

Elizabeth C. Rogers

September 10, 2024

The Honorable Andrew Friedson, President
And Members of the Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

**Re: Growth and Infrastructure Policy 2024-2028 Update (“GIP”)/
Adjustment to Infill Impact Area Boundaries in Germantown and Definition of
“High-rise unit” in Draft Impact Tax Bill**

Dear President Friedson and Members of the County Council:

Our firm represents Lerner Enterprises, the long-time owner and master developer of the project commonly known as “Black Hill,” in Germantown, Maryland. The overall Black Hill development is comprised of approximately 107 acres of land located along Crystal Rock Drive and Century Boulevard (surrounding the intersection of the two streets), just west of I-270 and approximately 1.5 miles north of the Germantown Center (the “Property”). The Property is zoned Commercial/Residential CR 0.75, C-0.5, R-0.5, H-145T and also located in the Germantown Transit Mixed Use Overlay zone. The Black Hill development is a multi-phased, mixed-use development which is currently approved for up to 3,284,000 square feet of total development (the “Project”). Several phases of the Project have been built to-date, including approximately 97,000 square feet of office use, 140 Assisted Living beds, approximately 6,400 square feet of retail use, and 355 multi-family dwelling units, along with a significant amount of open space and amenities. There are an additional 292 multi-family dwelling units that are approved and “building permit” ready, pending favorable economic conditions.

We are requesting that the County Council (1) adjust the proposed School Impact Area designation for the Property, and (2) reject the change proposed to the definition of “high-rise units” that is included in the Draft Impact Tax Bill (*See* Attachment B of the Planning Board Draft, 2024-2028 Growth and Infrastructure Policy). These requested changes will better align with current County policy and facilitate the construction of additional, much-needed housing on this Property and others.

I. School Impact and Transportation Policy Area Designations

We applaud the Planning Board for recommending that Germantown be reclassified in the Orange Policy Area, which is appropriate for “[c]orridor cities, town centers, and emerging transit-oriented development (TOD) areas where premium transit service (e.g., Corridor Connectors and bus rapid transit) is planned.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 6). Germantown is planned to have numerous Corridor Connector and Bus Rapid Transit routes. The Property sits at the terminus of the Manekin West Connector. In fact, Lerner Enterprises has funded the design of the future Dorsey Mill Road Bridge, which would provide for a direct connection between the Manekin West Connector and the Milestone/COMSAT East Clarksburg Connector, if constructed. As such, the Property certainly fits within the definition ascribed to Orange Policy Areas.

However, the Property is proposed to be located in a Turnover Impact Area, which is not reflective of the existing and planned development. As such we are requesting that the County Council expand the Infill Impact Area to also include the Property. Infill Impact Areas are intended to include those areas with “[h]igh housing growth predominately in the form of multi-family units that generate relatively fewer students on a per-unit basis.” (Planning Board Draft, 2024-2028 Growth and Infrastructure Policy, Page 4) (*emphasis added*) (as opposed to Turnover Impact Areas that are intended for areas with “[l]ow housing growth where enrollment trends are largely dependent on the turnover of existing single-family units.” *See Id. Emphasis added.*). This Property is certainly aligned with an Infill Impact Area classification, given the largely multi-family residential development that is approved and/or planned for the residential component of the Black Hill development.

This change is fair as it would treat the Property similarly to other multi-family developments in the County. And from a practical perspective, it would have a positive impact on increasing housing production, which the County desperately needs. Lerner Enterprises has obtained Site Plan and building permit approval for the next phase of the multi-family development in Black Hill, comprised of six multi-family residential buildings and 292 dwelling units. However, due to the challenges presented by rising construction costs and persistently high interest rates, although the building permits have been “approved,” Lerner Companies has not pulled the building permit. As a result, these buildings have sat “building permit ready” since August 2022. This modification would provide a meaningful economic change.

II. Definition of High-Rise Units in Proposed Impact Tax Legislation

Currently, Chapter 52 of the County Code defines high-rise units to include “any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories, and any 1-bedroom garden apartment.” (*Emphasis added*). The Planning Board draft Impact Tax Bill proposes to eliminate one-bedroom garden apartments from this definition. (*See Attachment B of the Planning Board Draft, 2024-2028 Growth and Infrastructure Policy*). This would have

significant negative impacts on currently planned project. Many developers have relied on this definition, which has been unchanged since 2003 (*see* Bill 31-03), in preparing development budgets and feasibility for projects. This change would have a drastic, negative economic impact on those garden apartment projects that have relied on this calculation. The Black Hill development is a prime example. As discussed herein, Lerner Enterprises is trying to get the next phase of the Black Hill development, which includes 292 multi-family dwelling units, off the ground. This proposed change, would have a significant negative effect on the viability of this next phase of the Black Hill development. This change alone, with all else remaining equal, would add \$1,084,314 in additional development impact taxes to the 292 units planned in the next phase of the project.

We appreciate your time and consideration of our requests.

Sincerely,



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September 13, 2024

The Honorable Andrew Friedson, President
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Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: Affordable Housing and Growth and Infrastructure Policy 2024-2028 Update

Dear President Friedson and Members of the County Council:

We have followed the 2024-2028 Growth and Infrastructure Policy update and want to express our support for two important recommendations in the Planning Board Draft that will promote much needed, additional affordable housing. These include two important affordable housing exemptions:

1. Recommendation 3.11a to Expand Affordable Housing Off-Site Frontage Exemption

The Planning Board Draft of the 2024-2028 Growth and Infrastructure Policy (the “Planning Board Draft”) appropriately recommends expanding “the current off-site mitigation exemption for affordable housing units... to include constructed improvement.” (See page 29). We commend Planning Staff and the Planning Board for this recommendation and recognizing the unique constraints that affordable housing developments face. We fully support this exemption as proposed.

2. Recommendation 3.11b to Fully Exempt Mixed-Income Housing Community uses from Needing to Complete an LATR Study

The Planning Board Draft recommends exempting Mixed-Income Housing Communities from the requirement to complete an LATR study. (See page 29). The Planning Board appropriately recognizes that Mixed-Income Housing Community projects “combine a high percentage of affordable housing (30-50%) with deeper levels of affordability (30-60% AMI),

creating housing that is affordable to more people with lower incomes.” This exemption is fully in line with other exemptions the County has provided to affordable housing, recognizing the importance of affordable housing in our community and the unique financial constraints these projects face.

If these exemptions were not approved, these additional costs would be likely to result in affordable housing developers needing to seek even more gap funding from the County, to cover these off-site costs. Such costly off-site frontage improvements would unquestionably challenge the feasibility of desirable Mixed-Income Community projects.

The Growth and Infrastructure Policy is an important tool in the County’s tool box for implementing important land use policies and objectives. These affordable housing exemption are necessary to further the County’s current housing goals, and are fully in-line with past County policy decisions aimed at achieving these important housing objectives.

We appreciate your time and consideration of our comments.

Sincerely,



Steven A. Robins



Elizabeth Rogers