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April 13, 2009

Dr. Royce Hanson
Chairman
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Mr. Rollin Stanley
Director of Planning
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Proposed CR District;
Possibility of a Comprehensive Zoning Map Amendment in advance
of a Comprehensive General Plan Amendment

Dear Royce and Rollin:

Recent discussions about the new CR zone have included whether there had to be a comprehensive master plan or General Plan Amendment in conjunction with a Zoning Map Amendment to “map” the CR District on properties formerly zoned in several commercial classifications.

After our April 1st meeting, I had a chance to do a little reading on that subject. While Zoning Map Amendments typically do follow the adoption of a master plan, there does not necessarily seem to be a requirement for such a course of action. There is plenty of case law that says that master plans are

merely guides and since it has been held that "...there is, of course, ...no requirement that the comprehensive plan adopted by the legislative body must conform to the recommendations of the master plan..." *Iverson v. Zoning Board of Howard County*, 22 Md. App. 265 at 269, 322 A.2d 569 at 571 (1974), then a comprehensive master plan or General Plan Amendment as a prerequisite to the adoption of a comprehensive zoning map amendment would seem to be unnecessary. See also *People's Counsel for Baltimore County v. Webster*, 65 Md. App. 694, 501 A.2d 1343 (1986), indicating that a master plan may be one of the factors from which a comprehensive zoning plan is derived, but that there is no requirement for consistency between the zoning plan and a comprehensive master plan.

I also investigated how the City of Rockville rationalized a complete revision of its Zoning Ordinance without the prerequisite of a General Plan Amendment. The former City Attorney (Paul Glasgow, Esquire) explained that a comprehensive zoning map amendment required only a thorough, diligent rethinking of the structure of a Zoning Ordinance and did not mandate a comprehensive master plan amendment. I have attached copies of City Ordinance No. 19-08, which revised the City's entire Zoning Ordinance, and a draft of an Ordinance which accomplished an amendment of the City's Zoning Map. You will note that the two Ordinances described a lengthy and thorough analysis of the Zoning Ordinance changes, the details of which the former City Attorney apparently believed satisfied statutory requirements for a thorough investigation supporting a comprehensive Zoning Map Amendment.

Obviously, you will want your own attorneys to evaluate this important threshold decision but, based on the information that I have alluded to in this letter, it would appear that a comprehensive, County-wide Master Plan or General Plan Amendment would not be necessary as a prerequisite to adoption of the CR District and mapping of the CR District and its zones throughout Montgomery County.

Sincerely yours,

MILLER, MILLER & CANBY

Jody S. Kline

JSK/dlt

Enclosures

cc: Lois Villemaire
Damon Orobona, Esquire
Josh Sloan
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