital shopping”. Book stores were early victims to the impact of digital technology upon the distribution of manufactured goods (c.f. Borders, Crown, Brentano’s R.I.P., not to mention Barnes & Noble at Woodmont Avenue).

But many other thematic retail chains, built on brick and mortar outlets, have fallen prey to this trend, and Covid-19 is just giving the whole trend a big push. Amazon is doing great since 2019 - brick and mortar retailers not so much.

Ergo, a prediction - many more retail businesses will be especially hard hit by bankruptcies, among many other kinds of business failures, in the next few years. Eventually the Amazon model probably will affect even the Walmart model (I am now buying groceries from “Instacart”), although the brick and mortar retail outlet will never go totally away.

There probably will always be some local shops in business districts, and nearby to residential neighborhoods, but how diversified their stock will be is hard to say. Seven-Eleven is different in multiple ways from Macy’s - even from Giant or CVS.

In short, I suspect that the inevitable march of advanced digital technology, given its boost by the pandemic-induced fear of congregation in confined spaces, will collectively alter the function and form of urban places in huge ways for years to come (with specific effects only predictable with a bit more experience of living with the trend).

Of course, if we do actually invent an effective vaccine in the near future, the above scenario will need serious revision, at least with regard to timing. But what if we don’t? How shocking to our “Modern” sensibilities will that be?

I am just old enough to remember a world without vaccines, let alone without genetically altered “designer babies”. I was given up for any further treatment by the doctors when I was nine years old, with streptococcus in the bloodstream. Fortunately for me (at least from my perspective), I recovered.

But the boy next door to me caught polio at summer camp and was in a wheel chair for the rest of his life. Antibiotics only segued from war medicine to civilian medicine after 1945 - the Salk vaccine not till 1955 - and “the pill”, that other culture changing drug, not till 1960.

Our “Modern” age, of assuming there will always be a simple remedy for disease (simple to the consumer, that is), is only 75 years old. Between the fall of Rome and the Renaissance was about 1,000 years. Food for thought?

If a Covid Vaccine does work - and soon - my forecast will need revising - but it does not seem unreasonable to think about a future in which the world never gets back to anything like what it currently still thinks of as “normal”.

In the meantime, vaccines or not, I tend to think that the long term outlook, even if just as a consequence of technology alone, is one of drastic reduction in the role of dense urban places as human travel destination centers - and, therefore, of significant reduction in the use of land and building space for retail commercial spaces, at least for goods distribution.

Spaces for entertainment and conviviality seem likely to share this prospect, although food and drink venues are different from retail merchandising - their rationale for being derives from the generic human desire to come together for mutual enjoyment, a social activity rather than a transfer function. But it is harder to think about the future of the former than the future of the latter.

Note that this generic trend does not necessarily imply an equivalent reduction in the residential use of dense urban places. It could just mean a reduction in the diversity of the quality of life experience in urban centers.

We already have “food deserts”, in parts of DC and other cities, where for-profit grocery stores choose to not locate, resulting, so I’m told, in diet deficiencies among residents of these poverty prone places.

OK - that's a fuzzy perspective on long term for retail space. What about other land uses?

Residential is not easy to forecast, because it comes in so many flavors, shapes, and densities. In general, it seems to me that both the pandemic and the trends of technology will work to take the shine off the glamor of cities - a glow that has been in effect for the last thirty years or more, both in USA and around the world.

Marriott's recent move to Bethesda CBD conceivably could be among the last hurrahs of the "density-is-good" era - at least for a while - and this corporation may well have its financial hands full in our brave new world, given the basis of its business being rooted in travel and tourism.

But, then again, maybe not. Much seems to depend on forces that are inherently impossible to forecast yet, at least with any precision. Protecting the natural environment seems to tilt urban development in a centripetal direction. Shifting more towards a digital environment seems to tilt urban development in a centrifugal direction. Two trends with opposite spatial implications - local particulars may govern the outcome, place by place, region by region.

But, to sum up again the broad picture of current change:

Digital technology substitutes the cell phone for the automobile - and the pandemic intensifies the pace of this transition.

Logically, this should tilt the trends in upper income residential development towards suburbs, exurbs, and rural retreats away from central cities - possibly also leaving lower income residential behind in denser urban locations, although it is hard to see much more than that at present.

Regarding employment space, (XXXX) reported to us that 90% of Manhattan office space is currently unoccupied. I think office space will fall prey to the same trends as outlined above for retail space - for the same reasons, plus the additional momentum added by the expected increase in the use of artificial intelligence (robots and other programmable "things").

And reduction in centralized office space should mean analogous reduction in commuter traffic. The combination of digital communication and driverless vehicles seems likely to have a lot of ripple effects on transportation, that are just

too numerous and nebulous for me to attempt even rough quantification, until the smoke of change clears a bit more.

The Purple Line

Obviously, the purple line's future will be affected in some way by all these cross-cutting currents. If the state of Maryland does not press this project forward to completion now, I would speculate that it will be a very long time before this project rises again, unless it is resurrected by the need to put people to work on infrastructure projects solely for economic reasons.

Under that scenario, a lot of projects could get started without a great deal of clear thought about future demand justification. Whether they would succeed in attracting private sector financing, to complement public sector financing, seems difficult to forecast - dependent, as with other things, on which way the political tides flow - towards the left or the right.

It does seem reasonable to say that the general reduction in volume of human travel (that seems likely to be the overall effect of the combination of pandemic and technology), logically should reduce effective demand for all major transportation-of-humans projects. Projects for the transportation of goods may be a different matter, although I'm not sure that the combination of existing roadways and driverless long haul trucks might not be adequate for quite a while.

Which particular mode of human travel is most likely to face the most reduction in demand (by virtue of digital communication replacing it) seems hard to put odds on (tourism travel, being subject to discretionary income, seems like the obvious early target - but roads versus transit, harder to weigh).

Local and State Politics

As far as local politics are concerned, is this not even more problematic than estimating trends in land use? Obviously state and local governments are going to be harshly squeezed financially, between the proverbial rock and hard place. Might this lead to a further shift of power, from local to federal, through an increase in the importance of federal monetary grants for public works projects?

Unlike the federal government, state and local governments cannot "print money out of thin air". In this respect, state and local governments are in the same boat

as private households, which is quite different from the situation that prevails for the US federal government.

The federal government can just make up money out of nothing - as it has been doing ever since the establishment of our current central bank a hundred years ago (today's US Dollar retains about 2-3% of its 1913 value in terms of goods purchase, so I'm told).

From my perspective,¹ our current financial condition, at national scale, seems not too different from that of an opioid addict. Gradually increasing the amount of "dollar elixir" available, on credit, from our national-scale monetary-pharmacy, does seem to work to keep economic depression from the door, at least for reasonable periods of time - until eventually - it doesn't - at which point, the patient either overdoses and dies, or finds a twelve-step rehab program and climbs a long, difficult ladder to a new kind of normal.

Our Federal Reserve Board seems to be not totally unlike the doctors who continue to prescribe narcotics, largely because they know that this remedy has worked in the past, and they think they will know when the cumulative situation gets out of hand - and then can dial it down, or off, as necessary.

A long look back in history provides evidence to suggest that our Federal Reserve Board is over optimistic on the last point (the ability to dial it down or off). And recent history does not seem to refute this conclusion. (See: "This Time It's Different: Eight Centuries of Financial Folly", Reinhart & Rogoff, 2011.)

Examining the current outlook on the premise of these authors (that all fiat currencies eventually result in an economic crash), we can see that the financial bubble crisis of 2008 (in real estate - preceded by analogous, smaller scale bubbles in other asset classes, such as tech start-ups in 2001) required an extra large dose of monetary "inflation"². in order to just stave off economic collapse.

Although the massive dollar injection of 2008(+) did once again bring the patient out of a near panic, the benefits never trickled down from Wall Street to Main

¹ Some wit has said: "Vertically oriented "experts" [deep knowledge] learn more and more about less and less, until they end up knowing everything about nothing - whereas horizontally oriented "experts" [broad knowledge] learn less and less about more and more, until they end up knowing nothing about everything". I think I tend towards the latter category, especially in its "less and less" aspect. :-)

² aka "credit expansion", or "liquidity increase", or "balance sheet adjustment", or "quantitative easing", or "currency devaluation", or "debt increase" - or take your pick of euphemisms.

Street, at least not far enough to prevent the national scale “patient” from developing schizophrenia (c.f. today’s US rich-poor dichotomy).

I understand that some kinds of economic theory have reasons to offer, for why a constant small rate of currency devaluation is beneficial to growth in the overall economy.

But I haven’t had occasion to find many scholars who talk much about the long term consequences of continual monetary inflation, other than those of a contrarian nature, leaning either leftwards (“Modern Monetary Theory”) or rightwards (“Libertarian Gold Bugs”). Both of these perspectives seem difficult to reconcile with a more prudent view of how best to approach good government.

And with those comments, it seems wise to bring this particular response to your question to a close. In the meantime, I hope the above will provide a little food for thought, if nothing else. Your question is prescient. Thanks for inviting me to think about it.

With all best wishes,

Dick

9408 Seddon Road
Bethesda, Maryland
July 16, 2018

Montgomery County Planning Board
M-NCPPC
Silver Spring, Maryland

In re:
Sketch Plan Application
#3201800110
4 Metro Center,
Bethesda, Maryland

Dear Mr. Anderson,
Dear Mr. Cichy,
Dear Mr. Dreyfuss,
Dear Ms. Fani-Gonzalez,
Dear Ms. Patterson,

Regarding this application, I urge you to exercise
the broad vision and policy leadership
that only you have the full authority to provide
in matters such as these -
and vote to:

DENY,
and
INITIATE ALTERNATIVE DESIGN STUDIES.

.....

1 DENY, on grounds that:

- (a) Application as submitted, contains
insufficient information to make
an appropriately informed decision;
- (b) Application, as submitted, does not adequately describe,
nor commit to, the “public amenity” it proposes,
sufficiently to justify approval of
the density and site configuration it seeks.
- (c) Application as submitted, fails to satisfy the criteria
laid out, for sites such as this one,
in the official and relevant guidance documents;
- (d) Application as submitted does not address conditions,
deriving from the history of this particular site,
that are important for any decision on its merits.

2 INITIATE ADDITIONAL DESIGN STUDIES, on grounds that:

this site is uniquely important for Bethesda,
and possibly all of Montgomery County.

This recommendation is based on:

- (i) a careful review of the relevant policy framework,
insofar as I understand it,
within which the Board is expected to operate;
- (ii) the application of what seems to me to be
a logical analysis
of the evidence visible in the record;
- (iii) a personal knowledge
of the history of this particular site,
as well as
fifty years experience in urban design and planning,
including over twenty as
Montgomery County Planning Director.

My rationale for reaching this conclusion is attached -
I hope it is clear on its face.

I recognize that situations such as this are complex,
and that reasonable people can disagree
on what factors are most important
to such decision making.

But I do hope that this document,
however inadequate it may be in expression,
will be found worthy of your serious consideration,
and hopefully persuasive,
as you exercise your responsibilities.

With thanks for this opportunity to present these ideas,
and all best wishes,

Yours sincerely,

Richard Tustian

SKETCH PLAN

Application #3201800110

4 Metro Center, Bethesda, Maryland

Richard Tustian, July 16, 2018

RATIONALE FOR DENIAL

(a-1) Insufficient Information: A Qualitative Perspective

This application provides:

- no three dimensional model;
- no sunlight/shadow study;
- no micro-climate/wind-tunnel study;
- no pedestrian path volume study.

The desirability of these kinds of information is noted in the minutes of the Design Advisory Panel Review, but none of them have been provided by the applicant to date.

I submit that:

- (i) all of the above studies are critical kinds of information, however broad or narrow the scope of their presentation - necessary for any adequately informed judgment of how good, or bad, will be the effects of a new building on both the public and private realms in its vicinity;
- (ii) the effect of the new building proposed, on both of these two realms, is the crux of the issue in any Sketch Plan decision, given the effect of such decision on subsequent steps in the regulatory process - as I have now been given to understand it - (i.e. significant change in either density or building spatial configuration, unless agreed to by the applicant, is not possible once Sketch Plan approval has been granted);

With regard to (i), I suggest that no reputable urban design school would teach its students that such studies can be safely ignored, if the character of the built environment, and its effects on human occupants, is to be properly understood,

- and I note that even the previous proposal in 2008, for the addition of a building on this site (which was denied by the Planning Board at that time), included a sun/shadow study.

With regard to (ii), I suggest that it is critically important for the Board to properly understand the effects of these factors, particularly on the public realm, in order to avoid any suggestion of inadequate due diligence in the use of the discretionary decision making authority granted to it under the relevant regulatory framework.

Since both the Staff Report. and the Design Advisory Panel Review Minutes, indicate recommendations for approval of this application, it becomes necessary for me to point out where I believe they have misinterpreted either the situation, or the appropriate relevance of the regulatory framework. or felt inadequately authorized to initiate further alternative actions.

These points are addressed in greater detail in Appendix A.

What I would point out here is the special value, for proposal evaluation, of one of the above pieces of information, namely a three dimensional massing model - which, as noted above, was repeatedly requested in the DAP discussions, but was not provided by the applicant.

To help illuminate the Board's discussion of this issue, I have taken the personal initiative to have constructed, for my own understanding as well as use by the Board as desired, just such a small massing model of the proposal.

A few photos of this model are shown below - and I will bring it with me to your hearing of July 19.

To me, it reinforces the relevance of the old saying: "A good picture (in this case, a model) is worth a thousand words".

And more practically important, I believe it adds further evidence supporting a conclusion that the building proposed is simply just too big for the space it wants to occupy.

Like a cowbird egg that overwhelms the nest it usurps, this building simply destroys the coherence of the existing public space, imperfect as it may be - and fragments it into little ribbon skirts of shadowy canyon corridors.

SLAB
&
CANYONS
?

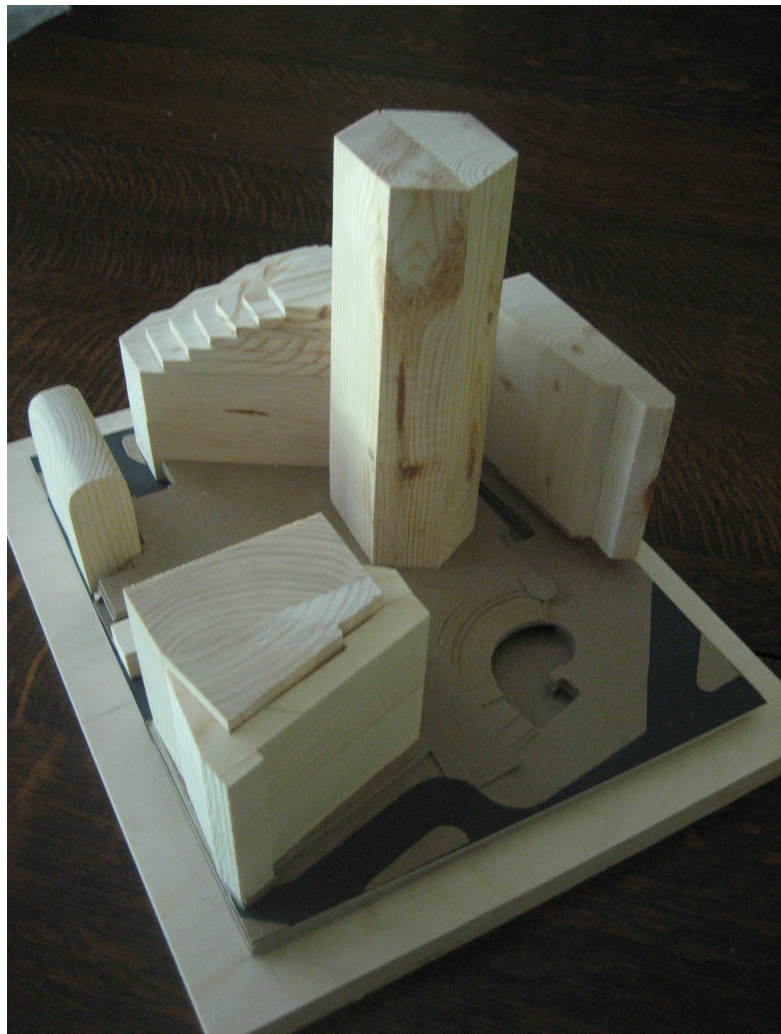
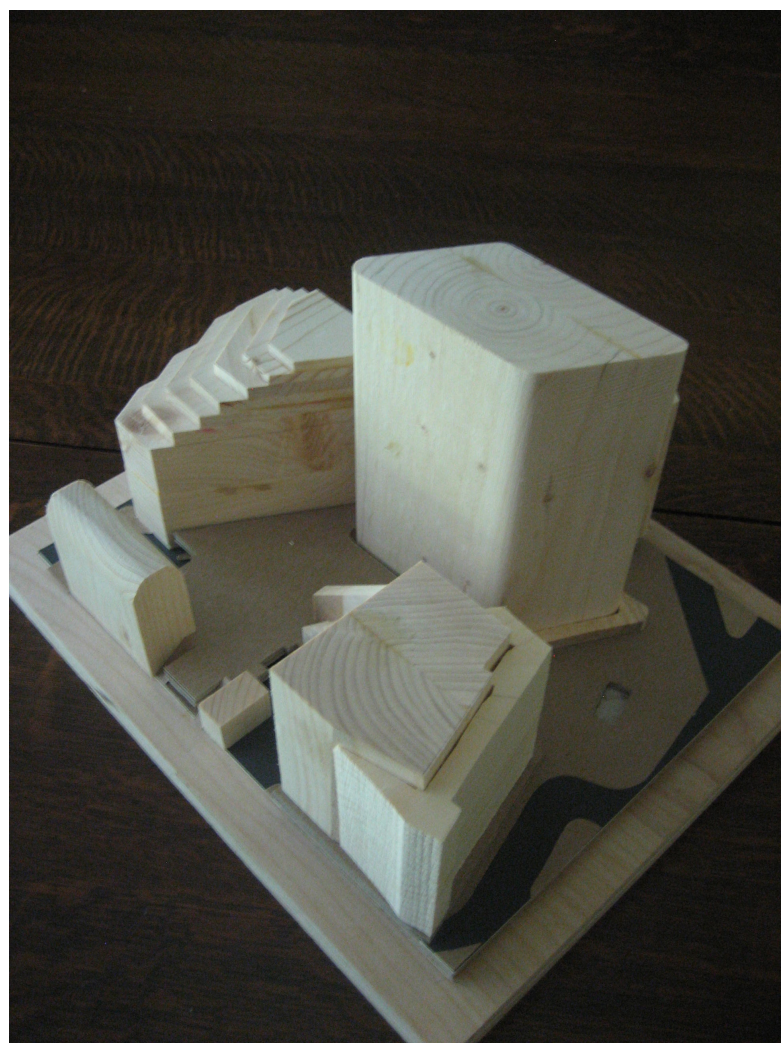
BETHESDA

METRO

CENTER

TOWER

&
PLAZA
?



The point here is that, without illuminating studies of the kind mentioned above, the Board cannot possibly make an adequately informed judgment, that is sufficient to justify striking a balance between density granted and whatever degree of “public amenity” (c.f. “public benefits”) is deemed necessary to satisfy the relevant zoning criteria.

I will be glad to elaborate on any, or all, of the above in conversation, should the Board wish to explore it further.

(a-2) Insufficient Information: A Legal Perspective

An initial expression of my concerns on this point, are outlined in a letter that I sent to DAP before its last meeting of June 27, attached hereto as Appendix B.

In it, I tried to get my head around what seems to me to be a considerable degree of cognitive dissonance buried in the weeds of the current regulatory framework.

Specifically, I addressed what I believe to be the need to not allow a point factoring system, that is stated to be intended to be only a guide to holistic decision making, to become a procrustean bed that cuts up an understanding of how all the parts of the urban environment function together.

If you can take the time to read that letter, before proceeding with this current one, I believe it should help make better sense of the thread of argument that I will now try to develop further below.

This is not the place to engage the full complexity of the legal system that shapes the regulatory framework within which the Planning Board must work.

But it does seem desirable to start at the beginning, with remembrance of some basic principles, in order to embrace an adequate understanding the current situation.

Zoning was decreed to be, in 1926, a constitutionally acceptable use of the police power of the government. by the famous US Supreme Court case known as *The Village of Euclid vs. The Ambler Realty Company*.

This case, and others, established that governments (state, plus local as delegated) have the power to regulate three

aspects of land: (i) its use; (ii) the height of building constructs upon it; and (iii) the configuration of these constructs over the area of the property in question.

The combination of height and configuration together are equivalent to the concept known as “volume”, and volume compared to horizontal plane area gives rise to the concept known as “density” - so this latter term is often used in lieu of its two separate components of height and area.

Although this governmental power called zoning obviously limits the rights of property owners to do whatever they wish with the land they “own”, the courts declared that such an infringement was constitutionally permissible,

- but only insofar as the government could prove that there was a public purpose served by the particular zoning restriction in question.

If the cited public purpose could be demonstrated in court as being insufficient to justify the restrictions of the zone, then the governmental zoning action could be denied by the judiciary,

- and considered as falling into the category of a “taking” of private property by the government, which is only acceptable constitutionally if adequate material compensation is provided to the owner.

The way to judge, whether a sufficient public purpose was behind any “Euclidean” governmental zoning action, took the form of the government being required to allocate a zoning category to all the land in the jurisdiction at one time (i.e. a “comprehensive” zoning action).

This “comprehensive” action was the thing that could be reviewed by a court to determine the constitutional adequacy of its stated public purpose.

In practice, such review tended to gravitate to an evaluation of whether the spatial boundary line, between land zoned in one category and land zoned in another, represented an appropriate class separation boundary,

- one that fulfilled, to a sufficient degree, the objective of achieving “compatibility” between adjacent different zoning classifications.

The key point being made here is that the crux of the entire zoning framework system depends on there being, at the bottom of it all, a demonstrable definition of “public purpose”,

- a two word concept which, over time, has come to find summary expression, as applied to zoning, in the form of three overarching normative ideas: “safety”, “health”, and “welfare”, and such supplementary normative words as “compatibility”, “non-arbitrary”, and “amenity”.

All of those words and ideas are relevant to the Sketch Plan Application at hand - all of them derive from the analyzing the needs of the community - the “public” - not from analyzing the desires of the property owner - a point that I will return to later below.

But to continue with analyzing the regulatory framework:

Only the legislative arm of government was authorized to assign zoning limitations on private property,

- because zoning, of necessity, makes class distinctions between one group of property owners and another,

- and only the legislative arm was deemed sufficiently reflective of the will of the people to be given the authority to so separate the community into unequal class segments.

All other branches of government, including at our local level the County Executive, the Planning Board, and all other commissions and agencies, have only the authority granted to them by the Legislature and/or the Constitution,

- and their exercise of such delegated power is always limited by whatever criteria are established for this by the Legislature.

Initially, an “Euclidean” zoning category would be assigned - by the local legislature - to every property in the county - by a comprehensive zoning map adoption.

It was this action that needed to be defended by the Council in court, if necessary,

- and, it turned out that the Maryland courts decided they preferred to not be swamped by individual property owner

lawsuits challenging the zoning category their property had been assigned by the Council - and seeking a change to some other category.

Thus was born the Maryland courts' "change or mistake" rule, which made normative that the courts would dismiss individual property zoning lawsuits, unless the plaintive could show there had been a "change" in the character of the neighborhood, since the last comprehensive rezoning,

- or a "mistake" of some kind in the original comprehensive rezoning.

Then, the "Floating" Zone was introduced.

This concept retained the three kinds of limitation (use, height, and configuration), but it separated the conceptual description of the zone from the action of allocating it to any particular site,

- so that the legislature could establish the legitimacy of the zone's nature, without actually including it any comprehensive zoning map amendment.

This zone would no longer have its proof of public purpose made demonstrable only by the Council's rationale for whatever overall comprehensive planning argument might be cited in support of a comprehensive zoning map action.

Therefore, it followed that each separate floating zone needed to have within its description not only its own unique statement of public purpose, but also its own statement of how its allocation to any given property should be judged,

- as to whether it was an appropriate fulfillment of that public purpose, at the time of the legislature did assign it to any specific property.

From this relatively simple beginning, an array of analogous zoning concepts has come into manifestation over the years - including incentive zones, inclusionary zones, transferable development right zones, overlay zones, etc.

For an interesting short description of such zones and related land use regulatory tools, see < <https://www.planning.org/divisions/planningandlaw/propertytopics.htm> >.

Montgomery County is among those few jurisdictions that pioneered the use of such zoning approaches,

- and among the first of its inventions was a hybrid zone, created by nesting the floating zone concept onto an Euclidean zone base.

The article referenced above does not address this kind of hybrid “Euclidean+Floating” Zone, and I am not sure how widespread the use of such zoning categories may be across the nation,

- or if it is possible that Montgomery County still remains unique in this regard.

These hybrid zoning categories were called Central Business Zones (CBDZ), and were first applied in Friendship Heights and Bethesda in the 1980’s,

- they now have morphed into what are currently called “Optional Method” Zones (OMZ), as a consequence of the recent remake of the zoning ordinance as a whole.

What needs emphasis here is the importance to these OMZ of their two tier nature, and the fact that the bottom tier - the non-optional tier - is Euclidean in its nature.

Once conferred on a property, this base tier of an OM zone grants a specific description of use, height limit, and configuration of density, that is usable by the property owner without requirement for any additional zoning permission review.

Like all Euclidean zones, these hybrid zones are allocated to specific properties by a class action of the County Council, which bears the constitutional burden of defending this action in court if necessary.

But this action tends to be judged by a court only with regard to whether an appropriate allocation of density has been granted to one area as contrasted with another (i.e. the zone edge compatibility question),

- not on the basis of how much of the optional method density is allocated to any one property within the comprehensively zoned area, compared to another within that same zone.

The second tier, the optional or top tier, is quite different legally from the first or bottom tier.

Two aspects of this situation deserve special attention:

(i) unlike the established Euclidean principle that a property owner is entitled “by right” to some level of zoning density potential, regardless of how small (c.f. the taking issue),

- a property owner has absolutely no inherent “right” to any of the density that is potentially available under the provisions of the top “optional” tier of a hybrid, or OM zone - it is all conditional;

(ii) the decision of whether and how to allocate all, or any, of the optional density, height, and configuration to any specific property is delegated by the Council to the Planning Board, along with specific guidelines to follow for making such decisions.

Any legal challenge, by a particular property owner, to the restrictions placed by the Planning Board on its optional method potential, as compared to those placed on another property within the same optional method zone, becomes the responsibility of the Planning Board to defend.

Does this not suggest that the Planning Board needs to be prepared to defend all of its actions in court?

- on optional method density allocations among property owners within the same zone?

- in terms of being consistent with regard to some definable criterion, that can be found within the guidelines assigned to its operations by the County Council?

If this is the situation, does this not highlight the value of the Board’s ensuring:

- that every OMZ decision it makes can be defended as at least relatively consistent with all the others?

- when considered against the normative baseline of the Council adopted policy guidelines?

And, if the baseline of consistency, within the guidelines assigned to the Board, actually consists of the nature of this thing called the “public interest”,

- (expressed in focussed form with words such as “compatibility”, “non-arbitrary”, and “amenity”),
- does this not highlight the need for the Board to have fully exhausted its potential resources of information and logical analysis before making an optional method density decision?

It is on the basis of the above chain of reasoning that I reached the conclusion expressed in section (a) above,

- namely that this application should be denied,
- because the Board has not received sufficient descriptive information to make an adequately informed judgment with regard to the effects of this building proposal on both the public and private realms in its vicinity.

But there are further aspects to the situation of this particular site that deserves mention, as are described further below.

(b) Inadequate Public “Amenity” Description

As mentioned above, the Sketch Plan Approval step, is the first of a set of sequential approvals necessary under the OM zone process, essentially requiring the Planning Board to make a finding that:

- the density and site configuration, of all new buildings approved at this stage, are deemed by the Board to be in balance with the public “amenity” it provides, when judged against the normative ideas that are contained in the official policy guidelines.

In the case at hand, the density and site configuration are described with illustrative drawings, considerable substantive language, and specific spatial dimensions down to the level of five feet, although with a particular ambiguity left undetermined, namely whether building use will be office or residential.

As an aside, it would seem that this logically requires the Board to evaluate primarily the office use option, since this would

seem to commit the Board to approving the larger of the two spatial configurations.

But, back to the main point - by contrast with the robust description provided for the density and site configuration, the “public amenity” package is described in terms of only:

(i) a commitment to landscape the four small areas surrounding the proposed building footprint, with some illustrative ground plane drawings (which any responsible building owner would naturally do anyway);

(ii) a list of “potential ideas” for improving the appearance and operations of the existing bus bay area on the site;

(iii) a commitment to “refine these concepts” and “work with WMATA”, in connection with a future Site Plan”;

(iv) mention of activating a “performance area/central lawn”, with no commitment to any specific kinds of performances, nor frequency of performance occasions, nor duration of the overall program into the future, nor nature of management, nor any other description that could be construed as describing a substantive commitment.

If there are other applicant commitments, to features that could be construed as contributing to the domain that I have called “public amenity”, I confess to not having been able to find them among the array of attachments mentioned in the Staff Report.

By contrast, it is stated that this application will escape any contribution towards whatever burden its occupants will put on the use of either park facilities (c.f. impact fee) or parking facilities.

Therefore, I must conclude that the application, as submitted, is dramatically unbalanced with respect to reaching a reasoned balance of equitable provision of “public amenity” in return for the optional benefit of building the massive amount of density and bulk that is being requested.

In closing on this point, I note that the Staff Report recommends a condition of future approval (presumably at Site Plan, although Preliminary Plan is also mentioned), that requires the applicant to:

- “demonstrate how each public benefit satisfies the Zoning Ordinance and Incentive Density Guideline requirements”.

Clearly there is confusion at work within the system, if the Sketch Plan commits the Board to having approved a given density and configuration (which is the premise of my entire understanding of the system), at step one,

- while delaying, to step two, at a later date, any finding with regard to the adequacy of the “public benefits” that are necessary, under the law, to justify that very density - as may be observed, even superficially, in the use of the term “incentive” in the above reference.

(c) Failure to Satisfy Guidelines Criteria

It is my understanding that the relevant guidelines for this Sketch Plan Application are to be found within three documents, taken as a whole rather than individually.

These documents are:

- the Downtown Bethesda Sector Plan;
- the Bethesda Design Downtown Guidelines; and
- the CR-8 Zone.

As an aside:

The Staff Report says that the Bethesda Overlay Zone does not apply to this application, but I question that,

- in light of the fact that the 290 foot height limit seems to derive its applicability directly from the Overlay Zone, rather than from the CR-8 Zone per se.

Whatever the relevance of this aside, I readily admit to a possible lack of understanding on this point,

- and completely confess to having experienced a considerable amount of confusion in attempting to find a clear path through the thickets of complexity to be found across the language in all three of these documents taken together.

I am grateful for the assistance of staff in finding my way as far as I have.

But whether my perception of the relative impenetrability of this bureaucratic wall is shared by many others or not,

- I do suggest that there is adequate evidence of a simple consistent theme running through all these guideline documents.

I submit that this theme can be described as the central importance of something called “the public realm”,

- defined in terms of the amount and character of open space that is available for use by the public within the Bethesda Downtown area.

It is true that the stated goal of the sector plan is to blend a broad overall normative objective - sustainability - with companion objectives of economic, equity, and environmental stability,

- so as to maintain homeostasis within what the plan calls an “Urban Ecosystem”.

But this overall vision takes on material focus in terms of the spatial pattern of those parts of the landscape through which all members of the community can travel, and into which all members of the community can see.

In short, it is, from a spatial perspective,

- the public travel paths,
- and sitting areas,
- and view sheds,
- that are intended to become the focus of regulatory efforts to shape the spatial character of the area.

The buildings are important to the plan’s vision also,

- but they are intended to be seen as a material frame to the public open space,

- not as objects revered for their own desires to be whatever their private owners wish them to express.

I suggest that the above goal and normative theme,

- that is expressed in different ways throughout the sector plan and the design guidelines, and even reflected in the OM zones,

- is consistent with a world wide movement towards a sustainable urban future - and merits commendation.

A recent article about an action of the United Nations seems to me to be a useful reference point in thinking about the relevance of the larger global perspective,

- it says, among other things:

"It's been over a year now since all 193 countries of the United Nations adopted by acclamation the "New Urban Agenda," the outcome document of the Habitat III conference held in October 2016.

"The historic nature of that achievement is hard to over-state: for the first time, we have a world-wide agreement embracing walkable mixed use, mixed transportation modes, polycentric regions, diversity and affordability, and other elements of a "new urbanism" (by any other name).

"But now comes the hard part of implementation ... (and) ... the fundamental role of public space in sustainable urbanization.

"We've come to recognize it" ... (open space) ... "as a kind of essential 'connective matrix' of healthy cities.

"It's public spaces—including streets—that give us the access to all the benefits of cities, and that connect private spaces to each other.

"It's public spaces that ultimately connect us to each other, as the research shows, and underlie efficient creativity and exchange within cities and towns."

Well, everyone can appreciate the yawning chasm that often exists between the aspirations of lofty rhetoric and the practicalities of material achievement.

But it seems to me that not only the aspirations of global thinkers can be invoked in deciding the fate of this particular Sketch Plan proposal.

My reading, of the policy guidelines that the Planning Board's action must be judged against, make it clear that priority must be given to preserving and enhancing public open space within the Bethesda Downtown area.

This interpretation of the policy guidance framework is supported by the evidence provided by the study produced by the GWU Center for Real Estate and Urban Analysis, which states specifically:

- that there is a measurable lack of public open space in the Bethesda Downtown (c.f. Bethesda ranks last among 52 metro area urban districts in open space per resident);
- and that such open space not only has qualitative value to the community, but also quantitative value to adjacent property owners.

For all the above reasons, I submit that the relative obliteration by the building proposed by this application, of the relatively cohesive existing open space on this site, is totally inconsistent with the intention of the adopted policy guidelines that constitute the framework for any Board decision on this application.

(d) Relevant Historical Aspects

Four aspects that can be seen in the history of the development of this site seem worthy of notice:

- (i) the ownership of the property;
- (ii) the primary committed function of the site;
- (iii) the zoning history of this site; and
- (iv) the zoning history of adjacent properties.

(i) Ownership of the Property

Unlike most other applicants for Sketch Plan Approval in Bethesda Downtown, this applicant does not own the property in question.

The property is owned by the Washington Metropolitan Area Transit Authority (WMATA).

The applicant is a tenant of WMATA, with a long term lease.

Might there be anyone, sufficiently interested in contesting approval of this application, as it has been submitted, who might seek to delve into the intricacies of how necessary it could be, from a legal perspective, for the actual owner of the property be the party that commits to the development proposal, with its promises of long term future operational commitments?

Such intricacies are beyond the scope of my time, effort, or interest. But it does seem relevant to recognize that this site is owned and operated by a public agency,

- whose mission is to serve the residents of Bethesda Downtown, among other parts of the metropolitan region,

- and whose operating income is supported by tax revenue provided by residents and property owners, not only in Bethesda, but also in the State of Maryland.

Should such a property owner be actively involved in seeking to preserve existing public open space, that is aligned with the public interest nature of its central mission, as contrasted with a passive support for whatever development will increase its rental revenue?

Should the Planning Board be seeking to engage its sister agency in a holistic approach to this site and its environs?

(ii) Primary Committed Function of Site

The primary function of this site, as committed by WMATA's operation of the transit station, is to facilitate the movement of pedestrians as they transfer from buses to trains, and vice-versa.

This function is important not only in its own right, but also in a way that specifically affects the viability and health of the public

open space realm that has been identified as so central to the underlying rationale for zoning in the area,

Anything that affects this function can be argued as being important to the public realm - that conceptual domain that constitutes the baseline touchstone for site development considerations under Montgomery County's relevant policy documents.

It is true that the application proposes to augment and enhance some of the material aspects of the existing bus bay as an "amenity".

But it is equally true that the loss of the light and air that is currently transmitted into the bus bay area at the fountain location, by the proposed new building location, is a factor that deserves special attention,

- from the perspective of its negative effect on transit travelers, whose experience constitutes an important part of the open space network concept for the public realm in Bethesda.

The existing bus bay area, at floor level on the Woodmont Avenue side, is perceived by a visitor as being covered by a ceiling that is - yes - too low to be enhancing,

- but this enclosing effect, from a vertical perspective, is offset (to a degree that could be debated) from a horizontal perspective, by the fact that the area has been kept open to a view of the exterior area's light and air, by avoiding side wall enclosure wherever possible.

Covering over the fountain area opening that lets sunlight and fresh air into the bus bay area, to allow a three hundred foot building to be built over top of it, cannot be considered a plus for the experience of people using the transit-bus transfer on this site.

Do not transit users, who only transfer at this station, need to be considered as equally a significant part of the public open space constituency as are Bethesda residents?

Since this factor has not been addressed so far in this application, and since it is dramatically impacted by the building location proposed in this application, it constitutes another reason for not approving this application without further study.

(iii) Zoning History of This Site

Not only is this particular site unique in Bethesda Downtown because of its transit function, but, in addition, it needs be noted that this property already has been granted the previous equivalent of current OM Zone status by a previous Montgomery County governmental action, as a part of which a significant portion of the site was reserved for public open space.

What the precise legal status is today, of this previously committed public open space, possibly could be considered an interesting topic to speculate about.

Might the existing public open space, on this site, be considered as being in less than the fee simple ownership status of WMATA, by virtue of the previous governmental action that committed it to public use - or even by virtue of the many years during which it has been considered as such, and traversed openly by the general public?

At present, I cannot offer any insight on such questions, other than to suggest that they seem to constitute additional evidence that supports the importance of being exceptionally thorough in evaluating the amount and character of public open space that will be left on this site if it is approved for an additional building.

(iv) Zoning History of Adjacent Properties

The same question, about the legal status of public open space that was committed to such use by previous OM-equivalent zoning actions, is also relevant to such adjacent properties as the two immediately neighboring ones, owned respectively by the Chevy Chase Land Company and Clark Enterprises, as I understand it.

Chevy Chase Land Company Site:

Successful use of the so-called “lawn area”, as proposed by the applicant, obviously is totally dependent on the cooperation of the owner of the adjacent property to the south (Chevy Chase Land Company).

The public open space, provided by the zoning approval given previously to this property, is on exactly the same level, over the

bus bay area below, as is the existing public space on which the applicant's existing building fronts.

A simple glance, by anyone entering this part of the existing public open space, will reveal that the part that falls on the Chevy Chase site is indistinguishable from the part that falls on the applicant's site,

- with the exception of the fact that the ground plane is fragmented, by the remnants of a previous skating rink on the applicant's site and by the different flooring material on the Chevy Chase Land Company site..

The applicant has proffered to seek such a cooperative endeavor, but a commitment to seek something is not a guarantee of success,

- a point that goes to the gist of the argument made above in section (b).

Clark Enterprises Site:

Like the Chevy Chase Land Company site, this site was previously approved for development under what was the predecessor zoning to the current OM Zones - namely the former CBD Zones.

As it happened, the Clark property was under development planning at the approximate same time as the WMATA transit station site.

The problem at that time was how to best integrate the functioning of both these sites with that of the WMATA transit site, from a "public amenity" point of view.

Clark Enterprises, having begun its site development planning as if it were dealing with any other site sitting alone on a defined property, initially was not enthusiastic about the Planning Department's efforts for coordinating spatial aspects across the boundary lines between separate private properties,

- namely, to amend its initial building plans so as to pull back the lower facades of its building face, in order to open up the view from Old Georgetown Road onto the Metro Center site,

- and, more importantly, to provide additional pedestrian access to the bus and transit area.

What the Planning Board eventually approved for the Clark property, was the building as one sees it today - with two important pedestrian elements that provide for pedestrian access to the Metro Center site:

- one along an arcade from the corner of Old Georgetown Road and XXXX, connecting to the deck level over the bus bays at its north-west corner, and

- another at the lower level of Woodmont Avenue, providing access, from the street where the buses enter, to the bus bay area from the west side.

The latter is the more significant to take into account, since, if this use of the Clark property were not present, the current pedestrian pathway at the bus bay lower level, with its benches and signs, would be inadequate to safely accommodate the traffic.

Now, I don't know what legal agreements were ever set up, between either the Chevy Chase Land Company or Clark Enterprises and either the county or WMATA, that may govern who has what rights to what parts of all three of these sites.

I simply suggest that these questions are not trivial, with regard to their potential effects on any new building configuration of the WMATA site,

- and that, although some of the aspects of these questions may properly fall into the purview of the Site Plan or Preliminary Plan, some of them, such as the value of the pedestrian access paths across the Clark property, may well be very important for how much the WMATA deck level can be "activated" by drawing in more pedestrian traffic.

In short, the functioning of both the bus bay area at lower level, and the plaza deck at upper level, are significantly affected by what is done on these two adjacent sites.

The public realm, that is the touchstone of success in whatever happens on the site of the applicant's proposal, is significantly dependent on what also happens on these sites.

All the above leads to a conclusion that it conceivably may be impossible to achieve “design excellence” on this particular site, without approaching it as a holistic exercise involving all three sites.

RATIONALE FOR CONSIDERATION OF ADDITIONAL DESIGN STUDIES

The foregoing has argued that the current Sketch Plan application should be denied - but that conclusion does not answer the residual question of what should happen to this site.

In 2008, the Planning Board denied a previous proposal to demolish the existing glass, three story, “food court” building and replace it - on the same footprint - with a building rising to the maximum height limit in place at that time (approximately 150 feet).

Since then, a new Bethesda Sector Plan, as well as a new Zoning Ordinance, has been adopted by the County Council.

This new plan says that this site is appropriate for an additional building, albeit one that is intended to be uniquely special,

- one that will act as a “beacon” announcing the centrality and importance of this location,

- and one that will have a “signature” nature, representing not only a manifestation of the somewhat abstract concept of “design excellence”, but also the symbolic nature of this site as a place of special civic character,

- not just another private sector building, no matter how well designed, but a building whose presence also will reflect something of the public and civic nature of the Bethesda community.

I have argued above that the building proposed in this application is too massive, too bulky, and too disruptive of the existing public open space, to fulfill the objectives of the Sector Plan.

The building proposed by this application forces its mass into the center of the existing open space - but this is not the only location on which it is possible to add a new building.

Three other peripheral locations are conceptually available - all in places that could leave the center of the site open for public use.

These three locations are:

(i) in the footprint area of the existing glass “food court” building;

(ii) in the area over the fountain and stairs going down from Wisconsin Avenue to the bus bay area;

(iii) in the area at the south-west corner of the existing plaza level, above the automobile waiting area beside the bus bays, off of Woodmont Avenue, called the “lawn” area, on the upper level, in the application.

All would require reducing the total square footage of building mass below that which the applicant has proposed,

- but we must remind ourselves that, legally, the applicant can have no expectation of being granted any density at all,

- other than can be justified by the amount and quality of whatever “public benefit” is judged appropriate by the Planning Board, under the relevant policy guidelines.

I am providing herewith some illustrative photos of building configurations that, theoretically, could be built on each of these three locations - using the 3-D model referred to at the beginning of this document.

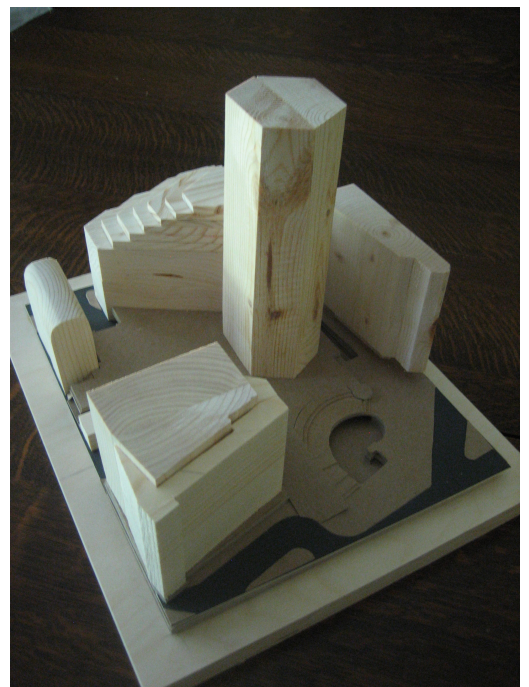
To provide an overly simplistic, and somewhat too poetical, way to think of the nature of these three alternative forms, I am labeling them - working off of the cowbird egg metaphor used earlier in this rationale against the building bulk proposed by this application - as:

(i) the “bluebird” alternative

- this would use a footprint replacing, and slightly smaller than, the existing “food court”;

- it would reduce the floor plate of the application’s proposed building, from approximately 24,000 sq. ft. to approximately 12,000 sq. ft.

the “bluebird”



the “nightingale”



the “faberge?”



- it is shown on the model as rising higher than currently allowed, to 350 feet, not simply to provide somewhat more floor space in this building than would be allowed by the 290 foot height limit of the current zoning, but to increase its visual effectiveness;
- the argument for such a height increase would not be based on any need to “compensate” the developer, however,
- it would be based on the value of the esthetic appeal of the more slender tower silhouette, and its visual “beacon” effect as a symbol of this unique site - (given that there will be, in the future, a large number of other 300 foot buildings in the vicinity, approved under the new Bethesda Overlay Zone);
- this building would fit basically the same supporting column configuration as the application’s building proposal, so its structural feasibility presumably would not be in question any more than that of the application’s proposal;
- by attaching one corner of this tower to the corner of the existing building to its west, a potential wind tunnel, that is implicit in the application’s building location, could be removed or reduced,
- and the possibility would exist to connect floors in the new building with elevators, safety egress, and street delivery service features that are located in that corner of the existing building.

(ii) the “nightingale” alternative

- this would use a footprint over the existing fountain and stair to the bus bay area,;
- this building location permits a consolidation of the public open space into one visually large cohesive space, to be landscaped and furnished with whatever combination of activities may be considered best under subsequent analysis;
- but, because this location blocks the view from Wisconsin Avenue and the east, into this larger public space, the need would exist to reduce the bulk of the tower, so that the space on both the north and south of this tower would allow vision from the street into this larger public space;

- in the photo, this tower is shown as having a floor plate of about 8,000 sq. ft., and an increase in height to 400 feet - the justification for which would need to be on the basis of the improvement thereby created in the esthetic and “beacon” quality of the tower in this visually prominent location;
- this alternative would require an assessment of structural support feasibility, but would seem doable, judging from the fact that it would not need to disturb the majority of the existing bus bay columns, and would have the added advantage of interfering less with bus operations during construction than the application’s building proposal.

the “faberge” alternative

- this would use a footprint in the southwest corner of the site, the area proposed for a “lawn” in the application;
- because of the three existing buildings surrounding this location, the tower would need to be tall and slim, like that shown for the “nightingale” alternative, yielding therefore a floor plate of about 8,000 sq. ft.;
- the major advantage of this location is similar to that of the “nightingale” alternative above - it allows consolidation of the public open space into one large and visually cohesive space, that can be landscaped and furnished with “activating” elements in a wide variety of possible ways;
- of course, like all possible locations for a building on this site, this one has its recognizable disadvantages, including its reduction of the attractiveness of the view shed from the terraced balconies of the hotel, and the possibly too-dark effects on the plaza of afternoon shadows from such a tall building, among others that could be discovered.

Summation

The main point in all the above is that the applicant’s building proposal is not the only possible solution to the challenge of putting a new building on this site, such as would rise to the level of both “design excellence” and “beacon symbolism” that are called for in the Sector Plan and Design Guidelines.

I have challenged the form of the building proposed in this application, and made the cowbird egg analogy to its desire to

center itself in the middle of the existing public open space “nest”;

- a “nest” that this proposed building never made, since it was provided by the combined efforts of WMATA and the Planning Board, and will be asked to contribute nothing towards paying for the burden its occupants will put on both parks and parking in the area.

But this observation is not meant to criticize the applicant, who may well feel it necessary, as a matter of fiduciary responsibility to corporate share holders, to propose a site configuration scheme that give emphasis to maximizing the economic return on investment potential to the corporation, rather than maximizing the social return to the community.

It seems to me that the community should not expect the private sector developer to give primary emphasis to the needs of the “public realm”, but rather should hope that the Planning Board can be the instrument of leading all parties concerned towards achieving the synthesis of public and private that the words of the Sector Plan so beautifully describe.

One way for this to happen could be for the Planning Board to commission its staff to lead an inter-agency exercise with WMATA and the other relevant parties, to study all the possible scenarios for developing the potential of this site and the two adjacent to it,

- including exploring the possibilities for cost/benefit sharing that are mentioned in the GWU Real Estate Center Report, as well as the potential for an expanded and on-going role by the Bethesda Urban Partnership, which is already charged with management and leadership roles with respect to the long range character and health of the Bethesda Downtown community.

Therefore, I conclude my comments on this application by returning to those made at the beginning - namely my hope that the Planning Board can “exercise the broad vision and policy leadership that only you have the authority to provide in matters such as these”.

APPENDIX A - STAFF REPORT & DESIGN REVIEW PANEL

The foregoing material in this document is written in the form of a narrative that seeks to stitch together a logical argument,

- comparing the proposal to various benchmark criteria along the way, but essentially relying on the reader to agree, or disagree, with the cumulative effect of the narrative as a whole.

The Staff Report appears to me to be more in the form of a check list of various topics, also comparing the proposal to various benchmark criteria, but not prioritizing their relative importance against any holistic judgmental perspective,

- thereby relying entirely on whether a simple tally of check points is enough, without attempting any overall holistic judgmental description.

If one accepts my perspective, that there is a different approach reflected in this document than is reflected in the Staff Report (i.e. analogous to the difference between “qualitative” and “quantitative”), then it is obviously not so easy to compare them.

Nevertheless, some effort to do this seems necessary - so the following addresses specific points in the Staff Report (which recommends approval), where I feel the need to disagree,

- or make a case for why the logic of my recommendation should be given more weight than the rationale cited in the Staff Report, for whatever is the particular point in question.

.....

Staff Report

The Staff Report recommends approval with a number of conditions (pages 3-5) - my comments are attached:

Density & Height

- a maximum number for both density and height (500,000 sq. ft. of new private floor space and 290 feet of height) is approved, but no relationship to site configuration, or public open space configuration is made.

Land Use

If the Residential use option is chosen by the applicant, no further adjustment of the site configuration is required,

- which effectively means that the Board will be committing to no further revision to the size and shape of the building as represented in the drawings of this Sketch Plan Application, unless the applicant agrees.

Only if the Commercial option is chosen by the applicant will there be further conditions imposed on the applicant, with regard to such things as pedestrian circulation and the design and function of open space areas.

Incentive Density

A final point score for “public benefits” will be established at Site Plan,

- which means that there is a total disconnect, between the timing of the Board’s granting a maximum density at Sketch Plan, and the Board’s making a finding that this grant is balanced against “public benefits” at Site Plan,

- clearly this is a “cart before the horse” approach that is totally contrary to the intent of the relevant policy guidelines, as argued above in this document.

Building Design

“The applicant must submit an architectural design concept to the Design Advisory Panel ... prior to submittal of any Site Plan application.”

This requirement is entirely procedural in effect, with absolutely no substantive meat in it, nor does it confer on the Design Advisory Panel any authority, deriving from the Sketch Plan action, to make any significant change in the building size and/ or configuration from that approved at Sketch Plan.

What this suggests is that the unstated, but implicit, staff understanding, of the regulatory system as a whole, is that one of the key elements of the original zoning authority (site configuration) is to be delegated to the DAP, with its findings accepted without further evaluation.

I will comment more on this observation in the section below concerning the DAP report included in the Staff Report.

Future Coordination for Preliminary Plan and Site Plan

These conditions include, among other provisions of a more detailed nature, the delegation to the Preliminary of Site Plan stages of such things as:

“Building shadow study”;

“Physical Scale Model”;

A demonstration of “how each public benefit satisfies the Zoning Ordinance and Density Implementation Guideline requirements;

A “strategy and long term commitment for programming the public spaces”.

It seems clear to this observer that the deferral of such key analytic components as these, to a second stage approval step,

- after having committed to acceptance of both a maximum density and a specific site configuration,

- makes no sense at all,

- if my understanding is correct that the Board is required to make a final judgment, with regard to density and site configuration, that is based on the “public amenity” concept,

- that, in turn, lies at the root of the legal zoning authority,

- at least as I understand the whole thing.

Perhaps my understanding is not correct.

If so, I will appreciate an explanation of how that is the case.

In this connection, I note that the Staff Report (page 23) also says that the purpose of a Sketch Plan - “for the optional method of development in the CR, CRT, EOF or LSC Zones” - is to:

- identify general land uses

* how can deferral to Site Plan, as recommended above, of a choice between commercial and residential use, satisfy this condition for approval of a Sketch Plan?

- development intensity

* identifying the maximum number of sq. ft. of building floor space does would seem to satisfy this condition);

- public benefits

* how can deferral of measuring the public benefits, to Site Plan or Preliminary Plan. as recommended by Staff above, satisfy this condition for approval of a Sketch Plan?

Summation

The Staff Report gives evidence of considerable lack of clarity with regard to how it relates to the relevant policy guidance documents that the Board is required to follow in acting on a Sketch Plan.

.....

Design Advisory Panel Minutes

As far as I can see, there is no specific substantive recommendation from the DAP, beyond what is shown in Attachment D, Design Advisory Panel summary letters.

The Staff Report does mention the DAP's role (page 22).

- but this mention implies that the question of how the Sketch Plan's "design" is to be treated as part of Sketch Plan action is unresolved.

Specifically, this section of the Staff Report says: there "is a significant urban design question that has been raised by staff and the DAP, and the Applicant must answer as the design continues to develop".

Obviously, such a statement cannot be reconciled with a requirement for a Sketch Plan Approval to satisfy some minimum level of "design excellence".

Continuing on to examine Attachment D, we find that it says (my underlining added + comments in italics):

1. Panel Recommendations:

The following recommendations should be incorporated

into the Staff Report along with the recommendations from the April 25th meeting (attached).

2. The preferred massing is the residential option.
 - *preferred but not required*
3. Continue to develop all of the access points to the plaza level including from the bus bay below, the north stair and the connections to the west and south.
 - *no commitment to scope of access improvements*
 - *west and south improvements need coordination with adjacent property owners*
4. Continue to emphasize the activation of the ground floor and programming the open space because these are critical elements.
 - *no commitment to any kind of substantive description*
5. Provide a physical model at site plan if possible to allow the panel to see the relationships to the open space and between buildings.
 - *evidence that even these design experts cannot adequately “see” the spatial relationships that constitute critical aspects of “design” from the drawings submitted by the applicant alone (c.f. first point in my recommendation for denial of application as submitted)*

Elsewhere in these minutes are the following comments:

Public Benefit Points: The project is on track to achieve the minimum 10 Exceptional Design points required in the Bethesda Overlay Zone.

- *“on track” has no effective meaning for a Sketch Plan action*

Straw vote: 3 support with conditions to meet the panel recommendations above

- *“straw vote” commonly means preliminary and non-binding - (i.e, an unofficial expression of the trend within a group, but in no way definitive).*

- *the “conditions” mentioned are not defined by the material that is referred to as “above”.*

Summary Conclusions

Neither the Staff Report, nor the Design Advisory Panel Minutes, satisfy the minimum requirements for information adequate for the Planning Board to make a decision on this Sketch Plan as required by law - at least as I understand that.

APPENDIX B - LETTER TO DAP, JUNE 26, 2018

20817

9408 Seddon Road
Bethesda, Maryland

June 26, 2018

Bethesda Design Advisory Panel (DAP)
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland

In re: Sketch Plan Application #3201800110
4 Metro Center

Dear Panel Members,

Thank you for the opportunity to submit comments to you in advance of your June 27, 2018 meeting to review this project, and subsequently forward your advice to the Planning Board.

I will be happy to engage in conversation with you at this meeting, but, if time does not permit, the following are some observations for your consideration.

I am a retired architect-planner-educator who has lived in Bethesda since 1967. I also served as Montgomery County Planning Director, M-NCCPC, for over twenty years, retiring from that position in 1990 for a second career in academia (c.f. short bio attached).

I have no business, or self-interested, connection to any of the property owners, developers, attorneys, civic groups, residents, or others, who may be relevant to this application. I simply wish to contribute to the long term public welfare of this community, to which I have devoted a considerable amount of effort over the years.

I am providing you with what I hope will be an informed and reasonable opinion, to be judged simply on its facts and logic, recognizing, of course, that other points of view deserve equal respect, and that this is a complex matter.

My perusal of this application, and of what I believe to be all of the primary laws and guidelines relevant to its consideration by the Planning Board, has persuaded me of the following:

This particular project application does NOT meet the minimum level of “exceptional design” necessary to qualify for approval,

The reasons outlined below derive from my understanding of the policy framework in existence, as it appears to me to apply logically to this project application.

If my understanding of this framework is incorrect, with regard to facts or logic, I will appreciate the opportunity to discuss this further with you and/or other appropriate persons.

Rationale

A Sketch Plan is a first step in a multi-stage process, by which a proposal for development in an Optional Method Zone can proceed from concept to detailed legal commitment.

The Sketch Plan step is optional for the developer, albeit highly recommended by County Government policy, so that the developer may get a preliminary sense of the Planning Board’s approach towards interpreting the county’s approved policy guidelines.

Approval of a Sketch Plan by the Planning Board represents a degree of affirmation that the concept expressed in the application is worthy of further consideration, but no final Board commitment to any specific aspect of the proposal, as it may develop with further detailed expression, is conveyed.

To illuminate this understanding further, it can be said that, if approval is granted by the Board, no commitment is made by the Board, at this stage, to accepting the density and site configuration that is shown on the application.

Neither is any commitment made by the Board, with regard to an approved Sketch Plan, that it represents an adequate balance between private building density and public welfare benefits - which is the crux of the ultimate finding that must be made before final project approval in Optional Method Zones.

In short, the regulatory policy documents, relevant to this application, indicate that the Board has the authority to radically revise its preliminary affirmation of what is shown on an approved Sketch Plan, for any reason, as more details of the

proposal become evident, in particular as these are further clarified at Site Plan submission.

Cautionary Note:

The above reflects my understanding of what I have taken to be the understanding of Planning Board staff, as communicated to me on June 25.

*I subsequently have noted that the language of the Zoning Code, Division 4.9, C. Development Standards, 2. Density, says "In the CR or CRT zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch plan **or** site plan ..." (bold font added).*

If it should be argued that my understanding of the policy framework, outlined above, is incorrect - and that, by contrast, the approval by the Board of a Sketch Plan does carry with it a commitment to not significantly reduce the density at Site Plan, or alter its configuration - then the arguments that I will advance below will be even more relevant than otherwise.

Despite this lack of commitment by the Board with respect to Sketch Plan approval (as I understand it), there does remain in the air a question of fairness to the applicant (who must spend money to advance his or her proposal to the next stage), and to members of the community (whose participation in helping to shape the future of its environment, social, and economic environment is officially encouraged by the regulatory framework), that seems to warrant consideration.

On this point, three particular questions seem pertinent to tomorrow's DAP discussion:

- 1 What is the appropriate scope of substantive comment, that the regulatory policy framework confers on the Design Advisory Panel, with regard to Sketch Plan submissions?
- 2 Is the scope of informational content, contained in this application, sufficient to make an informed guess as to how the project will look and function, after it is further detailed?
- 3 Whatever the relative merits of its content, does this application merit a recommendation of approval with respect to its degree of "exceptional design"?

1 Scope of DAP Substantive Comment

The mandate of the Design Advisory Panel derives from the provisions of the Bethesda Overlay Zone. (See Montgomery County Zoning Code (Division 4.9. Overlay Zones, Section 4.9.2. Bethesda (B), 4. Public Benefit Points, Section f.)

This language states: “The Planning Board must appoint a Design Advisory Panel composed of **relevant independent professionals**, including at least one resident of Bethesda, and consider the comments from that panel on all projects before making their determination concerning **exceptional design points**.” (bold font added)

This same section also says that “The Planning Board must determine that the development achieves at least 10 points for exceptional design under Section 59.4.7.3.E.4. The maximum number of public benefit points for exceptional design is 30.”

A casual reading of this language, by itself alone, conceivably could lead an observer to conclude that the criterion of “exceptional design” is not considered to be of great importance to the final decision regarding final approval of a Sketch Plan.

This logic would flow from the comparison of 10 points, as sufficient for approval with respect to its degree of “exceptional design”, to 30 points as the maximum number possible.

If 30 were compared to a classroom paper grade of A, and 20 to B, and 10 to C, no one could conclude that 10 points is congruent with any interpretation of the term “exceptional”. By definition, a C grade is far below “exceptional” - indeed, just short of absolute failure.

I submit that the logic of common sense, with regard to the accepted meaning of words, as well as to any holistic view of the regulatory framework applying to Sketch Plans, is quite the opposite of the above implication.

First with regard to words: one dictionary defines “exceptional” as “rare, superior, better than average, deviating from the norm”(Merriam-Webster) - another as “forming a rare instance; unusual; extraordinary; unusually excellent; superior” (Dictionary.com) - and another as “not like most others of the same type; unusual; unusually good” (Cambridge Dictionary).

Second, with regard to the framework, the Planning Board's guidelines for its Design Advisory Panel state the following:

1 "The additional 'BOZ' density should **only** be allocated if a **high degree** of design excellence is achieved and the DAP will advise the staff and the Planning Board on this issue." (bold font added)

2 There is "a need to **focus on design intent** to make sure **quality is paramount** to the applications and that an **attractive public realm** will be the outcome". (bold font added)

3 "The DAP will be guided by the Bethesda Downtown **Sector Plan**, the Bethesda Downtown **Design Guidelines**, the Bethesda **Overlay Zone**, and the **CR Zone** for granting density incentives for exceptional design." (bold font added - See Appendix, for selected additional excerpts from these documents.)

It seems abundantly clear to me, from the above evidence, that the intention of the regulatory framework, taken as a whole, can be summed up in three ways, titled below as Intent A, B, and C:

Intent A

The DAP is expected to bring an **independent professional perspective, that draws on a broad field of expert knowledge**, and be **not constrained to a narrow scope** defined only by an illustrative point factoring menu that is intended only to be used as a guideline to the extent that it is helpful.

In support of this interpretation, note:

"Unless dimensions are specifically recommended in the Sector Plan, guidelines that include dimensions **also outline opportunities for alternative design solutions** to meet the intent of the guidelines." (from Bethesda Downtown Plan Guidelines, July 2017, Guidelines Flexibility, page 5 - bold font added); and

"Meeting the recommended dimensions in the guidelines **does not ensure approval**. Design proposals and alternative solutions will be evaluated during the development process **based on the surrounding context, site conditions, and how**

the project meets the Sector Plan goals and Design Guidelines intent.” (ibid - bold font added)

“The goals of the DAP are to ensure the **highest quality design** for the planned and built environment, **assist in resolving issues** that arise in the regulatory process where **urban design principles** conflict with other county regulations by providing **review and discussion earlier in the process**, and prioritize the allocation of the CR public benefit points in the CR Guidelines and the Bethesda Downtown Plan.” (ibid, Design Advisory Panel, page 5 - bold font added)

Intent B

The term “**exceptional**” carries the meaning of being **very high above the “normal”** or “frequently encountered”, to the point of being almost uniquely valuable.

Intent C

The **meaning of the term “design”** is critical to any clear understanding of how development projects can best proceed through an evolutionary process (from initial conception to detailed commitment), that concludes with fulfillment of the public purpose intent (on which all zoning authority rests).

This last point (C) deserves some elaboration.

The term “design” refers to a **qualitative relationship, not a quantitative thing**. As one dictionary describes it, “design” is “the **arrangement of elements** or details in a product or work of art”. (Merriam-Webster - bold font added)

Given this meaning, it is impossible for any observer of any given artifact to judge the full merits of its “design”, until the artifact is completed.

The necessary corollary to this fact is that any judgment of an imprecise, or partial, or preliminary version of any artifact, including a real estate development project, can only evaluate what is specifically expressed at the time of judgment, plus what may be inferred by the evaluator to be the logical implications of those preliminary expressions.

Given the logic of items A, B and C above, I can only conclude that the scope of content, to be considered by the DAP at time

of Sketch Plan evaluation - although conditioned by a requirement to focus on “exceptional design” - is expected to be of the following nature:

Not only independent and professional, but also very broad and comprehensive, with respect to the meaning of these terms and the relevance of these meanings for achieving the basic public purpose intent of the overall regulatory framework for evaluation of Optional Method Zoning applications.

2 Scope of Information in Application

This application provides no **three dimensional models**, and only one perspective drawing, taken from only one direction - which significantly limits anyone’s ability to correctly assess the effects that the proposed building massing is likely to have on users who, of necessity, will have to see and approach the site from different directions. (The effects of “massing” obviously is a critical design consideration.)

This application provides no estimated **pedestrian path volumes**, which significantly limits anyone’s ability to correctly assess whether the proposed site configuration will contribute any thing of value to the Sector Plan goal of creating a well connected pedestrian network. (The nature of the pedestrian network obviously is also a critical design consideration.)

This application provides no **sunlight/shadow studies**, nor descriptive content regarding the relevance of this topic, which significantly limits anyone’s ability to correctly assess how much the proposed massing and site configuration may, or may not, be detrimental to the well being of locations and persons affected by them. (As with the first two factors above, the effects of views and shadows, on the nature of the light and air ambience of the site, is another critical design consideration.)

Similar observations can be made about the absence of other descriptive material (e.g. **micro-climate and wind tunnel effects**, etc.) that could make it easier for an observer to estimate more of all the aspects that ultimately need to be addressed, in order to reach a judgment about whether the project is likely to produce “exceptional design” when completed.

Of course, it can be argued that the provision of such additional information puts an additional cost burden on the applicant, and

therefore should not be considered a deficiency at the Sketch Plan stage.

By the same token, it is equally worth noting the points made in the preceding section, about the essential nature of design, and concluding that fairness in the process necessitates that a low level of information content in an application can only expect a low level of content response from the DAP, and Staff and Board.

3 Does This Application Merit Approval for “Exceptional Design”?

I submit that the answer must be “NO”, for a considerable number of reasons, some of which I have tried to outline below, recognizing that this list must remain illustrative rather than exhaustive in this document, due to the limitations of time available to prepare for the DAP meeting of June 27, 2018.

(A) Deficiencies in Design as Submitted

The proposed massing and site configuration of the building is simply too big, bulky, boxy, and intrusive, with respect to its **detrimental effect on the existing spatial and environmental quality of this site and its environs**, to warrant the conclusion that what it offers in return could meet the official policy objectives for **maximum “design excellence”**, that are woven deep, and with internal consistency, into the fabric of all the relevant regulatory documents (i.e. Downtown Bethesda Sector Plan, CR Zone, Bethesda Overlay Zone, and Downtown Bethesda Design Guidelines).

More specifically:

(i)

There is a **lack of public open space** within Downtown Bethesda - this proposal significantly reduces the size of currently available space of this nature on this site.

The application proposes to substitute free public entertainment events for such permanently usable public space - such events are, of necessity, sporadic and intermittent, compared to the value of physical space that is available to the community on a daily basis.

An apt comparison might be to the situation that prevailed in the development of Montgomery County's famed Agriculture Reserve. The overriding goal there was to preserve the physical farmland first, and work at enhancing the operational farming second. History suggests that that has proven to be a good strategy.

(ii)

With regard to **massing, and shadow and light and air effects**, mention has been made of the lack of either perspectives from multiple orientations, or three dimensional mock up models, or photos thereof, or sun/shadow effect studies.

My impression is that such additional information would reveal some substantial negative aspects to the proposal from a design perspective.

Specifically, it seems quite possible - maybe probable? - that the proposed building bulk and location could cast a dark shadow over the existing children's day care center at the south end of the existing platform park adjacent to the north of this subject site.

The Bethesda Plan notes that such day care centers are extremely important to the health of the community, and that sites for such uses are in very short supply.

(iii)

Other than **site "activation"** by events, the only other activation devices that appear obvious from the submission come in the form of plaza level retail around all four sides of the proposed high rise building.

Aside from the fact that the footprint of this private sector retail is actually larger than the footprint of the existing glass faced, three story structure in the same location (thereby reducing the size of the existing public space), there is no apparent reason why the same, or at least comparable, kind of retail "activation" could not be accomplished within the existing building - the addition of 290 vertical feet of office or residential density seems to add nothing to the existing situation in this regard.

(iv)

With respect to trying to “activate” the public space by opening up new **pedestrian pathways**, or improving existing ones, the submission does not seem to present anything substantially beyond the existing situation.

If anything the attractiveness and sight recognition of the transit entrance is reduced by the proposal’s covering over of the existing fountain cut that lets light and air into the bus arrival lower level, in order to claim a larger at grade public space to try and make up for the amount of the latter that the new building foot print requires.

One of the primary pedestrian access problems for this site is the lack of attractive, visible and easily navigated pathways for traffic that may want to get to the transit station by crossing the plaza from points along Woodmont Avenue and the residential neighborhoods to the west.

The applicant’s existing building, by the nature of its design, makes access through its lobbies extremely uninviting and difficult, even if the applicant wished to offer it. It is my recollection that the narrow stair up to the plaza level, from the street sidewalk near the bus entrance between the applicant’s building and the Clarke Building, is not shown to be significantly improved by the submission design, but I do not have time to check that and still meet the Staff’s deadline for submission of written comments tonight.

(vi)

This latter observation leads naturally to consideration of what might be the **best kind of building structure** to fit the idiosyncratic conditions of this particular site against the normative aspirations of the various relevant planning guidelines.

The building as proposed appears to be essentially a horizontally rectangular “slab” (or, if not horizontal, then at least square - no time left to try to take measurements from the material). The question may be whether such a huge mass, facing both the north and south directions, can ever be successfully accommodated on this site, if “exceptional design” is expected.

The alternative, of course, would be a tower, which, by definition, is significantly taller than wide on any side. It is my

understanding that the latter shape is the preferred consensus of most urban designers from cities around the world. I can supply reference material to substantiate that claim (e.g. cities renowned for their urban design achievements, such as Vancouver, etc.).

The implications of a design finding, that only a tower shape can successfully be fitted on this site, if maximum public use space and exceptional design are to be the result, would, of course, be that the total density of this proposal would require significant reduction, since its building envelope is already pushing against the 290 foot height limit of the relevant CR and Overlay Zones.

I submit that it is not only appropriate, but required, for DAP to consider such questions at this stage. I have done some research on this matter of tower versus slab, and would be willing to share more thoughts on it for further discussion if desired.

At present, I am inclined to feel that only a tower shape can come close to providing the symbolic effect that the planning documents put forward, as the basic rationale for recommending the addition of another building on this site up to 290 feet. But here again, more study obviously is necessary.

(vii)

Finally, it has come to my attention that **there exists a study of this site**, done independently of any connection to the current Sketch Plan application, by the George Washington University Center for Real Estate and Urban Analysis.

It is my understanding that this study claims to demonstrate that an activated park on this site would have the effect of substantially increasing the rent value of all adjacent properties within some not-insignificant radius of this site.

Furthermore, this study is based on evaluating the economic effects of a professionally prepared landscape plan, that activates the existing public open space, while also allowing for a building whose footprint is considerably smaller than that proposed by this application.

I submit that the existence of this study, demonstrating not only the viability, but also the profitability, of re-landscaping the existing public open space, is clear evidence that this particular

proposal does NOT meet the high bar necessary to be awarded approval for exceptional design.

The suggestion of this study, that a public/private venture of some kind might work to bring this site to fulfillment of its potential, as pointed to in the various relevant planning documents, seems to offer an interesting angle that conceivably could lead to heretofore unexamined possibilities - or not, as the case might be.

The Silver Spring Veterans Plaza and Civic Center, which is praised for its design features in one of the Planning Board's guideline documents, was the result of such a venture.

It is true that the site conditions of the Bethesda Metro Plaza and those of the Silver Spring Veterans Plaza are very different. Veterans Plaza is on a level site with only relatively low rise buildings around it. Bethesda Metro Plaza is on top of an above street level hilltop, surrounded by 12+ story buildings.

The latter site seems to be the more challenging of the two, in terms of achieving exceptional design excellence. But might it warrant further discussion by all the relevant parties?

Summary Conclusions Regarding Exceptional Design Merits

Although the composite review and approval process, for projects in Bethesda such as this one, has been divided into sequential approval steps (and topical compartments within these) by the adopted regulatory system -

And although the Sketch Plan step in this process uses only Public Benefits as a specifically illustrated criterion for approval, but requires demonstrated Exceptional Design as a critical and necessary component of the necessary Public Benefits package,

- I believe the only logical conclusion that I could defend, in fairness to the applicant seeking advice and counsel at this early stage, would be that the present proposal does not meet the necessary level of quality to be given the necessary 10 points of the rating system for exceptional design, and that, without radical revision of a serious nature, it would be highly unlikely to warrant such approval at Site Plan.

DAP APPENDIX

The following excerpts (illustrative but not exhaustive) are cited in support of the observation that the basic thrust of all the planning documents that are relevant to the topic of design excellence show a need to aspire to the highest level of creativity and innovation. and to sound health, safety and welfare standards as is conceivably possible..

(Italic font indicates quotations - italic underlining and **bold** font has been added by this author):

Council Approved & Board Adopted Bethesda Sector Plan

*Introduction - B. Challenges - **Lack of urban parks and green space***

*2,6 Urban Design - Public Space Network - A **well connected public space network** with a range of inviting streets, parks and plazas is **crucial** to fostering a walkable, bikeable and liveable downtown environment.*

*2.6.2 - Urban Form - ... increased building heights should be supported in targeted areas, while also ensuring **new development relates to the character** of existing streets, districts and neighborhoods.*

*2.6.2 - Urban Form - A. - Recommendations: Symbolic Center and Civic Gathering Spaces: Design **signature buildings** that integrate design and sustainability to occupy the **symbolic center** and surround civic gathering spaces.*

*2.6.2 - Urban Form - B. - Goal: **Preserve the scale and character** of designated areas and **ensure compatibility** of new development with surrounding neighborhoods.*

*2.6.2 - Urban Form - C. - Goal - Create a walkable environment where buildings frame a vibrant public realm and relate to the human scale. **Limit the impacts of imposing building massing and bulk, particularly in the design of tall buildings**, by designing with sensitivity for their effect on access to **sunlight and air, shadows** and how they contribute to the character and **visual identity** of Downtown Bethesda.*

2.6.2 - Urban Form - C. - Recommendations: Innovation: Encourage **innovative building form** and allow flexibility for design that meets the intent of the recommendations.

2.20 - Building Form Recommendations - Bulk: **Limit tower floor plates**, vary geometry and articulate facades to reduce building bulk.

2.20 - Building Form Recommendations - Separation: **Separate towers** to allow access to light and air, and reduce impact of shadows on the public realm.

2.6.3 - Placemaking - A, Recommendations - **Create gateways at transit entrances** that integrate elements such as wayfinding, landscape and **building form unique to Bethesda**.

2.7.1 - Parks and Open Space - Adding more density to an already densely built environment requires more parks ... **The positive effect of parks on people cannot be overstated**, particularly in urban areas.

2.8.2 - A. - Child Care Services - The high value of property in Downtown Bethesda often prices child care services out of the market and limits the provision of outdoor play space for children. Recommendation: **Encourage child care facilities in key locations** ,,,

Board Adopted Bethesda Downtown Design Guidelines

(to be completed as time allows)

RICHARD TUSTIAN - SHORT PROFESSIONAL RESUME

Richard Tustian is an architect, planner, and educator with over 50 years experience in managing the built environment.

After designing eight buildings (as architect), and as many municipal master plans (as planning consultant), he served as Planning Director of Montgomery County, Maryland for over twenty years (500 square miles - 2018 population 1,000,000+).

During this time, he gained national recognition for the design and implementation of a comprehensive urban growth management system, whose many successful innovations are

widely considered to have had a seminal influence on the field of urban planning.

In later years, he provided educational and consulting services to governments, universities, and other institutions, including positions as Senior Fellow, Lincoln Institute of Land Policy, and Adjunct Professor, University of Pennsylvania.

His professional accreditations include: BArch, University of Toronto; MArch, MCP, CertUD, University of Pennsylvania; Loeb Fellowship, Harvard University; Senior Management Certificate, Federal Executive Institute; and Fellow, American Institute of Certified Planners.

Some component elements of the Montgomery County urban growth management system, that have been studied by scholars, include:

The MC General Plan: “Wedges and Corridors” - a prototypical example of the concept;

The MC Agriculture Reserve, with Transferable Development Rights system - awarded, in 2017, the American Planning Association’s Landmark Planning Award, “for a planning initiative at least 25 years old that is historically significant and initiated a new direction in planning”;

The MC Community Master Plan system - which links plan guidance to incentive zoning codes, staged subdivision regulations, and other related policy mechanisms;

The MC Adequate Public Facilities Ordinance, with its Bi-annual Growth Policy - used for coordinating the release of private land development permissions with the delivery of the public facilities listed in the Capital Improvements Program; and

The MC Moderate Priced Dwelling Unit Ordinance - which requires that a certain percentage of the total units, in all new housing developments, be made available at “moderate” cost.

Activities during Mr. Tustian’s time as educator and consultant include provision of services to:

The Lincoln Institute of Land Policy - as course developer and teacher, in a multi-year project to provide educational seminars

on customized growth management issues, to a wide diversity of municipal governments across the nation;

The University of Pennsylvania - as multi-year course developer and teacher of topics both traditional (e.g. "Introduction to City and Regional Planning") and innovative (e.g. "Secret Seeds of Form: The Role of Rules and Limits in Design");

The National Research Council, Transportation Research Board - as team member in a project to explain and measure the relationships between transit and urban form;

The City of Los Angeles - as coordinating consultant in a project to totally reshape the existing planning-regulatory system, to incorporate ways to address contemporary transportation, environmental, and social equity concerns; and

The American Institute of Certified Planners - as coordinating consultant in a project to develop new advanced specialty certificates for Transportation and Environment planning.

Articles written by Mr. Tustian include:

"The Administrative Organization of Planning", published in Elsevier's International Encyclopedia of the Social and Behavioral Sciences (2007);

"Inclusionary Zoning and Affordable Housing", published by the National Housing Association (1999);

"Land Use Planning", published by Macmillan in its Encyclopedia of the Future (1996);

"Saving Farmland Through Transferable Development Rights", published in the American Farmland Trust Magazine (1986);

Five annual growth policy reports, culminating in "Planning, Staging, and Regulating", published by Maryland National-Capital Park and Planning Commission (1974-9);

And numerous papers and talks on urban planning topics, presented at a wide variety of educational conferences and seminars.