

# Urgent plea to improve the Transfer of Density regulations

## *Woodmont Triangle Amendment to the Sector Plan for the Bethesda CBD*

Memo: Marlene Michaelson and John Carter, AIA  
Date: 12 May 2007  
From: Jay Hellman 202 841-1944 jay.hellman@alum.mit.edu

### *Preface*

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This is not an abstract, conceptual treatise. It is an urgent plea to help Montgomery County actually achieve the most laudable goals that motivated Council Resolution 15-1316, January 31, 2006.

I write as the development managing partner of 7725 OGR LLC which owns a strategic site to help achieve these goals. Our site is located at the NE corner of Fairmont Avenue and Old Georgetown Road (the BP gas station.) With the most valuable assistance of Mal Rivkin, AICP we have been researching, thinking (*getting our imaginations in focus* to quote Mark Twain) and meeting with a very broad range of people since November 2002.

Our “Petri dish” for reinventing the Woodmont Triangle in the age of the computer is Fairmont Avenue (including Veterans Park which has the potential to become the *Town Square* — the most significant public amenity in the Woodmont Triangle.) By “Petri dish” I mean that important instances of all the critical elements that give the Woodmont Triangle its identity, its charm, its diversity, its history, are present right here.

Successful implementation of our vision (which is consistent with the Council intent) will serve as a valuable model to guide other projects (both in the Woodmont Triangle and elsewhere in Montgomery County.)

NB While I was preparing this memo and the enclosed exhibits I learned from Jeff Black, owner of Black’s Bar & Kitchen at 7750 Woodmont Avenue, that the density transfer deal he and Scott Ross (4900 Fairmont project) had negotiated after much analysis and thought (further complicated but also considerably enhanced by virtue of the contiguity of their two sites) fell apart precisely because of the critical problem I am writing this memo about. This, if not rectified immediately, would be a tragic loss for all of us — ironically, it would be a greater loss for the public sector than the private sector. This contradicts the Council intent.

### *The problem: density transfer must preserve & improve some existing buildings*

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I recently learned something very troubling from John Carter on a lengthy telephone call April 12, following an excellent brainstorming session at John’s office at MNCPPC with Mal Rivkin and Judy Daniel, Bethesda Coordinator (new planner John Marcolin attended) on March 12. John said that a site selling FAR can only sell the amount by which the Optional Method density exceeds the Standard Method base density — the existing building is irrelevant.

This is a logical oxymoron. I ask you to please read this memo and look at the enclosures, then please correct this quickly so we can achieve the spirit and the intent of the new regulations.

*The “project” is the Woodmont Triangle. Individual buildings are pieces of a larger picture.*

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The beauty of the M-NCPPC Planning Board’s March 2006 document is that it recognizes that the “project” is not any individual building, rather it is the “Woodmont Triangle.” Each building is a piece of a larger puzzle. How to get them to work together to produce music instead of noise is the challenge. **Government must play the role of the “coach” or “conductor”** writing the rules to make it easier for the private sector to make money doing the right thing rather than the wrong thing. The first steps have already been accomplished.

**Eliminating “minimum lot size” and enabling “clustering”** (i.e. transferring density from one location within the Woodmont Triangle to another location) are so critical and so marvelous because these remove the necessity of assembling all the smaller buildings and demolishing them. This **makes it possible to grow but not sacrifice our past, our identity, our community character.** In fact, variety in height, scale and architecture can enhance considerably the charm and energy of this community as part of the larger Bethesda “city.”

And, too, the **Amenity Fund** properly recognizes that each individual building cannot play an important role in providing “public amenities,” rather, that **is a Woodmont Triangle concept.**

*“public contribution” of a portion of the value of the Optional Method transfer of density:*

*1) contribute to Amenity Fund; 2) improve the old, small, existing building*

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I always envisioned the TDR proceeds as enabling a selling property owner to **improve his existing building so that it will look better, last longer and operate more profitably as a result.**

For example, imagine putting **green roofs on the small buildings.** Not only will this save energy and greatly lengthen roof life, it will also improve the view from above as the new towers will look down on them. Environmental benefits, too, would benefit all: improved storm water management both quality and quantity, improved oxygen / carbon dioxide balance, and reduced heat-island effect in urban areas.

In the case of Positano Restaurant, exactly the kind of long-standing retail business that we wish to retain in the Woodmont Triangle, owner Luigi Traettino asked me when we first met to discuss the new possibilities, if he could **put a roof garden on top of his restaurant.** I said that would be marvelous. It would also really enhance the view from the new windows that need to be built on the north facing wall of the adjacent three story office building at 4962 Fairmont (see photos enclosed below.)

Imagine **existing buildings** selling their un-needed density **contributing to the Amenity Fund,** too. Then undergrounding utilities and improving sidewalks (paving, lighting, furniture) would be accelerated and improve the public environment for everyone. There is absolutely no reason that those activities should be “building specific” -- those are **Woodmont Triangle key elements.**

My specific suggestion is that the difference between Optional Method density and Standard Method density valued based on each individual deal be allocated as follows (see spreadsheet):

20% to the Amenity Fund;

30% to the building itself;

*Reality Check Plus: we must increase density intelligently and attractively.*

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Please read the Executive Summary Report of **Reality Check Plus / Envision Maryland** written largely by John Frece, Associate Director of the National Center for Smart Growth Research and Education at the University of Maryland. ([www.realitycheckmaryland.org](http://www.realitycheckmaryland.org)) John, as you may recall, used to head the Office of Smart Growth when Parris Glendening was governor.

The key sentence is the second paragraph on page 3: “... goals could be achieved largely by re-directing much of the new growth projected to come to the state to existing urban areas, both large and small. ...”

Bethesda and the Woodmont Triangle with Metrorail, circulator bus systems, and a pedestrian-friendly mixed-use land-plan is one of the best opportunities in the entire state to achieve exactly that. **The challenge is how to increase density and retain attractiveness.** Variation in building heights in a setting of architectural charm support density as a key enabler of more retail. The synergy of all three makes being a pedestrian that much more exciting.

*It is not in the public interest to under-develop an urban site — subject to good design.*

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As I wrote in a tabbed-essay I prepared for the DC Zoning Commission in 1988 entitled **Zoning and PUD's** — **It is not in the public interest to under-develop an urban site — subject to good design.** That means bigger is better up to a point. And the “point” is when it overwhelms, when it is not attractive. To minimize sprawl, to minimize automobile traffic congestion and all its concomitant faults (air pollution, energy consumption, time wasted, aggravation ...) **we have to make pedestrian-friendly, mixed-use areas that are Metro-served so appealing and functional that more people want to be there.** The Woodmont Triangle plan can achieve this goal.

*The hard dollar cost of “public amenity space” is >3 times as much for the public sector vs private sector.*

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Enclosed is an economic analysis I prepared for John Carter of the real economics of “public amenity space” to compare it with what can be achieved today with the new rules creating the **Amenity Fund**. I used as my example the development planned by Ross Development at the corner of Fairmont and Norfolk Avenues. Here staff was still requiring Ross to provide 6,000 sq ft of ground floor space for public amenity. There was no recognition that **Veterans Park** was immediately across the street, nor any sense that Veterans Park, if enlarged and improved, could become the “Town Square” for the Woodmont Triangle. **Worse, the critical synergy between retail and park was ignored.**

My spreadsheet shows that the public cost of this 6,000 sq ft of space is almost four times the private cost: **the public loses an annual revenue stream of \$514,000 compared to the private sector losing a revenue stream of \$136,000.** And, in addition to the annual cash flow, the **Amenity Fund** would be able to receive a **contribution of \$400,000.**

Marlene and John (and the Planning Staff), please let's refine these regulations so we accomplish the fundamental mission of government: make it easier for the private sector to make money doing the right thing rather than the wrong thing.