



TUESDAY, FEBRUARY 24, 2015
CITY OF COLLEGE PARK
COUNCIL CHAMBERS

7:30 P.M.
MAYOR AND COUNCIL MEETING
AGENDA

(There will be a Worksession Discussion following the Regular Meeting)

MEDITATION

PLEDGE OF ALLEGIANCE: Councilmember Day

ROLL CALL

MINUTES: February 10, 2015 Regular Meeting; February 10, 2015 Public Hearing
on 15-O-01, Transcript in lieu of minutes for the Oral Argument held
on January 27, 2014 in case CPD-2014-01

ANNOUNCEMENTS

ACKNOWLEDGMENT OF DIGNITARIES

ACKNOWLEDGMENT OF NEWLY APPOINTED BOARD AND COMMITTEE MEMBERS

AWARDS

PROCLAMATIONS

AMENDMENTS TO THE AGENDA

CITY MANAGER'S REPORT: Joe Nagro

STUDENT LIAISON'S REPORT: Cole Holocker

COMMENTS FROM THE AUDIENCE ON NON-AGENDA ITEMS

PRESENTATIONS

Chuck Bean, Executive Director
Metropolitan Washington Council of Governments

CONSENT AGENDA

15-G-14 Approval of Order of Remand for Departure Application
Number CPD-2014-01, 4618 College Avenue.

Motion By:
To: Adopt
Second:

- 15-G-15 A motion that the City Council formally adopt the colorized version of the original Seal of the City of College Park, using the designated color values, to serve as the official seal of the City of College Park. Aye: ____ Nay: ____ Other: ____
- 15-G-16 A motion that the City Council approve a new design for the City of College Park Flag that incorporates the color City Seal in the gold and black quadrant background.

ACTION ITEMS

- 15-G-09 Approval of an amendment to the Declaration of Covenants and Agreement Regarding Land Use with 7401 Realty, LLC to allow the National Green Building Standard for the multi-family development at 4700 Berwyn House Road. Motion By: Dennis To: Approve Second: Aye: ____ Nay: ____ Other: ____
- 15-G-17 Approval of a letter to the 21st District Delegation stating the City's support for Senate Bill 369, to authorize a certain Class D (on-sale) Beer and Wine License issued for certain premises in the 7100 block of Baltimore Avenue to be converted, on or after a certain date, into a Class D (on- and off-sale) Beer and Wine License for certain other premises in the 7100-7200 block of Baltimore Avenue, subject to the applicant entering into a Property Use Agreement with the City. Motion By: Stullich To: Approve Second: Aye: ____ Nay: ____ Other: ____
- 15-G-18 Authorization for the City to sign a Memorandum of Understanding with the University of Maryland for City participation in the Partnership for Action Learning in Sustainability (PALS) Program, and funding of \$10,000. Motion By: Kabir To: Approve Second: Aye: ____ Nay: ____ Other: ____
- 15-G-19 Approval of a change order in an amount not to exceed \$80,524 for Charles P. Johnson Associates for the Duvall Field project. Motion By: Kabir To: Approve Second: Aye: ____ Nay: ____ Other: ____
- 15-G-20 Approval of a letter of support for HB 584, Ethics Law – Financial Disclosure Statement by Elected Local Official of a Municipal Corporation – Confidential Information. Motion By: Mitchell To: Approve Second: Aye: ____ Nay: ____ Other: ____

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|---------|--|---|
| 15-G-21 | Approval of a letter of support for HB 682, Municipalities-Charter Amendments – Referendum and Signatures Required for Petitions | Motion By: Mitchell
To: Approve
Second:
Aye: ____ Nay: ____
Other: ____ |
| 15-G-22 | Approval of a letter of support for SB 604/HB 229 – Human Relations – Employment Discrimination – Protection for Interns | Motion By: Day
To: Approve
Second:
Aye: ____ Nay: ____
Other: ____ |
| 15-G-23 | Approval of a letter of support for HB 376 – Electric Companies – Vegetation Management – Local Law, Rule or Regulation. | Motion By: Mitchell
To: Approve
Second:
Aye: ____ Nay: ____
Other: ____ |
| 15-G-24 | Authorization for the City to sign on to the amicus brief to urge support for freedom to marry. | Motion By: Stullich
To: Approve
Second:
Aye: ____ Nay: ____
Other: ____ |

COUNCIL COMMENTS

COMMENTS FROM THE AUDIENCE

ADJOURN

WORKSESSION

1. Discussion of Draft Strategic Plan

INFORMATION/STATUS REPORTS (For Council Review)

1. Legislative Report – Len Lucchi, O’Malley, Miles, Nysten & Gilmore, PA

**This agenda is subject to change. For the most current information, please contact the City Clerk. In accordance with the Americans with Disabilities Act, if you need special assistance, please contact the City Clerk’s Office and describe the assistance that is necessary.
City Clerk’s Office: 240-487-3501**

MINUTES

MINUTES
Regular Meeting of the College Park City Council
Tuesday, February 10, 2015
7:30 p.m. – 8:46 p.m.

PRESENT: Mayor Fellows; Councilmembers Wojahn, Brennan, Dennis, Stullich, Day, Hew and Mitchell.

ABSENT: Councilmember Kabir.

ALSO PRESENT: Joe Nagro, City Manager; Janeen Miller, City Clerk; Bill Gardiner, Assistant City Manager; Suellen Ferguson, City Attorney; Terry Schum, Director of Planning; Bob Ryan, Director of Public Services; Bob Stumpff, Director of Public Works; Cole Holocker, Student Liaison.

Mayor Fellows opened the regular meeting at 7:30 p.m. Councilmember Stullich led the Pledge of Allegiance.

Minutes: A motion was made by Councilmember Mitchell and seconded by Councilmember Day to approve the minutes of the Special Session on January 20, 2015 and the Regular Meeting of January 27, 2015. The motion passed 7 – 0 – 0.

Announcements:

Councilmember Dennis announced that the Lakeland Civic Association would hold their monthly meeting on Thursday at 7:00 p.m. at the College Park Community Center.

Councilmember Wojahn announced that the North College Park Citizens Association would also meet on Thursday, beginning at 7:30 p.m. at Davis Hall.

Acknowledgement of Newly Appointed Board Members: Mayor Fellows acknowledged Judy Blumenthal who was recently appointed to the Aging-In-Place Task Force and thanked her for her service.

Amendments to the Agenda: Item 15-G-10 has been moved to the Consent Agenda.

City Manager's Report: Mr. Nagro said the City is re-opening the business recycling grant program to commercial and multi-family properties; microgrants of up to \$500 are available for community events; City offices will be closed on Monday for the Presidents Day holiday and trash collection will be delayed one day next week.

Student Liaison's Report: Mr. Holocker said the SGA is supporting HB 229/SB 604 which fixes a loophole in the law to provide protections against harassment to unpaid interns. He has been working with the Athletic Department to increase their engagement with the community. He is also working with the Neighborhood Quality of Life Committee.

Comments from the Audience on Non-Agenda items:

Suchitra Balachandran, 9320 St. Andrews Place: Urged Council's support for Del. Peña-Melnyk's bill which will affect the way municipal charter amendments would be handled. It

would allow a municipality to send a charter amendment to referendum and to set the threshold for the number of voters between 5% and 20%. They analyzed the City's voter rolls and were surprised to find so many people who no longer live in the City, so they met with the County election supervisor to discuss the problem.

Mary Cook, 4705 Kiernan Road: She learned a lot from their meeting with the County election supervisor about how many people we have on the rolls that no longer live here. It is especially bad in a college town like College Park because it stops people from putting a referendum on the ballot. Names don't come off the rolls very easily – they need return mail to confirm that someone has moved out. She urged Council's support for Del. Peña-Melnyk's bill.

CONSENT AGENDA

A motion was made by Councilmember Mitchell and seconded by Councilmember Hew to adopt the Consent Agenda, which consisted of the following:

- 15-G-07 Approval Of A Letter To The Board Of License Commissioners That The City Voices No Objection To The 2015 Annual Renewal Of Liquor Licenses For Establishments In The City Of College Park**
- 15-R-02 Adoption of 15-R-02, A Resolution of the Mayor and Council of the City of College Park approving A Settlement Agreement With Comcast Of Maryland, LLC**
- 15-G-10 Approval of a letter of support for MC/PG 106-15 WSSC-Independent Review Board-Refunds**

The motion carried 7 – 0 – 0.

ACTION ITEMS

- 15-O-01 An Ordinance Of The Mayor And Council Of The City Of College Park To Repeal And Re-Enact Chapter 161, "Recycling" In Its Entirety, To Require Source Separation Of Recyclable Materials For All Owners And Residents Utilizing City Solid Waste Collection Services**

A motion was made by Councilmember Wojahn and seconded by Councilmember Brennan to adopt Ordinance 15-O-01, An Ordinance Of The Mayor And Council Of The City Of College Park To Repeal And Re-Enact Chapter 161, "Recycling" In Its Entirety, To Require Source Separation Of Recyclable Materials For All Owners And Residents Utilizing City Solid Waste Collection Services

Councilmember Wojahn said that Chapter 161, "Recycling" was last amended December 10, 1991, and provides only for the mandatory separation of used newspaper from municipal solid waste in the City of College Park. Used newspaper is the only commodity the City is recycling according to the Code. It is past time to update the Code with what we are actually recycling

according to the Code. It is past time to update the Code with what we are actually recycling today. We have gone from used newspapers to dual stream recycling to single stream recycling of many commodities. Therefore, this change to the Chapter 161 simply indicates in writing the current recycling policy now in effect.

There was an earlier public hearing so no audience comments were taken at this time.

There were no comments from Council.

The motion passed 7 – 0 – 0.

15-G-08 Approval of the City's co-sponsorship of a Mother's Day 5K Race in north College Park, co-sponsored by the College Park Community Foundation

A motion was made by Councilmember Mitchell and seconded by Councilmember Day that the City co-sponsor, along with the College Park Community Foundation, a Mother's Day 5K Run on Sunday May 10, 2015, authorize the expenditure of a \$500 grant from Recreation funds to the College Park Community Foundation to be used for this event, authorize City Public Works and Public Services staff to support this event, and authorize the use of City Contract Police Officers as needed.

Councilmember Mitchell said that the College Park Community Foundation has proposed and is planning a Mother's Day 5K run in north College Park on Sunday, May 10, 2015. Former Councilmember Mark Shroder, CPCF Board Chair Tricia Homer and CPCF Board Member Nick Brennan discussed this event with the Council at the work session on February 3. Last year the first College Park Mother's Day 5K was hosted by the Prince George's County Runners Club. The College Park Community Foundation has proposed hosting this year's event. Proceeds would go to the CPCF. The CPCF will be responsible for all race related logistics including route certification, registration, event timing, runner's shirts, etc. City staff will work with CPCF to plan community notification, route safety, etc. The Recreation Board voted for the City to support the event with a \$500 grant again this year. The City Attorney has advised that Council approval is necessary for the City to be an official co-sponsor of this event so that City insurance would cover it. The commitment the City will make as co-sponsor of this event is to provide the following: \$500 grant as recommended by the Recreation Board, Event-day City contract police support for safety and traffic control, Event-day placement of traffic cones (borrowed from UMPD) at cross streets for runner safety and coverage under the City's insurance to include Carrollton Enterprises / Hollywood Shopping Center as location of runner staging area, start and finish lines, and after race awards event

Comments from the audience:

Ms. Tricia Homer and Ms. Jackie Pearce Garrett, CPCF: Thanked the Council for their support of this event.

Councilmember Wojahn recused himself from the vote because he is on the Board of the College Park Community Foundation.

Councilmember Brennan recused himself from the vote because he has a family member who is on the Board of the CPCF.

The motion passed 5 – 0 – 2 (Wojahn and Brennan abstained)

15-G-09 Approval of an amendment to the Declaration of Covenants and Agreement Regarding Land Use with 7401 Realty, LLC to allow the National Green Building Standard in addition to LEED Standard for the multi-family development at 4700 Berwyn House Road.

A motion was made by Councilmember Dennis and seconded by Councilmember Brennan to approve an amendment to Section 10 a. and b. of the Declaration of Covenants and Agreement Regarding Land Use between 7401 Realty LLC and the City of College Park dated August 15, 2014. This amendment will give the owner of 4700 Berwyn House Road the option to pursue National Green Building Standard (NGBS) bronze level certification using the ENERGY STAR path for energy performance as an alternative to Leadership in Energy and Environmental Design (LEED) certification.

Councilmember Dennis stated that 7400 Berwyn House Road is being sold to Wood Partners who is seeking this change to the agreement. NGBS is a green building rating system designed to address residential buildings. It offers bronze, silver, gold and emerald certification using third-party verifiers. Based on staff research and review of policies in other jurisdictions, staff determined that the two rating systems have similar requirements except that NGBS is less stringent in verifying energy performance and relies more heavily on energy modeling than site verification. The conclusion is that NGBS bronze certification combined with Energy Star certification would be a comparable standard to the basic level of LEED certification.

Comments from the audience;

Andy Shuckra, Keane Enterprises, original applicant for 4700 Berwyn House Road in the DSP process in 2014: He addressed what it would mean for them to add Energy Star certification to NGBS standard. They are proposing a high quality building and worked to orient the building to Route 1 with high quality visual elements. They requested an amendment to expand flexibility to include the NGBS standard. Staff recommended coupling that with Energy Star certification, which is not what they anticipated. They don't think the Energy Star piece would result in a significantly better project, and it would add unnecessary expense, time and redundancy for them. He provided information about Energy Star and detailed the problems they see with it. They view Energy Star as more onerous than LEED and would cost an additional \$200,000. LEED does not require compliance with Energy Star. They want to move this forward and believe their original proposal is best.

Scott Zimmerlee, Wood Partners: Most residential projects use NGBS. NGBS and Energy Star have similar requirements, but you can't certify two different standards with two different consultants. They are doing a lot of the things that are on the Energy Star scorecard. Mr. Shuckra said each unit will be individually metered, which is a large factor in reducing energy consumption. Ongoing monitoring and testing is expensive and onerous.

Chris Hatcher said the applicant is providing funds so the City could hire a consultant out of those funds to do some type of monitoring.

Ms. Ferguson said the wording in the agreements now says, “the owner shall make every effort to achieve a project that can obtain” either certification; it does not require that the certification be obtained, just that it could. The agreement later states that if by a certain date the applicant cannot show documentation that it has been certified, they could submit a scorecard and the City could retain a consultant to determine if the scorecard was correct. That is what the \$50,000 was for. There never was an absolute requirement that the builder have the LEED certification – just that they be certifiable.

Mayor Fellows said since staff and the applicant are in disagreement about the proposed amendment, there could be further discussion about the language; it does not need to be decided tonight.

Ms. Schum said last week Council asked staff if NGBS Bronze level certification is equivalent to basic-level LEED certification. Staff has researched the question and provided a response, but staff is not making a recommendation to Council about whether they should accept this amendment because the language in the current agreement does not require this owner to get any certification whatsoever. She checked with other jurisdictions that have green building codes to answer Council’s question and there is agreement that LEED meets or exceeds Energy Star requirements at its most basic level. Certification is not required at any level in the current agreement.

Councilmembers Wojahn, Hew and Dennis requested more time to address this question.

Mr. Hatcher advised that this decision need not have a precedential value for future decisions. The applicant is amenable to providing more time for Council to weigh the issues but noted that they are in the middle of negotiations on the deal, so he asked when Council would take this issue up next. Mayor Fellows said there is a possibility this could be decided in Special Session next week.

A motion was made by Councilmember Dennis and seconded by Councilmember Hew to table this matter until next week’s Worksession. The motion passed 7 – 0 – 0.

Mayor Fellows said this project is important to the City, so regardless of the precedential value of this decision, the greener and more sustainable it is, is good for the City.

15-G-11 Approval of letters of appreciation to the University of Maryland and Maryland-National Capital Park and Planning Commission for their support of the 24th Annual Tribute to Dr. Martin Luther King, Jr.

A motion was made by Councilmember Dennis and seconded by Councilmember Day to authorize the Mayor to send letters of appreciation to the University of Maryland and the Maryland-National Capital Park and Planning Commission for their continued support of the annual Martin Luther King, Jr. Tribute program co-sponsored by the City, University, Park and Planning and the Lakeland Civic Association.

Councilmember Dennis said the City's annual tribute to Dr. Martin Luther King, Jr has benefited from the long-standing support provided by the University of Maryland and Maryland-National Capital Park and Planning Commission for planning and logistics. The University has often been a source of prominent Keynote speakers, and the Office of Community Engagement participates in planning the program and printing the program brochure. Our Martin Luther King Jr. tribute program will celebrate its 25th anniversary in 2016. Beginning as a grass roots program in our Lakeland community, the program has grown in participation and attendance, and the venue has changed to accommodate growth of this program. This tribute has been presented at The Kay Theatre of The Clarice for over 10 years. Staff there provide exceptional stage management and technical support every year. Our use of the Kay Theatre is supported financially by M-NCPPC. The success of our annual tribute to Dr. King is possible with the help of our partners, and the attached letters express our appreciation for this support. Councilmember Dennis mentioned that the one-hour video of the January tribute is being played on the City's cable channel during Black History Month.

There were no comments from the audience or from the Council.

The motion passed 7 – 0 – 0.

15-G-12 Approval of additional FY '15 funds for Mayor and Council Travel and Training estimated at \$7,250

A motion was made by Councilmember Stullich and seconded by Councilmember Wojahn that the City Council authorize up to \$8,000 in additional funds from the FY '15 budget for Mayor and Council Travel and Training.

Councilmember Stullich said that when the City Council prepared their FY '15 Travel and Training budget last spring, we made our best effort to anticipate the conferences that we would want to attend in the coming fiscal year. In recent weeks, however, additional conferences have come to light. One is the US Conference of Mayors annual convention which will be held in San Francisco in June. In addition, two of our Councilmembers are on the NLC Policy Committee which meets in Salt Lake City in June. The total estimated cost is \$7,250. Funds to cover this additional travel will be transferred into the account 1010.12-11 (Mayor and Council Travel and Training) from FY '15 surplus funds at the end of the fiscal year.

There were no comments from the audience or from the Council.

The motion passed 7 – 0 – 0.

15-G-13 Appointments to Boards and Committees

Mayor Fellows said the Council has been asked to reappoint the existing Class B and Class C Directors to the City-University Partnership to conform the terms to the Partnership’s by-laws, so tonight’s appointments will include a list of Partnership appointments that were made previously.

A motion was made by Councilmember Dennis and seconded by Councilmember Stulich to reappoint Charlene Mahoney to the Education Advisory Committee, to reappoint Taimi Anderson to the Animal Welfare Committee, and to forward a letter to the Historic Preservation Commission recommending the appointment of Bob Schnabel to the Old Town Local Advisory Committee. In addition, the following CPCUP appointments are made:

Andrew Fellows	Class B Director	06/30/17
Maxine Gross	Class B Director	06/30/18
Senator James Rosapepe	Class B Director	06/30/16
Stephen Brayman	Class B Director	06/30/17
David Iannucci	Class C Director	06/30/17
Dr. Richard Wagner	Class C Director	06/30/16

The motion passed 7 – 0 – 0.

COUNCIL COMMENTS:

Councilmember Wojahn reminded everyone about the event on February 25 at Kangnam BBQ with Sen. Rosapepe. He has talked with the event planner about College Park Day and said there is increased interest from performers so we may want to consider a second stage.

Councilmember Mitchell asked about House Bill 271 Quarterly Audits for Speed Monitoring Systems and its impact on us. She asked if anyone from the City is attending tomorrow’s meeting about municipal tax write-offs. There was a discussion about Highway User Revenues.

COMMENTS FROM THE AUDIENCE: None.

ADJOURN: A motion was made by Councilmember Mitchell and seconded by Councilmember Dennis to adjourn the regular meeting, and with a vote of 7 – 0 – 0, Mayor Fellows adjourned the meeting at 8:46 p.m.

Janeen S. Miller, CMC
City Clerk

Date
Approved

MINUTES
Public Hearing of the College Park City Council
Tuesday, February 10, 2015
7:15 – 7:20 p.m.

15-O-01

An Ordinance Of The Mayor And Council Of The City Of College Park To Repeal And Re-Enact Chapter 161, “Recycling” In Its Entirety, To Require Source Separation Of Recyclable Materials For All Owners And Residents Utilizing City Solid Waste Collection Services

PRESENT: Mayor Fellows; Councilmembers Wojahn, Brennan, Dennis (arrived at 7:18 p.m.), Stulich, Day, Hew and Mitchell.

ABSENT: Councilmember Kabir.

ALSO PRESENT: Janeen Miller, City Clerk; Bill Gardiner, Assistant City Manager; Suellen Ferguson, City Attorney; Bob Ryan, Director of Public Services; Bob Stumpff, Director of Public Works; Cole Holocker, Student Liaison.

Mayor Fellows opened the Public Hearing on 15-O-01 and invited public comment.

Comments From The Audience:

David Dorsch, 4607 Calvert Road: The USA is the freest of all countries, so the government should only pass laws that are absolutely necessary when there is no other way to achieve the outcome. Recycling is a great idea but it is one of those areas where government should not mandate what we do. This proposal discriminates against blue glass, requires that the resident know about the composition of the material they are recycling, and to wash it first. Rather than pass this bill, just encourage residents to do their best to recycle. Some recyclable material might end up in the landfill, but it won't cause the world to end.

There being no further public comment, Mayor Fellows closed the public hearing at 7:20 p.m.

Janeen S. Miller, CMC
City Clerk

Date Approved

CITY OF COLLEGE PARK, MARYLAND

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CITY COUNCIL

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ORAL ARGUMENT CPD-2014-01

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TUESDAY
JANUARY 27, 2015

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The Council met in the 2nd Floor Council Chambers, City Hall, 4500 Knox Road, College Park, Maryland, at 7:00 p.m., Andrew M. Fellows, Mayor, presiding.

PRESENT

ANDREW M. FELLOWS, Mayor
 PATRICK L. WOJAHN, Councilmember, District 1
 S.M. FAZLUL KABIR, Councilmember, District 1
 P.J. BRENNAN, Councilmember, District 2
 MONROE S. DENNIS, Councilmember, District 2
 ROBERT W. DAY, SR., Councilmember, District 3
 STEPHANIE E. STULLICH, Councilmember,
 District 3
 DENISE C. MITCHELL, Councilmember, District 4,
 Mayor Pro Tem

ALSO PRESENT

MIRIAM BADER, Senior Planner
 COLE HOLOCKER, Student Liaison
 SUELLEN M. FERGUSON, City Attorney
 JOSEPH L. NAGRO, City Manager
 BILL GARDINER, Assistant City Manager
 JANEEN S. MILLER, City Clerk
 TERRY SCHUM, Director of Planning

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Welcome. 3

Orientation. 3

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Motion to Deny83

Roll Call Vote on Motion to Deny 102

Motion to Remand 107

Roll Call Vote on Motion to Remand 109

Adjourn

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P-R-O-C-E-E-D-I-N-G-S

7:00 p.m.

MAYOR FELLOWS: Good evening and welcome to the public hearing on the exception filed for the recommendation of the College Park Advisory Planning Commission in Case No. CPD-2014-01.

This is related to the Applicant, Steven Behr, the property at 4618 College Avenue. The subjects are departure of 11.4 feet from the required 22-foot driveway width.

The rules of procedure are going to be, we're going to start with an orientation by Planning staff on the subject.

Ms. Schum?

MS. SCHUM: Thank you, Mr. Mayor.

For the record, Terry Schum, Planning Director.

I believe this evening we'd like to start with an introduction and some explanation by the City.

MS. FERGUSON: Good evening, Council.

1 This is a case about a house on
2 College Avenue. We wanted to do a little bit of
3 a free presentation because this is somewhat more
4 complicated than you usually run into.

5 This involves a house in the Historic
6 District which is also a historic site. It
7 involves a request for a change in use from
8 single-family home to a rooming house. So that
9 is something that is handled by Park and Planning
10 and by the County by issuance of a use and
11 occupancy permit through DPIE.

12 The second issue is that to be a
13 rooming house, the house must have a certain
14 number of parking spaces and it also must have a
15 certain width of driveway. It doesn't have the
16 width of driveway required so a departure was
17 requested. Now under the current zoning law, the
18 City handles departures of this type from design
19 standards.

20 The third agency that became involved
21 in this was the Historic Preservation Commission
22 because they are also requesting permission to

1 put parking spaces at the rear of this property,
2 which is an environmental setting and a
3 contributing resource. So an HAWP permit had to
4 be issued.

5 The way that it was figured that this
6 would go most efficiently was to go to the HPC
7 first. That is why it was before you a while
8 back to approve the environmental setting
9 changes, or not to approve them but to support
10 them. Now it's back to you on the departure.

11 There are also landscape manual
12 changes that are handled at the director level,
13 at Ms. Schum's level. So mainly you're looking
14 at the departure, which is to change the required
15 width of the driveway.

16 So that's the first thing we wanted to
17 explain as to why this is in front of you this
18 evening when you know that you've seen at least
19 part of this previously.

20 The second thing is that through no
21 fault of the Advisory Planning Commission who saw
22 this first, there was a failure to make one of

1 the findings below. It's the fourth finding,
2 that the departure will not impair the visual,
3 functional, or environmental quality or integrity
4 of the site or of the surrounding neighborhood.

5 You can take care of that at this
6 level. Having looked at this, I believe that
7 there is sufficient evidence in the record for
8 you to make that determination without having to
9 send it back to the APC for that purpose.

10 There is an argument in the record
11 that in fact the departure does not impair the
12 visual, functional, or environmental quality or
13 integrity. But you will have to make that
14 finding this evening. I think you have enough
15 evidence there to make that finding.

16 So that is the second explanation that
17 we wanted to make.

18 Then I think we had one about the
19 rooming house. The rooming house is allowed in
20 the R18 as a right.

21 You will recall that this property
22 applied for a two-family home through a special

1 exception in 2011. The City opposed that.

2 There was a proposal to have two
3 families, so that would be up to 10 unrelated
4 people in the house. The City opposed that and
5 the District Council agreed with the City, and
6 that was denied. That was for special exception
7 use.

8 Currently under the R18 zone a rooming
9 house is an allowed use. It allows for an
10 operator to have a rooming house with up to nine
11 persons in five guest rooms or suites of rooms on
12 the property. So that's the occupancy load
13 that's required or allowed, between four and nine
14 guests in five guest rooms or suites of rooms.

15 In the record that you have before
16 you, you will see the floor plans that have been
17 provided to you which are showing seven guest
18 rooms or suites of rooms plus a bedroom for the
19 operator.

20 So we wanted to explain this is not a
21 case that you have seen before. It's not an
22 everyday use in the zone so we wanted to give you

1 that background before we go into the merits of
2 this case.

3 MS. SCHUM: Okay. Thank you.

4 I'm going to try to give a brief
5 orientation to the case and show you some
6 exhibits that are part of the record and part of
7 the PowerPoint presentation that was made by
8 staff previously.

9 Then have you refer to the resolution
10 unless you want me to go into great detail when I
11 get to that point. I'll leave that up to you,
12 Mr. Mayor and Council.

13 Again, CPD-2014-01 is an application
14 for a departure from the design standards for a
15 commercial driveway which is required by the
16 Prince George's County zoning ordinance when the
17 property is used as a rooming house.

18 So this application, as the attorney
19 has indicated, was triggered because the property
20 owner filed for a use and occupancy permit with
21 Prince George's County to convert the use from a
22 single-family dwelling, which it is today, to a

1 rooming house use.

2 A rooming house is a permitted use but
3 requires a commercial parking lot with one
4 parking space required for each guest room and a
5 minimum 22-foot wide driveway, that's the
6 commercial standard, as well as compliance with
7 the landscape manual.

8 The specific request that's before you
9 tonight and was before the APC is to allow the
10 width of the driveway to be less than the
11 required 22 feet. The driveway currently is only
12 10.6 feet wide at its narrowest and therefore the
13 departure request is for 11.4 feet.

14 The subject property is located at
15 4618 College Avenue in the Old Town Historic
16 District. The Applicant is Steven Behr, who is
17 also the property owner.

18 If we look at this slide it shows the
19 location of the property on College Avenue
20 between Rhode Island Avenue and Norwich, excuse
21 me, and Hopkins Avenue as well as the zoning in
22 the block which is split between R18, R55, and

1 local commercial or C1 which is on the corner at
2 Rhode Island Avenue.

3 The property outlined in red right
4 here is only one lot and it measures 10,000
5 square feet.

6 On this slide it's a bird's-eye view
7 of the property. It indicates here the shared
8 driveway that exists between the subject
9 property, which is the blue dot right here.

10 This is the outline of the subject
11 property. It's a fairly narrow lot but it's
12 pretty deep in the back.

13 Miriam, you've got the better one.
14 Much better. Okay.

15 This is the shared driveway that
16 exists between the two houses here. Parking for
17 this house is shown here. Parking for the
18 subject property directly behind the house.
19 What's also shown is the adjacent property to the
20 east, which is a single-family rental property,
21 and the adjacent property to the west, which is
22 also a rooming house use.

1 On this slide you see the proposed
2 site plan with the layout of the commercial
3 parking lot with the required five parking
4 spaces, one for each guest room, and a gravel
5 driveway that varies in width at its narrowest
6 from 10.6 feet here to 22 feet in the rear yard.

7 These are the five parking spaces
8 including one handicapped space, which is
9 required.

10 The driveway in the rear is wide
11 enough to allow for two-way traffic. Of course
12 in the narrower section as you move towards the
13 front it's really only suitable for one-way
14 traffic at the same time.

15 The important thing to note I think
16 here is that the shared driveway under a joint
17 agreement with this adjoining property owner adds
18 an additional 6 feet in width to the existing
19 driveway.

20 However, under the rules of the county
21 that extra 6 feet in width cannot be included as
22 part of the application or counted as part of the

1 applicant's driveway. It can be considered when
2 addressing required findings. But for purposes
3 of the departure, the departure needs to be 11.4
4 feet.

5 It would be less if the county allowed
6 this portion of the driveway here belonging to
7 this property to be counted, but that's not the
8 case.

9 On this slide it's just a picture
10 showing how the existing driveway looks today.
11 You can see that it has encroached a bit into the
12 front yard of the property. So initially the
13 driveway was here. It has over time spread to
14 the west to create what's being used as a parking
15 area in this location. It wasn't part of the
16 original driveway.

17 This is just a bigger close-up. As
18 you move further into the site and go towards the
19 rear of the property you can see just how narrow
20 it is between the two houses.

21 If we're counting 10.6 feet from this
22 point here, this is a window well and the

1 structure that covers the window well, to this
2 part of the house here, the free and clear area
3 of the driveway is only 10.6 feet. So that's how
4 we calculated the numbers to get to the required
5 departure of 11.4 feet.

6 This is the landscape plan that was
7 submitted by the Applicant under the alternative
8 compliance provision, which really is a companion
9 application to this departure request and will
10 only be implemented if the departure is approved.

11 If the departure isn't granted and a
12 rooming house is not established then the
13 Applicant does not need to meet the requirements
14 of the landscape manual, and therefore this
15 particular plan would not be implemented.

16 What it does, it adds a hedge planting
17 along the edge of the driveway in the front yard
18 here to take back that area of creep that I
19 showed you earlier in the picture, and also to
20 replace some plantings at the perimeter of the
21 house, add some trees in the front yard.

22 It also replaces some existing

1 invasive bamboo in the rear property with trees
2 and will relocate a shed.

3 You don't need to take action on this
4 particular case tonight. I'm just providing it
5 to you for your information.

6 Finally what I've condensed on the
7 screen, it sort of shouts at you, are the
8 required findings that must be made in order to
9 grant a departure including the fourth and last
10 required finding, which the APC failed to find
11 because it wasn't in our code.

12 What the City attorney referred to
13 earlier, you have the ability to make that
14 finding if you so choose.

15 On December 4, 2014 the APC held a
16 public hearing on the case and voted 5-0
17 unanimously to recommend approval of the
18 departure with conditions based on their
19 determination that all the required findings were
20 met.

21 Their rationale is included in
22 Resolution 14-RR-13, Section 2, which was served

1 to all parties of record on December 19, 2014.

2 Their seven conditions relate to
3 additional site improvements including posting of
4 no parking signs so that cars don't park in the
5 driveway, only the parking lot in the rear.
6 That's the purpose of a commercial parking lot,
7 to leave the driveway free and clear.

8 And a particular interest, again as
9 the attorney has indicated, one of the conditions
10 asks the Applicant for a written determination
11 from Park and Planning and the Department of
12 Permits and Inspection and Enforcement (DPIE)
13 concerning what's permitted under a rooming
14 house.

15 In terms of the number of guests that
16 can be in the home or the number of occupants, if
17 there is a difference, the number of kitchens
18 that are permitted, and whether furnishings would
19 be required to be provided to the guests of the
20 rooming house.

21 We know now that the house currently
22 has eight bedrooms, four bathrooms, and three

1 kitchens.

2 When the resolution was mailed to the
3 parties of record there was in fact only one
4 party of record besides the Applicant in this
5 case here, who is represented by his attorney,
6 Bradley Farrar.

7 The other party of record was Kathy
8 Bryant. As an individual she also serves as
9 President of the Old Town Civic Association.
10 However, she did not attend the hearing but
11 submitted an email comment that was forwarded to
12 the APC and became a party of record. Ms. Bryant
13 is here tonight and I assume she wants to speak
14 on this case.

15 I will conclude my remarks now unless
16 you would like me to go into more detail about
17 the rationale for the APC's decision, that the
18 findings were met, or if you have questions about
19 the conditions or anything else regarding the
20 case. Other staff is here as well to answer.

21 MAYOR FELLOWS: Request from Mr.
22 Wojahn?

1 COUNCIL MEMBER WOJAHN: Thank you, Mr.
2 Mayor.

3 Thank you, Ms. Schum, for your
4 presentation.

5 My question is, I was wondering what
6 the effect would be if we were to reverse the
7 decision or the recommendation of the Advisory
8 Planning Commission and deny the departure, what
9 the options for the Applicant would be to come
10 into compliance with the zoning code.

11 MS. SCHUM: The Applicant as the house
12 is today currently complies with the zoning
13 ordinance. It has a use and occupancy permit as
14 a single-family home and it is registered with
15 the city as a rental unit. There are five
16 unrelated persons residing in the home.

17 COUNCIL MEMBER WOJAHN: Okay. So
18 basically the choice that the Applicant would
19 have would either be to figure out a way to widen
20 the driveway, or to just keep on operating and
21 not be a rooming house, or keep the house as it
22 currently is and not have to widen the driveway?

1 MS. SCHUM: That's correct.

2 COUNCIL MEMBER WOJAHN: Okay. Thanks.

3 MS. SCHUM: As is, the driveway
4 doesn't need to be widened.

5 The departure of course is before you
6 because the Applicant does not have enough room
7 to widen the driveway to meet the standard.

8 COUNCIL MEMBER WOJAHN: All right.
9 Thank you.

10 MAYOR FELLOWS: Other questions or
11 additional information?

12 All right. Thank you.

13 MS. SCHUM: Thank you.

14 MAYOR FELLOWS: I'm sorry. Mr. Day?

15 COUNCIL MEMBER DAY: Thank you, Mr.
16 Mayor.

17 Ms. Schum, has the Applicant agreed to
18 all of the requirements that have been put in
19 front of him from all the requests from the
20 different committees and groups that have
21 reviewed this?

22 MS. SCHUM: The Applicant has agreed

1 to the conditions that are contained in the
2 resolution of the APC. Those are the seven
3 conditions, including alternative compliance
4 which is a separate case.

5 As I explained, the additional
6 landscaping and improvements to the driveway and
7 yard would not be required unless the departure
8 is approved. Because the use as a rooming house
9 requires two things, the commercial parking lot
10 and driveway and compliance with the landscape
11 manual.

12 So the plan we showed you is
13 acceptable for alternative compliance. It's
14 impossible for this property to meet landscape
15 buffers and screening just given the sheer
16 proximity of the houses, how close they are to
17 one another.

18 Alternative compliance is what you
19 apply for if it's impossible to achieve
20 compliance. And then it's a negotiation, really.

21 So staff and the APC -- well, this is
22 really up to staff although we shared this

1 information with APC. That's why you see it in
2 the record. Staff felt that the improvements
3 shown on the landscape plan were good and
4 acceptable, and therefore approvable by staff.

5 MAYOR FELLOWS: All right. Thank you.

6 Ms. Stullich?

7 COUNCIL MEMBER STULLICH: Thank you,
8 Mr. Mayor.

9 With respect to the question about
10 whether the owner is complying with everything
11 that's been asked, one of the things that
12 happened to this property in 1992 or sometime
13 after 1992, the owner at that time cleared the
14 rear yard of grass and vegetation and covered it
15 completely with gravel in order to allow more
16 parking spaces for the higher occupancy with the
17 addition that he built, which shouldn't have been
18 done.

19 So what we have is a backyard that was
20 done inappropriately without approval and that
21 has not been corrected in all of this time,
22 including the time that Mr. Behr has owned the

1 property.

2 Is that correct?

3 MS. SCHUM: I might defer to the
4 attorney.

5 I don't know that this Applicant, who
6 is not the property owner that you're referencing
7 because the property has changed hands, I don't
8 know that there is a requirement in place
9 currently for this property owner and Applicant
10 to do that. But I'll defer to the attorney on
11 that.

12 MS. FERGUSON: Your recollection is
13 correct. The environmental setting originally
14 was a regular backyard with grass. Without
15 getting a historic area work permit, the prior
16 owner graveled the backyard.

17 Part of the application that's been
18 made at this time for the use and occupancy
19 permit for a rooming house includes an
20 application, which is now actually not in place
21 because it expired. But there is an application
22 for a building permit to put the five parking

1 spaces in the backyard and also to do various
2 landscaping changes.

3 That is part of what went to the
4 Historic Preservation Commission for review as to
5 whether this change to the environmental setting
6 would be acceptable to them. I believe that you
7 have that decision in the packet.

8 They agreed that with certain changes
9 it would be okay to have the five parking spaces
10 in the backyard. So that issue about the HPC
11 compliance has been taken care of.

12 That's what you voted on the last time
13 when you were dealing with this. That was that
14 request.

15 COUNCIL MEMBER STULLICH: Thank you.

16 MAYOR FELLOWS: Other questions?

17 All right. We next go to the oral
18 argument against the recommendation.

19 I believe Ms. Stullich -- will you be
20 making the oral argument or do we have someone
21 who is prepared to?

22 MS. FERGUSON: The Council Member I

1 believe may have some questions of her own. But
2 the way that we should proceed at this point is
3 anyone who is in opposition to this below would
4 speak.

5 The Council Member has the right to
6 call it up if she does not believe that the
7 criteria were met or has other questions based on
8 the record.

9 Then you of course would vote as to
10 whether to accept the recommendation of the APC,
11 modify it, or remand it for further fact-finding.
12 So that's what you will do.

13 The Council Member would not be making
14 a presentation, Council Members would not. It's
15 whoever was party of record below that would be
16 presenting. And then questions from Council can
17 be taken.

18 MAYOR FELLOWS: Ms. Stulich?

19 COUNCIL MEMBER STULLICH: If I may ask
20 the attorney, would it be appropriate at this
21 time for me to state the required findings that I
22 believe are not met?

1 MS. FERGUSON: The order of
2 presentation is for the opposition to speak first
3 and then for the Applicant to speak next. Then
4 you will have heard all sides of the issue.

5 Then if you have additional questions
6 about whether one of the required findings, which
7 are up on the screen, have been met and/or other
8 questions based on what you've heard and what's
9 in the record, and the record is pretty extensive
10 here, then you can ask those questions then.

11 COUNCIL MEMBER STULLICH: Okay. Thank
12 you.

13 MAYOR FELLOWS: Ms. Bryant? Welcome.
14 Thank you.

15 MS. BRYANT: Kathy Bryant, 7406
16 Columbia Avenue.

17 This is at least the third time I have
18 appeared before the City Council and in Upper
19 Marlboro on this issue in front of Mr. Behr.

20 Frankly, as a resident over the last
21 10 years, I'm kind of offended that I have to
22 keep opposing this issue. I have opposed his

1 desire to change this property every single time.

2 Even though I'm speaking as a
3 resident, I feel like I probably represent Old
4 Town. Because we cannot tolerate the increase of
5 number of students or anybody in this house as a
6 rooming house, the influx of more people.

7 I want to say just so the Council
8 knows this, do you all know who this person is?
9 (Speaker points to a photo) This is Mike Jacobs,
10 who was a former mayor of College Park.

11 I don't know if everybody lived here
12 when Mike Jacobs was mayor of College Park. I
13 did.

14 Mike Jacobs and I had many
15 conversations. Mike Jacobs told me over and over
16 and over that College Park has no control over
17 its zoning.

18 And he said because we have no control
19 over our zoning with Prince George's County, we
20 want to make sure we do not give up any land to
21 variances. Because then we lose total control
22 over zoning in College Park because that's the

1 only zoning control we have.

2 So I am here tonight to oppose what
3 Mr. Behr is proposing again for at least the
4 third time.

5 I just want to add that in the 1980s
6 I attended some hearings in Upper Marlboro that
7 were supposed to downzone this specific property
8 and other properties in Old Town College Park
9 from R18 to R55.

10 For some reason it's not on record.
11 But I attended hearings, other residents attended
12 hearings that were supposed to downzone these
13 properties to R55 single-family.

14 This property has operated as a
15 single-family residence for all these years.

16 I do not support an increase of this
17 property into a rooming house by approving the
18 variance. So bottom line, I oppose the variance
19 request.

20 MAYOR FELLOWS: Thank you.

21 I don't believe there's any other
22 parties of record.

1 Mr. Schnabel, are you a party of
2 record?

3 COUNCIL MEMBER STULLICH: He is not.

4 MAYOR FELLOWS: Okay. So that
5 concludes the oral argument against the
6 recommendation of the Advisory Planning
7 Commission.

8 Next is the oral argument in favor of
9 the recommendation, if you would like to make
10 that.

11 PARTICIPANT: Do we go at a separate
12 time?

13 MAYOR FELLOWS: All at one time.

14 MAYOR PRO TEM MITCHELL: Excuse me?

15 MAYOR FELLOWS: Pardon me?

16 MAYOR PRO TEM MITCHELL:
17 Clarification, both parties have one person
18 speak?

19 MS. FERGUSON: No. The question was,
20 is Mr. Behr's time separate from his attorney's
21 time. The answer to that is no, it's the same.
22 It's all one.

1 MAYOR FELLOWS: The earlier oral
2 argument was limited to 30 minutes. The rebuttal
3 is limited to 10 minutes.

4 APPLICANT BEHR: Good evening,
5 everyone, Mayor, Council Members. I really
6 appreciate your time tonight.

7 I would like to say that I feel, as
8 the Applicant, in this situation I have done
9 everything in my power to make sure that this
10 property has met every level of concern from all
11 parties involved, from the LAC to the APC, the
12 Historic Commission, the County, and now of
13 course the City Council.

14 I respect everybody's feedback on this
15 project, especially the opposition. I am sorry
16 that you feel that way about my property.

17 I took it over in 2006 and I didn't
18 create a lot of these issues. I've been trying
19 to correct as much as I can.

20 This has been going on since I bought
21 the property. This would represent a final
22 resolution of this entire thing in a way that is

1 I think beneficial both to the property itself
2 and to the City of College Park.

3 The improvements that we're making
4 with this plan are incredible. The landscaping
5 is going to be tremendous.

6 The limitation on the parking is
7 something that everybody wants.

8 The property as a whole is going to
9 have more control over it because as a rooming
10 house you have to have an authorized person there
11 monitoring the situation. So it's not like it's
12 a single-family home and there's no control.

13 I believe that this is really going to
14 be in favor of everyone involved. I personally
15 have made the commitment to do whatever is in my
16 power to make sure that my property is a benefit
17 to the City and not a hindrance.

18 I'd be glad to work with you as well
19 if you feel that there's some improvements that
20 can be made. Because I really would like to put
21 this whole issue to rest and really get it
22 resolved in a way that's mutually beneficial to

1 everyone.

2 In regards to the reason we're coming
3 here today, it's a carry-on from the fact that I
4 didn't request this change just to request this
5 change.

6 There was a zoning violation on the
7 back of the property and the only way that I
8 could resolve that issue that was done way before
9 I owned the property was to get the rooming house
10 designation. There was not enough land or lot
11 coverage otherwise.

12 So that's why I'm here today. This
13 was the best possible solution to the scenario.

14 I really hope that everybody comes
15 down in favor of this and that we can move on and
16 continue to make the property beneficial to the
17 community.

18 Thank you all.

19 MAYOR FELLOWS: Thank you.

20 We'll continue. This is still within
21 the 10 minutes.

22 MR. FARRAR: Good evening, Mr. Mayor

1 and members of the City Council.

2 For the record, my name is Bradley
3 Farrar. I'm the attorney for Mr. Steven Behr.

4 For the record, my address is 4614
5 Clemson Road in College Park.

6 As Mr. Behr discussed briefly, the use
7 of the home as a rooming house is allowed in the
8 R18 zone.

9 As such, as it's planned and
10 programmed as we worked with the staff, listened
11 to the LAC, listened to the APC and came up with
12 a plan to address all of their concerns and put
13 forth a program that is beneficial to the
14 neighborhood. It resolves and addresses a number
15 of issues including the issue about the parking
16 lot in the back of the home.

17 As Mr. Behr pointed out, he did
18 receive a zoning violation. Once the City
19 Council approves this, that issue would be
20 resolved. Again, it would be a permitted use
21 within the R18 zone.

22 With respect to issues with the Civic

1 Association, for the record, at the APC it was
2 addressed and it was noted that there was not any
3 opposition from the Civic Association. Again,
4 there wasn't general opposition.

5 MAYOR FELLOWS: There will be an
6 opportunity for rebuttal.

7 MR. FARRAR: The record was clear on
8 page 132. I point your attention to page 132 of
9 the APC hearing, beginning with line 1 where Mr.
10 McFadden and Ms. Cook have discussion about
11 whether or not the Old Town Civic Association was
12 in opposition.

13 They say that there has been no email
14 chatter. And then Mr. McFadden says that he is
15 on the LAC and they unanimously approved the plan
16 with some comments that are included in the staff
17 report.

18 I was kind of surprised that I didn't
19 see anybody from the neighborhood there then.

20 Once again, they are not here tonight
21 so I don't think that they are after them with
22 pitchforks. I take that to mean that this is a

1 plan that the Civic Association was not in
2 opposition to, that they found it to be
3 acceptable in all respects and terms.

4 Therefore I would again urge the City
5 Council to approve the APC's recommendation.

6 With that, I have no further comments.

7 MAYOR FELLOWS: Thank you.

8 We'll just give you an opportunity to
9 ask questions of that argument.

10 Any Council Members wishing to ask
11 questions?

12 Mr. Wojahn?

13 COUNCIL MEMBER WOJAHN: I guess I'm a
14 little bit confused. After the staff
15 presentation we asked what the results would be
16 if we denied this tonight. The response as I
17 understand it was that they could keep on
18 operating the house as it currently is.

19 But now the Applicant is saying that
20 they got a violation for having the parking lot
21 in the back.

22 Is the parking lot in the back

1 currently in violation of the zoning ordinance as
2 it is?

3 MS. FERGUSON: The parking lot was a
4 violation of the zoning ordinance because the
5 environmental setting was changed without a
6 historic area work permit. So whatever happens
7 with the use of this house, that was a separate
8 problem which was known back in 2011 when the
9 special exception was denied.

10 The District Council noted it at the
11 time that the environmental setting had been
12 changed without getting a proper permit.

13 They do now have a proper permit to
14 have -- well, they've applied for two things.
15 One is a new use, which is the rooming house, and
16 the second is a building permit for the back, for
17 the parking spaces. Those really are separate
18 things.

19 There's five because that's what would
20 be required for a rooming house. If it retained
21 the single-family home it would only require two.
22 But at this point as far as I understand it there

1 are two different items.

2 The HPC has approved the placing of
3 the five parking spaces in the backyard and so
4 that building permit would issue. But that's
5 separate from the use as a rooming house, which
6 is the departure that you're looking at this
7 evening. And that's needed to change the 22-foot
8 wide required driveway.

9 COUNCIL MEMBER WOJAHN: Right. But
10 the use as a rooming house is not necessarily
11 related to the parking lot in the back?

12 MS. FERGUSON: As far as I understand
13 it, it would be related in the way that there are
14 five parking spaces required for a rooming house.

15 That would have been one of the
16 reasons that Mr. Behr would have given at the HPC
17 as to why he needed five in the backyard instead
18 of two.

19 COUNCIL MEMBER WOJAHN: Okay.

20 MS. FERGUSON: Unless someone else
21 goes back in and starts arguing about that, I
22 assume that permit is going to issue. That's the

1 approval for the permit. There are two pieces of
2 this.

3 So, no. That zoning violation notice
4 wasn't related to the use of the property. It
5 was related to the fact that they had actually
6 destroyed the environmental setting in the back
7 without getting a permit for it.

8 COUNCIL MEMBER WOJAHN: Okay. All
9 right. Thank you.

10 MAYOR FELLOWS: Ms. Stullich?

11 COUNCIL MEMBER STULLICH: Thank you,
12 Mr. Mayor.

13 I have a number of questions that I'd
14 like to ask of Mr. Behr.

15 APPLICANT BEHR: Sure.

16 COUNCIL MEMBER STULLICH: If you could
17 come up to the podium there?

18 APPLICANT BEHR: Yes.

19 COUNCIL MEMBER STULLICH: Thank you,
20 Mr. Behr.

21 I'm looking at Exhibit 17.

22 It's not up there. I don't know if

1 you can put it up there.

2 In any case, it shows the floor plan
3 for the first, second, and third floors.

4 APPLICANT BEHR: Okay. Great.

5 COUNCIL MEMBER STULLICH: With a total
6 of eight bedrooms, nine beds, plus an operator
7 bed.

8 Does this mean a total occupancy of 10
9 occupants altogether in this house? That would
10 mean the maximum number of occupants is 10?

11 APPLICANT BEHR: As far as I have it
12 configured, that's what it would be. If the
13 operator has a wife, I couldn't say for that.
14 Zoning allows that. But we're not expecting it
15 to be any more than that, nine guests and the
16 owner/occupant.

17 COUNCIL MEMBER STULLICH: The
18 owner/occupant?

19 APPLICANT BEHR: The owner or
20 occupant. I could be in there eventually one
21 day, or I can have an operator running the place
22 and that would be their room.

1 COUNCIL MEMBER STULLICH: What kind of
2 person would this operator be?

3 APPLICANT BEHR: It would be someone
4 that I approve and I sign an agreement with who
5 can run the place and will have the
6 responsibilities of operating the facility under
7 the rooming house regulations.

8 COUNCIL MEMBER STULLICH: Going to the
9 driveway specifically, it's true that the width
10 of the driveway at its narrowest point between
11 your house, 4618 College, and the adjacent house,
12 4620 College, the distance between those two
13 houses is 16.6 feet, is that correct?

14 APPLICANT BEHR: I believe so. But
15 it's a shared driveway.

16 COUNCIL MEMBER STULLICH: Right. So
17 you own 10.6 feet out of the 16.6 total feet?

18 APPLICANT BEHR: I believe that's how
19 it must be set up. I don't have the exact
20 dimensions myself, Stephanie. But that's what
21 the County determined so we're going by what the
22 County is determining.

1 They determined that we needed a
2 variance of at least -- I think the City
3 increased it a little bit. But it was around
4 that amount, yes.

5 COUNCIL MEMBER STULLICH: Okay. The
6 other 6 feet then is owned by the adjacent
7 property owner and the record shows that you're
8 able to use that 6 feet through a joint driveway
9 agreement, which we have in our packets here?

10 APPLICANT BEHR: Yes. That was put in
11 place by Texier back before, in 1992 sometime I
12 believe or before.

13 COUNCIL MEMBER STULLICH: So the
14 residents of the house next door, 4620, they can
15 use your 10.6 feet and you can use their 6.0 feet
16 but they can use in fact the full length and
17 breadth of the drive part of the driveway that
18 you own?

19 APPLICANT BEHR: Correct.

20 COUNCIL MEMBER STULLICH: Is that
21 right?

22 APPLICANT BEHR: Yes, indeed. That's

1 worked out very well for us ever since I've owned
2 the place.

3 COUNCIL MEMBER STULLICH: How do we
4 know what kind of usage will be made of the
5 portion of the driveway by the residents of --
6 I'm sorry. How do we know what usage will be
7 made of the entire driveway by the residents of
8 4620?

9 APPLICANT BEHR: I cannot control what
10 the folks in 4620 do. But I can tell you from
11 history that nobody has parked along that side of
12 the driveway at all during the time of me owning
13 the place.

14 MS. FERGUSON: Mr. Behr can only
15 respond based on what's in the record. I don't
16 think there are any answers to that particular
17 question in this record.

18 MAYOR FELLOWS: Thank you.

19 COUNCIL MEMBER STULLICH: Okay. So
20 two houses and it seems unclear as to how many
21 people will be coming and going in this driveway.

22 The decision of the APC requires that

1 no parking signs will be posted along the
2 driveway on the west side, on your side of the
3 driveway.

4 APPLICANT BEHR: Correct.

5 COUNCIL MEMBER STULLICH: But there's
6 not a requirement for no parking signs on the
7 other side, the 4620 side of the driveway because
8 that's a separate property, is that correct?

9 APPLICANT BEHR: That's correct.

10 COUNCIL MEMBER STULLICH: And 4620
11 College Avenue is not a part of this application?

12 APPLICANT BEHR: Correct. I do not
13 own that property so there is no way I would be
14 able to control any of their land or their
15 property.

16 COUNCIL MEMBER STULLICH: Right.
17 Okay. So signs couldn't be required or enforced
18 there.

19 APPLICANT BEHR: Not by me.

20 COUNCIL MEMBER STULLICH: Right. So
21 you don't have any plan to resolve that issue or
22 to address that issue?

1 APPLICANT BEHR: As far as I know
2 there is no issue because there is no parking
3 that has historically occurred along that
4 driveway on their side.

5 MS. FERGUSON: We're going outside of
6 the record. I know the Council Member is asking
7 you a question about whether there is anything in
8 this record to resolve that issue. And from the
9 record, there isn't.

10 Mr. Behr is now testifying outside of
11 that record. He wouldn't be allowed to do that.

12 COUNCIL MEMBER STULLICH: Okay. The
13 APC's recommendation to not allow parking in the
14 driveway, wouldn't that violate the terms of your
15 joint driveway agreement by limiting the use of
16 the driveway by 4620 residents, which you've said
17 you can't control?

18 APPLICANT BEHR: We aren't limiting
19 the use. They have full reign to drive in and
20 out of that driveway as the shared use allows.

21 COUNCIL MEMBER STULLICH: The
22 limitation is on the ability to use the driveway

1 for parking.

2 APPLICANT BEHR: My side of the
3 driveway, there will be no parking there. I can
4 tell you that as far as I know there wouldn't be
5 on the other side either.

6 You can ask that owner if you would
7 like. But I don't have any control over that. I
8 have no intentions of parking any cars along
9 either side of the driveway.

10 COUNCIL MEMBER STULLICH: Right. I
11 think the issue with so many houses in Old Town
12 is not just what the property owner's intention
13 is but what happens.

14 APPLICANT BEHR: Understandable.

15 COUNCIL MEMBER STULLICH: And what is
16 difficult to control.

17 One of the criteria is that the
18 departure has to be necessary to alleviate
19 circumstances that are unique to the subject use
20 given its nature at this location, or alleviate
21 circumstances which are prevalent in the
22 District. So this is criteria number three.

1 The width of the frontage of this
2 property which is 50 feet, is that unique in this
3 neighborhood?

4 APPLICANT BEHR: The unique portion is
5 the fact that the driveway is so narrow.

6 And the request in for the rooming
7 house that we have, it requires a larger width of
8 driveway. Barring tearing up the whole front
9 yard to create that width and create an entry to
10 the driveway, there is no way to do that.

11 The best way to go was to get a
12 departure to keep the historical nature of the
13 home from the front looking right and to keep the
14 driveway narrow, as is the way in College Park.

15 COUNCIL MEMBER STULLICH: The
16 alternative is to occupy it with five occupants
17 as it has been for -- no more than five unrelated
18 persons as it has been for most of its history.

19 MR. FARRAR: That certainly is an
20 alternative.

21 But again, what's unique is within the
22 R18 zone a lot of this size. It's in the staff

1 report. Having a lot of this size and being
2 designated as an R18 lot. A rooming house is a
3 permitted use by right within the R18 zone. So
4 that would be the unique character.

5 Being that it's clustered in a
6 residential neighborhood, this departure is
7 necessary because it preserves the residential
8 character of the neighborhood.

9 Some of the alternatives that would be
10 necessary to have the permitted use would not
11 preserve the residential character and the charm
12 and the aesthetics of the Old Town neighborhood.

13 COUNCIL MEMBER STULLICH: The rooming
14 house is permitted by right if the property meets
15 the required conditions. One of the requirements
16 is a 22-foot wide driveway.

17 So as I think you're alluding to, it's
18 not a large property to hold a large number of
19 people and a large number of cars. It's a
20 standard 50-foot wide lot.

21 It is not a right to have a rooming
22 house no matter what. It's a right to have a

1 rooming house if you meet all of the criteria.

2 APPLICANT BEHR: Stephanie, if I may,
3 the other unique condition here is the lot
4 coverage.

5 The reason that we went this route was
6 the zoning violation that was brought upon us
7 through the whole exemption process and resulted
8 in a zoning violation for the backyard.

9 That meant the only way we can get the
10 backyard resolved is to go through a rooming
11 house if I want to maintain any parking
12 whatsoever for the house. Otherwise there would
13 be no parking. All the parking that's there
14 would end up going on the street.

15 COUNCIL MEMBER STULLICH: I think
16 that's -- I'm sorry. Ms. Ferguson?

17 MS. FERGUSON: We're going beyond the
18 record here. You do have the record of that
19 determination in your packet. You'll need to
20 look at that for this. Mr. Behr's testimony
21 about that isn't there, isn't in your record.

22 COUNCIL MEMBER STULLICH: Right. What

1 I'm asking about is where in the record is
2 evidence that this change would alleviate
3 circumstances that are special to the subject use
4 given its nature at this location or alleviate
5 circumstances which were prevalent in the
6 District. That's what I'm not seeing.

7 MR. FARRAR: I think that staff
8 delineated that in their recommendation. And the
9 APC agreed to that as well. It's in the record.

10 COUNCIL MEMBER STULLICH: Okay. I
11 have no further questions at this time.

12 MAYOR FELLOWS: All right. Thank you.

13 For the hearing, we've had the oral
14 arguments against the recommendation and the oral
15 argument in favor of the recommendation.

16 Now we come to the rebuttal.

17 Ms. Bryant, you have 10 minutes to
18 rebut the argument you just heard. Just remember
19 you need to keep to things that are in the
20 record.

21 MS. BRYANT: Thank you.

22 I did not misrepresent myself. I have

1 appeared tonight as a resident.

2 I have appeared against Mr. Behr in
3 opposition at every single public hearing that
4 has been held regarding his property in Upper
5 Marlboro and here. But I could not come to the
6 APC meeting because I had to work that night. I
7 did send an email.

8 I feel like I am not getting advanced
9 notice on these meetings far enough ahead to make
10 arrangements to be able to always attend with my
11 work schedule. I'm just saying that I care about
12 the neighborhood and I want to appear on these
13 issues.

14 I think that this is a very, very
15 important issue for Old Town and all of College
16 Park. The departure just is not what is wanted
17 in the Historic District nature of Old Town
18 College Park or the kind of neighborhood where we
19 live.

20 If he is allowed to build a rooming
21 house with nine, 10 people or even more later,
22 that just adds density that our neighborhood

1 cannot tolerate. Those strains are already very
2 difficult on our neighborhood.

3 He said that he could have an
4 owner/operator live in the house, the rooming
5 house. But there's no guarantee.

6 I have been lied to by many landlords,
7 by owners of properties who have told me -- I had
8 a guy build a house on Columbia Avenue, a little
9 box house. And he told me his daughter was going
10 to live there for four years while she went to
11 college and then he was going to live there. He
12 never lived there. I don't think he owns the
13 property now.

14 MS. FERGUSON: You're going -- I'm
15 sorry.

16 MS. BRYANT: Am I off the record?

17 MS. FERGUSON: Way off.

18 MS. BRYANT: I'm sorry, Suellen.

19 Okay. I'm just -- I have to illustrate --
20 anyway.

21 This is not in the nature of Old Town
22 College Park. This property was never intended

1 to be a rooming house.

2 I want to say again that during public
3 hearings in Upper Marlboro this property was
4 recommended to be downgraded to R55. It was not
5 supposed to stay R18. A lot of the old
6 properties were supposed to be downgraded to R55.

7 This has not been used as a rooming
8 house. When I was growing up here it was always
9 a single family.

10 I just want to make sure I say what I
11 need to say.

12 MAYOR FELLOWS: Do you have a
13 transcript of the hearing?

14 MS. BRYANT: No, I don't.

15 MAYOR FELLOWS: Oh. Well, that makes
16 it hard for you to know what was in the hearing.

17 MS. BRYANT: Yes, it does. I'm just
18 going by my memory of attending public hearings.

19 MAYOR FELLOWS: For the purpose of
20 this hearing, it really is only supposed to be in
21 response to things that were in the hearing at
22 the APC hearing.

1 MS. BRYANT: Yes. All the
2 correspondence I've received had nothing about --
3 no information about that. I read everything
4 that was sent to me but I did not have any
5 information about the hearing.

6 I don't see how Mr. Behr can say this
7 is going to add to residential charm and
8 character. This is a historic district.

9 To increase the number of residents in
10 a rooming house so that a large enough piece of
11 building to have residents -- I'm sorry. To
12 increase the size of the building to accommodate
13 that many residents is not going to add to the
14 charm of the neighborhood.

15 He says he'll keep the landscape. You
16 can only have so many things on a piece of
17 property.

18 So I disagree with him. It is our
19 experience just by numerical numbers, if you
20 increase the number of people you downgrade the
21 charm of the neighborhood.

22 I don't think there is a right to have

1 a rooming house in this zone. I live in an R55.
2 There is not a right to have a rooming house.
3 That is just a zoning name but it's not a right
4 to have a rooming house.

5 You don't have to expand to the
6 maximum width of a property to increase the
7 number of residents.

8 I hope I've conveyed how I feel about
9 this. I live in this neighborhood. It upsets me
10 terribly that this might happen.

11 I don't believe that Mr. Behr really
12 wants to add to the charm of the neighborhood. I
13 feel like the departure will downgrade the
14 neighborhood, maybe incrementally but I think it
15 will downgrade the neighborhood and the charm
16 that's already here.

17 MAYOR FELLOWS: All right. Thank you,
18 Ms. Bryant.

19 Ms. Stullich?

20 COUNCIL MEMBER STULLICH: I just
21 wanted to clarify a point. Mr. Behr is not
22 asking to expand the house. The house was

1 already expanded some years ago. He's trying to
2 change the use of the house but not to expand it.

3 MS. BRYANT: But I understand that by
4 changing the use of the house or the width of the
5 driveway that it might allow more people to live
6 there.

7 COUNCIL MEMBER STULLICH: Yes.

8 MS. BRYANT: Thank you. That's what
9 I'm trying to address not having received any
10 literature. I looked over my attachments several
11 times and I didn't receive anything saying
12 anything about this.

13 I wasn't 100 percent sure how that
14 went but I knew that his intent was to increase
15 the number of people. That's what's always been
16 his intent at every hearing I've gone to. So
17 that's why I'm here opposing this.

18 MAYOR FELLOWS: All right.

19 COUNCIL MEMBER STULLICH: Thank you.

20 MAYOR FELLOWS: Ms. Mitchell, did I
21 see your hand?

22 MAYOR PRO TEM MITCHELL: Yes. Thank

1 you, Mr. Mayor.

2 Ms. Bryant, thank you for coming down.

3 I just want to make sure that I'm clear. I know
4 you said tonight you're representing yourself as
5 an individual.

6 But in regards to the Civic
7 Association's stance, they were in opposition to
8 this?

9 MS. BRYANT: I am not representing the
10 Civic Association tonight.

11 I started attending these hearings
12 back -- the first one probably was 2006, around
13 that time, as a resident. I somehow learned
14 about this and I went to Upper Marlboro by
15 myself. I went as a resident protesting what Mr.
16 Behr wanted to do. So I'm a party of record from
17 back then.

18 I am always attending hearings against
19 Mr. Behr because I am a concerned resident.

20 I cannot -- even if I'd had a Civic
21 Association meeting, they are not parties of
22 record because this happened long before I was

1 president of the Civic Association. We've gone
2 through many incarnations in the Civic
3 Association. So I'm just attending as a resident
4 who's been here from the very beginning opposing
5 Mr. Behr.

6 I believe Mr. McFadden has been also
7 opposing him.

8 But I have been at every single one.
9 I just regret that I worked the night of the APC
10 hearing. I greatly regret that I worked that
11 night.

12 I will make sure if anything comes up
13 against Mr. Behr that I will not work. I will
14 say that I can't so I can attend the hearing so I
15 will not be said that -- that nobody can say I
16 didn't show up.

17 MAYOR PRO TEM MITCHELL: Thank you,
18 Mr. Mayor.

19 MAYOR FELLOWS: Thank you, Ms.
20 Mitchell.

21 Ms. Stullich?

22 COUNCIL MEMBER STULLICH: I just

1 wanted to clarify a little bit. I think what I
2 heard you saying is that the Civic Association
3 hasn't taken a position on this.

4 MS. BRYANT: No.

5 COUNCIL MEMBER STULLICH: And the
6 Civic Association hasn't been meeting regularly
7 so there hasn't been a meeting where this was
8 discussed since this application was made.

9 MS. BRYANT: Right. I thought about
10 having one but I'm the only party of record, so I
11 didn't see the point. I'm planning on having one
12 to address other issues. I had planned to have
13 one and inform them of this issue but only
14 parties of record can speak.

15 COUNCIL MEMBER STULLICH: Right.
16 Again to clarify, I think that's a bit of a
17 misunderstanding.

18 At this point parties of record are
19 people who testified at the APC hearing. It's
20 the same property but it's a different request,
21 it's a different application. So the slate kind
22 of starts clean for parties of record.

1 MS. BRYANT: Okay. But I did appear
2 and then I did send an email for the APC.

3 COUNCIL MEMBER STULLICH: Right.
4 Thank you. I just wanted to clarify that. Thank
5 you, Ms. Bryant.

6 MS. BRYANT: You're welcome. I
7 appreciate it.

8 Just for a layperson, like you all are
9 versed in what's a new record and what's, you
10 know -- I've been attending hearings all along
11 against this property without attachments that
12 explain this and without, you know -- it's hard
13 to always know what's coming along.

14 To me as a resident, I keep hearing
15 the same property. And yeah, anyway.

16 MAYOR FELLOWS: Thank you for coming
17 down.

18 COUNCIL MEMBER STULLICH: Thank you.

19 MS. BRYANT: I hope that made sense.
20 It's just hard as a resident to know everything
21 that you all know all the time.

22 MAYOR FELLOWS: Thank you.

1 Now the rebuttal by the parties in
2 support of the recommendation of the Advisory
3 Planning Commission.

4 APPLICANT BEHR: I'll keep it brief.
5 I don't have a whole lot to say. I just wanted
6 to clear up a few things.

7 In terms of the floor plan layout that
8 was presented, it is five suites of rooms, not
9 seven or eight suites of rooms. It's five as per
10 the County suggested. That's how I've laid it
11 out. As far as we could tell, it is in
12 compliance with what the County requires. So
13 that's number one.

14 Number two, like you said, thank you,
15 Stephanie, this is a whole new process. We've
16 only had one hearing outside of the City Council.
17 So this is the first hearing on this matter in
18 this regard. The other processes were a long
19 time ago and this is a new matter.

20 Again I just want to say I'm really
21 looking forward to supporting the community and
22 ensuring that this property is done correctly and

1 meets the needs of the folks who have an interest
2 in it.

3 Because I've seen through this process
4 there are a lot of people who have a lot of
5 concerns about Old Town College Park. I can
6 understand a lot of those concerns. I'd like to
7 be a person who is helping to push things forward
8 and not continually being roadblocked and being
9 constrained with limitations.

10 I'm doing my very best to put
11 everything correct with this property. This was
12 the only venue I had left to resolve this matter.

13 I hope everyone can come to an
14 agreement that would be beneficial to all parties
15 involved. Thank you very much.

16 MAYOR FELLOWS: All right. Thank you.
17 Ms. Stullich?

18 COUNCIL MEMBER STULLICH: Thank you,
19 Mr. Mayor.

20 Just a clarifying question.

21 APPLICANT BEHR: Sure.

22 COUNCIL MEMBER STULLICH: There are

1 five as it's currently designed?

2 APPLICANT BEHR: Yes.

3 COUNCIL MEMBER STULLICH: There are
4 five suites of rooms?

5 APPLICANT BEHR: Yes. If you look,
6 we've shaded the suites and coded them on the
7 floor plan. You'll see what the suites of rooms
8 are. When you look back at the floor plan you'll
9 see how that is.

10 COUNCIL MEMBER STULLICH: The five
11 suites include a total of eight bedrooms?

12 APPLICANT BEHR: Yes. There are a
13 total of eight.

14 The house now, it used to have nine
15 bedrooms. We opened it up to make it a single-
16 family home as per the last measures that
17 happened. So I lost a bedroom in fact.

18 We only have eight bedrooms in the
19 whole house. We've set it up so that there are
20 five suites of rooms as per the county code.

21 COUNCIL MEMBER STULLICH: The operator
22 would occupy one of those suites?

1 APPLICANT BEHR: Only one.

2 COUNCIL MEMBER STULLICH: One of those
3 suites?

4 APPLICANT BEHR: Yes.

5 COUNCIL MEMBER STULLICH: Okay. Thank
6 you.

7 APPLICANT BEHR: Actually, to clarify
8 that, the five guest suites he would not be
9 occupying.

10 COUNCIL MEMBER STULLICH: Oh, it's
11 five guest suites plus an operator suite?

12 APPLICANT BEHR: Five guest suites
13 plus the operator's room. Right.

14 COUNCIL MEMBER STULLICH: The operator
15 has a room or a suite?

16 APPLICANT BEHR: One room, yeah.
17 Right now it's set up as one room. So there
18 wouldn't be room for any more operators at that
19 point. There's room for one person pretty much.

20 COUNCIL MEMBER STULLICH: It could be
21 reconfigured at some later date?

22 APPLICANT BEHR: We could I'm sure do

1 that. But there would be no reason to because
2 there's only so many ways to fit nine total
3 guests in the property.

4 If I were to take away a suite from
5 the rest of the folks then there would be less
6 guests. So if I were to reconfigure it would be
7 for less people, not more.

8 COUNCIL MEMBER STULLICH: Unless the
9 operator were similar to the guests?

10 APPLICANT BEHR: It wouldn't make any
11 difference because there's only so many people
12 you can fit in those rooms.

13 I know the folks from City Planning
14 have seen the property as well and were very
15 positive that the size of the house would
16 accommodate what's being presented.

17 It would not be a matter of crowding
18 in any way, shape, or form. We're not trying to
19 squeeze more people in than we need to. I'm only
20 trying to utilize the property as it was
21 intended.

22 I believe it was said that this was

1 never a rooming house. In fact it's called the
2 Holbrook House. The Holbrooks themselves used
3 this as a rooming house when they first bought
4 the house. Ms. Holbrook for a very long time
5 used it as a rooming house.

6 So we're just bringing this house back
7 to its roots. It's going to continue to be used
8 as a rooming house I hope if we have an agreement
9 from everyone here.

10 COUNCIL MEMBER STULLICH: If I'm not
11 mistaken, she used it as a rooming house for
12 three roomers and then at one point four roomers.

13 APPLICANT BEHR: Very possible at that
14 time.

15 COUNCIL MEMBER STULLICH: She didn't
16 have the number of roomers that --

17 APPLICANT BEHR: It was a smaller
18 house at that time.

19 COUNCIL MEMBER STULLICH: Before it
20 was illegally expanded.

21 APPLICANT BEHR: It was expanded
22 through the appropriate processes by the prior

1 owner. They actually went through a historic
2 area work permit to do that addition. So it was
3 not an illegal expansion.

4 What he -- I don't want to go further
5 into those details.

6 MAYOR FELLOWS: This is beyond the
7 scope of this hearing.

8 APPLICANT BEHR: That's how it was
9 bought by me. I didn't have anything to do with
10 that expansion.

11 COUNCIL MEMBER STULLICH: Thank you.

12 APPLICANT BEHR: Thank you.

13 MAYOR FELLOWS: Thank you.

14 All right. We've gone through the
15 arguments for and against, the rebuttals.

16 I will declare this hearing having
17 been held.

18 At the close of the hearing the
19 majority, the Mayor, and Council shall accept,
20 deny, modify, or return the recommendation of the
21 Commission.

22 I guess we next go to the Council.

1 Is there more instructions that we
2 should get?

3 MS. FERGUSON: Well, what Council
4 would do would be to make a determination as to
5 whether you agree to grant this departure as has
6 been requested. Then you would direct that a
7 resolution be prepared based on whatever your
8 decision is.

9 If you wish to grant this, you would
10 have to pick up the fourth criteria that was not
11 addressed by the APC. As I said, that was
12 through no fault of theirs. So you'd have to
13 deal with that and you could direct that that
14 happen.

15 You could also send it back to the APC
16 if you find that there's not enough in the record
17 about some of these items to make a full
18 determination or you can deny it.

19 MAYOR FELLOWS: Ms. Stullich?

20 COUNCIL MEMBER STULLICH: The fourth
21 criteria that the APC did not consider through no
22 fault of their own is number four on the list

1 here?

2 MS. FERGUSON: That is correct.

3 COUNCIL MEMBER STULLICH: Thank you.

4 MAYOR FELLOWS: Members of Council?

5 Ms. Stullich?

6 COUNCIL MEMBER STULLICH: As Ms.

7 Bryant said, this house and its status, use, and
8 occupancy have been discussed for a long time.
9 The City has been in court over this, over this
10 property, not this issue before us today, and
11 were successful in court.

12 This is ultimately about whether and
13 how houses can be expanded to have a greater
14 occupancy, which is what the rooming house would
15 allow him to do.

16 Mr. Behr has stated that this is the
17 only option open to him. But in fact, the option
18 that's open to him is also to use the house as a
19 single-family house for no more than five
20 unrelated people.

21 I understand that there was a change
22 in ownership and that things were done by the

1 previous owner. That happens all the time. If
2 somebody does things that are not appropriate or
3 not in compliance and then it changes ownership,
4 and then it's like, okay, now we're starting
5 fresh and so all of that history doesn't matter
6 anymore, that concerns me greatly.

7 I can think of another property where
8 somebody is building an addition without any
9 permits. The City is fighting that but it seems
10 to take a long time.

11 If he were to sell that property and
12 then a new owner said, "Well, that addition was
13 there when I bought it so I should be able to
14 occupy it," whatever is necessary to be able to
15 do that.

16 I think everybody in this room knows
17 that we have very difficult problems in Old Town
18 and that many houses have been one by one
19 steadily changed to include more occupants than
20 they were originally intended to house.

21 This house was originally an owner-
22 occupied property. And yes, Ms. Holbrook had

1 roomers, a small number compared to what's
2 proposed now.

3 The houses in Old Town that are some
4 of our biggest problem houses are these R18
5 houses that often end up having more than five,
6 sometimes a lot more than five people living in
7 them. Those are prime candidates to become
8 fraternity satellite houses and to be very
9 disruptive to the community. So I think the
10 occupancy really is a very important issue here.

11 Yes, the driveway departure is
12 necessary to allow a rooming house. But a
13 rooming house does not have to be allowed in this
14 property.

15 A rooming house is only allowed by
16 right if the conditions are met. And the
17 driveway condition is not met.

18 These circumstances aren't really
19 special to this property. It's a standard 50-
20 foot wide property along the frontage. It's a
21 property like so many that was constructed to be
22 a single-family house and to not try to

1 accommodate this many people and this many cars.

2 I think that's really the issue before us.

3 I know the APC was not aware of the
4 fourth criteria, the departure will not impair
5 the visual, functional, or environmental quality
6 of integrity of the site or the surrounding
7 neighborhood.

8 That really is the issue. The
9 departure would allow a more intensive use that
10 really does impair the quality and integrity of
11 the neighborhood.

12 That's my kind of opening comments.
13 I'm eager to hear what others have to say.

14 Thank you.

15 MAYOR FELLOWS: At this time are you
16 ready to say what you think the Council should
17 do?

18 COUNCIL MEMBER STULLICH: Yes. I
19 would like to move -- should I make a motion at
20 this time?

21 MAYOR FELLOWS: No. I was wondering
22 if you might.

1 Mr. Day?

2 COUNCIL MEMBER DAY: In the opening
3 statements by our City staff, it was referred to
4 as the house next door as being a rooming home.
5 If we were to put the picture back up on the
6 screen we would see a driveway that is probably
7 just as narrow if not the same.

8 This is a tough one because I have a
9 great deal of respect as the former chair of the
10 APC for the people that sit on that board and
11 take their time to make these decisions.

12 One of those members is James
13 McFadden, who lives in Old Town, who I respect
14 greatly because he has stood there and he has
15 fought a long time to make sure that things go
16 the right way. He also sits on the LAC, which is
17 another body who has reviewed this project.

18 Both bodies have voted unanimously to
19 support this issue.

20 It is tough because I know the
21 commitment they make. And I know they didn't
22 take this lightly. I know they would never take

1 this lightly in their own backyard or anywhere
2 else in College Park.

3 So I'm tending to lean with the APC on
4 this and support this. I'm trying to figure out
5 how we would address number four. I'm not sure
6 how we'll do that yet. But I'm leaning that way.

7 MAYOR FELLOWS: All right. Thank you.

8 Mr. Wojahn?

9 COUNCIL MEMBER WOJAHN: Thank you, Mr.
10 Mayor.

11 First of all, I want to start off by
12 thanking the Applicant and the staff and the City
13 Attorney and Ms. Bryant for your testimony and
14 for all the information that you've presented
15 this evening.

16 I respect my colleague Mr. Day's
17 comments about the work that the APC does. I
18 know that the APC works very hard and really
19 looks and analyzes these issues very thoroughly.

20 But I think there's a fundamental
21 issue of premise here that in reading through the
22 record of the case I don't think is one that was

1 really thoroughly examined. That is the issue of
2 whether or not the property that we're talking
3 about is a single-family home or a rooming house.

4 I hear that the Applicant wants it to
5 be a rooming house. That's what they're working
6 on making it into. But currently what it is,
7 it's a single-family home.

8 The criteria that we're looking at,
9 and they're all very clear -- can we put those
10 back up on the screen, the criteria?

11 Ultimately what this comes down to is
12 the criteria that we have to look at as a Council
13 and what the law is in terms of when one of these
14 departures needs to be granted.

15 They're all very clear that these
16 departures must only be granted when necessary.
17 It has to be the minimum necessary given the
18 circumstances and the request must be necessary
19 to alleviate circumstances.

20 If you take as a premise the notion
21 that this is a rooming house then perhaps it is
22 necessary to grant the departure. Because then

1 if you don't grant the departure, it's clear that
2 you don't have the space to widen the driveway
3 and it's clear that they would have to get a
4 variance to expand the driveway into the front
5 yard.

6 What I don't see in the record is why
7 it's necessary, and I haven't heard the Applicant
8 make this case, why it's supposedly necessary
9 that this property be made into a rooming house
10 as opposed to a single-family residence when it's
11 been used as a single-family residence now for
12 years.

13 I'm not sure why the APC didn't
14 address that issue. I might consider that maybe
15 we should send it back to them to consider that
16 issue in greater detail.

17 But right now I don't see any
18 information on the record that indicates that it
19 is. I believe it's the Applicant's burden to
20 make that case.

21 So absent seeing that evidence, I'm
22 inclined to support Ms. Stullich's -- the

1 direction that Ms. Stullich is going in, and deny
2 this departure request.

3 MAYOR FELLOWS: Ms. Mitchell?

4 MAYOR PRO TEM MITCHELL: Thank you,
5 Mr. Mayor.

6 First I have a question for my
7 colleagues. Just out of curiosity, when we talk
8 about historic preservation, how many homes are
9 part of the historic preservation in your
10 district, how many homes total?

11 COUNCIL MEMBER STULLICH: I would have
12 to ask staff to answer that question.

13 But I can say that this house is not
14 only a contributing property to the Historic
15 District, but it's also an individually
16 designated historic site that was subject to the
17 County Historic Preservation Ordinance before
18 there was a Historic District.

19 There are only, is it five or six
20 total properties in the neighborhood that are
21 individually designated.

22 MAYOR PRO TEM MITCHELL: Okay.

1 COUNCIL MEMBER STULLICH: Can I ask if
2 staff have the information on the total number of
3 contributing properties?

4 MS. SCHUM: I'm going by memory. I
5 would say maybe 300 properties.

6 COUNCIL MEMBER STULLICH: Okay. Or is
7 it 300 total properties in the District?

8 MS. SCHUM: I mean, I'm doing this by
9 memory. I don't -- 250? The Old Town Historic
10 District is smaller than the Old Town
11 neighborhood. I'm not recalling offhand.

12 MAYOR PRO TEM MITCHELL: Okay. So
13 you're saying about five or six? Okay.

14 COUNCIL MEMBER STULLICH: Five or six
15 individually designated houses.

16 MAYOR PRO TEM MITCHELL: Okay. Thank
17 you.

18 I guess I also have a query in regards
19 to -- not a question. Let me rephrase.

20 APC took a stance in regards to this
21 decision. Now it's being brought back to us
22 because of item number four.

1 MAYOR FELLOWS: Not exactly.

2 MAYOR PRO TEM MITCHELL: It's two
3 parts.

4 COUNCIL MEMBER STULLICH: It's brought
5 back because I asked to bring it back.

6 MAYOR PRO TEM MITCHELL: All right.
7 I have some concerns.

8 Go ahead, Mr. Mayor, to some other
9 Council colleagues for comments. I will come
10 back in order to have a proper statement made.

11 MAYOR FELLOWS: Thank you, Ms.
12 Mitchell.

13 Mr. Brennan?

14 COUNCIL MEMBER BRENNAN: Thank you,
15 Mr. Mayor.

16 Thanks to Mr. Behr, our staff, Ms.
17 Bryant for coming out this evening, and Ms.
18 Stullich for investing a lot of time into
19 understanding this.

20 I think Ms. Bader made a good
21 statement on the record when she said that she
22 thinks that most of the people's concerns are

1 more about the rooming house than with the
2 departure.

3 It's hard to discuss a technical
4 variance when the real disagreement is with the
5 residence. But the two things are linked.

6 In terms of the operator issues, I
7 think that a number of residents are concerned
8 that an operator is an operator on paper, but
9 it's not an operator in the sense of what you
10 would think of for a boarding house.

11 I've read many books on when boarding
12 houses were operated and used in our country. It
13 wasn't a student that was just used on paper as a
14 boarding house. It was normally a widow or a
15 widower or somebody of that nature who was
16 looking to collect additional income to
17 supplement her expenses, or provide travelers
18 with an opportunity.

19 In a sense this is, and I'm making an
20 assumption here but I think a good one, it's
21 going to be a group of 10 students living in a
22 house. And one of the students is going to be an

1 operator on paper.

2 I think that causes a lot of concerns
3 with people. When you kind of gloss over that
4 detail I think it raises people's awareness a
5 little more.

6 I think most people would prefer to
7 know that that person is a full-time caretaker
8 who is going to be there year after year and has
9 a stake in your property, and is going to have a
10 legal and liable stake in your property.

11 From my understanding of the product
12 that a boarding house provides, it doesn't seem
13 to me that that's how it's going to be used in
14 our city.

15 I also think that this sets a
16 precedence for houses that have been exploited by
17 previous owners to modify them without proper
18 permit to then be purchased by somebody else, and
19 that person then exploits that change to create
20 an argument for something new.

21 The integrity of the neighborhood is
22 really important here.

1 I think that 10 people, going from
2 five to 10 people is doubling the occupancy of
3 this house. It's putting 10 more people in the
4 house.

5 It's putting five cars in the backyard
6 potentially and five cars on the street, and cars
7 potentially in the neighbor's driveway that could
8 potentially create an obstruction. But as you
9 stated, there could be an agreement made there.

10 I just have to agree that I would like
11 to stick with the integrity of our community.
12 The house has been operating as a single-family
13 home as long as I know. There are rumors that
14 it's been a boarding house but not to the extent
15 that it's being used here.

16 Just as a personal anecdote, I was
17 walking by this property last year and there was
18 a loud party in the backyard. I can't tell if it
19 was in your backyard or your neighbor's backyard,
20 but it was a party that emanated all the way up
21 into Berwyn.

22 It just makes me question density of

1 people in our community and how we have to be
2 mindful about having too many people in
3 residences and on our properties.

4 Those are my comments for now.

5 MAYOR FELLOWS: Okay. Thank you.

6 Dr. Kabir?

7 COUNCIL MEMBER KABIR: Thank you, Mr.
8 Mayor.

9 I have a question for the attorney.

10 The options we have, one of the
11 options we have is to deny the application. The
12 other is to send back to APC. Is that correct?

13 MS. FERGUSON: Yes. It's in the code.
14 You may deny, you may modify and approve, you may
15 approve, or you can remand if there is
16 insufficient information in the record in your
17 opinion to support all of these required
18 findings.

19 You do have a number of things that
20 came up this evening in the record, such as the
21 questions about how the use of the driveway can
22 be controlled when there's joint use, among other

1 things. But there's a number of things that have
2 come up that you could decide that you want to
3 know more about before making your decision.

4 Or you can make your decision on the
5 record. I think there's enough in the record at
6 this point for you to make a decision.

7 But if you're not comfortable with
8 that and you want to know more, you can send it
9 back to the APC to inquire into these other
10 areas.

11 COUNCIL MEMBER KABIR: The reason why
12 I'm asking is because I'm hearing what my
13 colleagues are talking about, particularly Ms.
14 Stullich. And I understand, I take her point on
15 number four, that APC probably did not address
16 the issue of impact on the neighborhood.

17 If that is the case, I think it might
18 be better if we can send it back to APC instead
19 of denying outright.

20 MAYOR FELLOWS: Other comments?

21 Ms. Stullich?

22 COUNCIL MEMBER STULLICH: Thank you.

1 I realize that one option is we could
2 send it back to the APC.

3 I also have a great deal of respect
4 for APC. I think they take their jobs very
5 seriously. They do good work. That doesn't mean
6 that we always have to agree with the decision
7 that they make.

8 In this particular case there was one
9 criteria that they were not aware of.

10 But aside from that criteria I think
11 there's some other issues that I think I've
12 raised, including that the property really is not
13 special or unusual in its shape and its size.
14 It's a relatively small property with a 50-foot
15 frontage, as is true of many single-family
16 houses.

17 Also the issue which Mr. Behr has
18 stated, he can't control use of the driveway by
19 neighbors.

20 I actually have seen the driveway
21 being used for very large parties. It wasn't
22 really possible to tell which household was using

1 it in that way. But nobody would have been able
2 to use the driveway for several hours when that
3 was happening.

4 Yes, we could send it back to the APC.
5 I don't know that we'd do the APC any favors by
6 doing that. I think we can appreciate their
7 service and yet come to a different decision.

8 The motion that I would like to make
9 is that we deny this departure.

10 MAYOR FELLOWS: All right. We have a
11 motion to deny. That needs a second.

12 COUNCIL MEMBER WOJAHN: Second.

13 MAYOR FELLOWS: Seconded by Mr.
14 Wojahn.

15 Further comment?

16 Ms. Stullich?

17 COUNCIL MEMBER STULLICH: Thank you,
18 Mr. Mayor.

19 I know this can feel like a hard case
20 because I think Mr. Behr seems very sincere in
21 his desire to do something that he perceives as
22 good for the community.

1 Whatever decision is made will last
2 for a long time, not just the time that Mr. Behr
3 owns the property. As we have seen, properties
4 change hands and things turn out differently.

5 I think, as I said before, everybody
6 knows very well the problems that we have in Old
7 Town which are related to density and to the
8 steady expansion of the density of occupancy in
9 many houses that were constructed and long used
10 as single-family houses.

11 And then they become something
12 different one way or another with more people
13 than they were originally built for, additions
14 that are built improperly, sometimes under
15 previous owners. And then it all becomes kind of
16 the past history that we can't look at because it
17 was done before.

18 It's just a steady erosion in the
19 quality of life in Old Town. Each individual
20 case by itself may not make a huge difference.
21 But collectively these changes do make a big
22 difference.

1 This departure is not necessary. It's
2 only necessary to allow a rooming house. A
3 rooming house is not permitted by right. It's
4 only allowed by right if the conditions are met.

5 One of the conditions is for a 22-foot
6 wide driveway, which is not possible on this site
7 because there's not that much space between the
8 two houses.

9 You can see to accommodate the cars
10 what's been done is to turn what was once green
11 space into just gravel. It's not attractive.
12 The landscaping improvements will help a little
13 bit but it will still be an awful lot of gravel
14 and a lot more cars than ever were intended to be
15 there.

16 I'm pretty sure when Ms. Holbrook ran
17 the house with a few boarders that there were not
18 huge numbers of cars on the property. The
19 property is just not designed for that.

20 So I hope my colleagues will support
21 me and the welfare of the Old Town neighborhood
22 in supporting my motion.

1 Thank you.

2 MAYOR FELLOWS: In the instance of
3 this type of a decision, do we go out to the
4 audience for comments on this? I don't think we
5 do.

6 MS. FERGUSON: No. This is a hearing.

7 MAYOR FELLOWS: So we're staying with
8 the Council.

9 Mr. Day?

10 COUNCIL MEMBER DAY: Number four, I'm
11 baffled here. Because right there it says the
12 departure will not impair the visual, functional,
13 or environmental quality or integrity of the site
14 or the surrounding neighborhood. But that's part
15 of our resolution that the APC put to us.

16 So if they didn't address it and they
17 didn't view it, they wouldn't have put it in this
18 whereas in their statement, correct?

19 MS. FERGUSON: This was not included
20 as a finding that the APC took up unfortunately.
21 The Applicant's attorney addressed this
22 requirement because it's a County requirement so

1 it applies to the City also. This was an error.

2 There is evidence in the record here
3 to show, and you have enough evidence one way or
4 the other to make your determination.

5 But the required finding is required
6 and they did not make that in the APC resolution.
7 That is actually a separate matter.

8 To do anything approving this
9 application you would need to deal with all four
10 of the findings, not just the three. So you'd
11 have to do that.

12 The issue is whether you feel that the
13 record supports what the APC found as discussed
14 this evening and as you see in the record.

15 If you were to support this
16 application you would need to make the finding
17 for number four or your record would be
18 deficient. That's why we've brought it up
19 separately.

20 MAYOR FELLOWS: Since now the motion
21 before the Council is to deny, the comments of
22 Council Members should be related to whether

1 denial is appropriate.

2 COUNCIL MEMBER DAY: I don't feel
3 denial is appropriate for this at this point. I
4 think we should be considering looking at
5 possibly sending this back to the APC.

6 MAYOR FELLOWS: All right. Thank you.

7 Other comments?

8 Mr. Brennan?

9 COUNCIL MEMBER BRENNAN: Just a
10 response to Mr. Day. I think if we send it back
11 to the APC for number four, I don't see a way of
12 them addressing the environmental quality or
13 integrity of the site that's going to be impacted
14 by having the number of people living on that
15 property as a result of granting this variance.

16 I would support the motion to deny
17 because I don't feel that that can be addressed
18 unless it's kept at five people.

19 MAYOR FELLOWS: Let me take a shot at
20 this. There are many ways we could return it.

21 Mr. Day's point is that we should
22 return it to the APC. But I don't know if he was

1 saying just to do it for four. There could be
2 lots of other reasons to do it.

3 COUNCIL MEMBER BRENNAN: I'm sorry.
4 That was my assumption.

5 MAYOR FELLOWS: I just wanted to make
6 it clear that if we chose not to accept the
7 denial motion, if we chose to return it there
8 could be a number of things that we could ask
9 them to consider or reconsider.

10 Mr. Wojahn?

11 COUNCIL MEMBER WOJAHN: Thank you, Mr.
12 Mayor.

13 I brought up an issue before, this
14 issue of whether or not -- I think this is a
15 fundamental issue here. If the departure is
16 truly necessary and the departure is related to
17 having a rooming house, do we need to be able to
18 see that an actual rooming house is necessary.

19 But I think because this is tied up
20 with the issue of whether or not -- all these
21 criteria are tied up with whether or not we're
22 looking at a rooming house here as opposed to a

1 single-family residence.

2 We can also look at the record and
3 look at whether or not a rooming house, using
4 this property as a rooming house meets these
5 criteria or not.

6 I think the record shows that we have
7 before us that having a rooming house as we heard
8 from the residents would impair the visual,
9 functional, or environmental quality or integrity
10 of this site or the surrounding neighborhood. We
11 haven't seen any evidence that it is necessary to
12 use this as a rooming house.

13 Therefore with the record that we have
14 before us, I don't think we need to go any
15 further. I don't think we need to remand it to
16 the APC. I think we can decide tonight that the
17 Applicant's burden isn't met and deny this.

18 COUNCIL MEMBER DAY: May I respond to
19 that?

20 MAYOR FELLOWS: Yes. Mr. Day?

21 COUNCIL MEMBER DAY: Statements made
22 tonight made it very clear that it has been used

1 as a boarding house, or a rooming house rather.

2 COUNCIL MEMBER WOJAHN: Years ago.

3 COUNCIL MEMBER DAY: It has been done.

4 COUNCIL MEMBER STULLICH: With a
5 smaller number of people.

6 COUNCIL MEMBER DAY: It was a rooming
7 house.

8 COUNCIL MEMBER STULLICH: A smaller
9 number.

10 MAYOR FELLOWS: Ms. Mitchell?

11 MAYOR PRO TEM MITCHELL: Yes, Mr.
12 Mayor.

13 I appreciate my colleague Kabir first
14 asking about the opportunity to remand it back to
15 APC. We're saying it was no fault of their own
16 that they did not take component number four into
17 consideration.

18 If we do that then it will refute the
19 environmental landscape concerns that you're
20 talking about, Council Member Wojahn, if it's
21 being met or not.

22 But other than that we should uphold

1 our APC's decision. We have boards and
2 commissions here to take time to research, to
3 listen to testimony and they made a decision.

4 This is negating what they say.
5 You're saying what they said is not worthwhile or
6 to the point.

7 I know my Council colleagues are going
8 to tell me, well, the premise. The premise here
9 is they made a decision and we should uphold it.

10 MAYOR FELLOWS: Thank you.

11 Mr. Wojahn, Ms. Stullich, then Dr.
12 Kabir.

13 COUNCIL MEMBER WOJAHN: I want to
14 respond to a couple of comments that my
15 colleagues have made.

16 The APC did not make a decision as to
17 whether or not a boarding house is necessary.
18 They did not look at that issue.

19 We can either send it back to them to
20 look at that issue, or if the evidence on the
21 record is enough for us to decide that a boarding
22 house is not necessary, that this property does

1 not have to be a boarding house, then we don't
2 need to waste our time. We can decide that
3 ourselves tonight.

4 With respect to Mr. Day's comments,
5 yes, it has been used as a boarding house before.
6 I understand that. But that doesn't mean that it
7 has to be used as a boarding house.

8 It's the burden of the Applicant to
9 show not just that it has been used as a boarding
10 house before but that being a boarding house is
11 necessary. That's what those criteria up there
12 say, that it has to be necessary.

13 Thank you.

14 MAYOR FELLOWS: Ms. Stullich?

15 COUNCIL MEMBER STULLICH: Thank you,
16 Mr. Mayor.

17 We do rely greatly on our boards and
18 commissions. The APC in particular handles many
19 complex and difficult issues.

20 However it is in the order of things
21 that sometimes, if we do not agree with their
22 decision, if we think there are some

1 circumstances or issues that they did not
2 consider, we can make a different decision. That
3 is the procedure.

4 I don't think it's proper that we
5 should say we should always uphold the decision
6 of the APC. That makes us just a rubber stamp
7 and that is not what the process is.

8 The process allows for our review.
9 And if the process allows for a review then it
10 must as a necessity allow for the possibility
11 that we could come to a different decision.

12 To come to a different decision, a
13 different conclusion is not by any means a sign
14 of disrespect for the APC. It is simply that we
15 reviewed the facts of the case, we reviewed the
16 record, we reviewed the arguments, and we came to
17 a different decision.

18 I think the idea that we can never do
19 anything other than uphold the APC's decision or
20 send it back to them is not correct.

21 Ms. Ferguson?

22 MS. FERGUSON: I was waving at the

1 Mayor.

2 COUNCIL MEMBER STULLICH: Okay. So
3 just in conclusion, I think we all greatly
4 respect and appreciate our APC members and their
5 service and their commitment. And to come to a
6 different decision in this case does not in any
7 way negate or undermine that respect. It just
8 means coming to a different conclusion.

9 Thank you.

10 MAYOR FELLOWS: Thank you.

11 Ms. Ferguson?

12 MS. FERGUSON: In response to some of
13 the Council comments, I did want to clarify one
14 thing.

15 A rooming house is a use as of right
16 in the R18. There's not any necessity for you to
17 find by law that a rooming house is necessary.

18 As has been noted at various times
19 during this conversation, it's only allowed by
20 right if certain criteria are met.

21 One is a commercial width driveway and
22 that is not met. That's clear from this

1 application. That's why a departure is being
2 requested.

3 When the departure is requested you
4 are required to make certain findings to support
5 that departure. It's like a variance. It's a
6 give. It's not something that someone gets of
7 right.

8 Those four criteria are up there. You
9 have your record. There are a number of
10 questions that have been raised this evening
11 about whether or not the -- about the control of
12 the property, the uniqueness of the property,
13 which are things that go to these required
14 findings.

15 So those are proper matters for you to
16 decide on this evening if you care to. Or to
17 send back down if you care to because you don't
18 feel that you have enough information.

19 But the necessity for a rooming house
20 as opposed to a single-family home is not one of
21 the items that you can decide. All you can
22 decide is whether or not this use of right should

1 be allowed since it's not of right at this point
2 because they don't have the proper width of
3 driveway.

4 COUNCIL MEMBER WOJAHN: Mr. Mayor?

5 MAYOR FELLOWS: Yes.

6 COUNCIL MEMBER WOJAHN: I'm going to
7 respond to that. The way I read these criteria,
8 these required findings, it says that a departure
9 is the minimum necessary given the specific
10 circumstances of the request.

11 So for us to say that the departure is
12 necessary, that we need to grant this departure,
13 accepts the notion that the property is a rooming
14 house.

15 Am I wrong on that?

16 MS. FERGUSON: The departure itself
17 has to do with the driveway.

18 COUNCIL MEMBER WOJAHN: Right.

19 MS. FERGUSON: Now what that ends up
20 being is a decision as to whether this is going
21 to be a rooming house or not. Because if they
22 aren't granted a departure, he cannot have a

1 rooming house there because that requirement
2 stays and there's no way to conform to that
3 requirement without a departure.

4 COUNCIL MEMBER WOJAHN: Exactly.

5 MS. FERGUSON: But the departure in
6 all these references refer to the driveway.

7 Things such as not having control of
8 the driveway, not being able to ensure that
9 there's going to be other parking in that
10 driveway, which was a requirement of the APC
11 frankly, does go very probably to the functional
12 nature of that driveway and also to whether the
13 purposes of the zoning ordinance are being well
14 served.

15 There are a number of things here that
16 you can look at that have been raised in this
17 record and have been raised this evening.

18 COUNCIL MEMBER WOJAHN: Right. I
19 understand that.

20 Just so that I'm clear, if the
21 property stays a single-family house then no
22 departure is necessary. The minimum departure is

1 zero because you don't need a departure.

2 MS. FERGUSON: That is correct. A 22-
3 foot wide driveway is not needed. The house
4 would continue as it is with the driveway as a
5 single-family home. That is correct.

6 COUNCIL MEMBER WOJAHN: Okay. Thank
7 you.

8 MAYOR FELLOWS: Dr. Kabir?

9 COUNCIL MEMBER KABIR: Thank you.

10 If we send this back to the APC can we
11 ask them only to look into number four, the
12 concerns we have about number four, instead of
13 looking at the entire case?

14 MS. FERGUSON: Specifically?

15 COUNCIL MEMBER KABIR: Yes.

16 MS. FERGUSON: Yes, you could do that.
17 But if you're going to remand something back to
18 the APC it is a good idea to be specific as to
19 what you believe is missing in the record.

20 One of the things that we have to look
21 at here is, this is a recommendation to you that
22 stands unless you call it up or someone else

1 does. But you're the final decider of whether
2 this departure is going to be granted or not.
3 That's why it's always on your agenda. It's not
4 automatic at the APC level.

5 If you are going to send it back to
6 them, it would not be for another determination
7 of law. It would be for them to get more facts
8 and then answer some questions that you are
9 unclear about now and what their feeling about
10 those are once they get those additional answers.

11 So the more direction that you give to
12 them about what it is that has been causing you
13 to have questions, the better.

14 But the overall answer is you can say,
15 we don't think we need any more facts about these
16 others but we do need some more facts about
17 number four. So send us more information about
18 that, explore that more. You could do that.
19 That's pretty general. Or you could be more
20 specific.

21 COUNCIL MEMBER KABIR: Thank you.

22 MAYOR FELLOWS: Thank you, Dr. Kabir.

1 Mr. Dennis?

2 COUNCIL MEMBER DENNIS: Yes. Thank
3 you.

4 We have a motion and we have a second.
5 That is denial of this issue.

6 Following what you've just said, Ms.
7 Ferguson, my question is if we wanted to remand
8 this to the APC we have to have another motion
9 and another second and discussion, is that
10 correct?

11 MS. FERGUSON: Yes.

12 COUNCIL MEMBER DENNIS: Okay. Thanks.

13 MAYOR FELLOWS: Yes. We have a motion
14 before us, a motion that we are currently
15 considering to deny. I believe everybody has
16 spoken and I believe you've heard each other's
17 comments.

18 Any other comments before we vote on
19 the motion?

20 COUNCIL MEMBER KABIR: May we have the
21 roll call?

22 MAYOR FELLOWS: All right.

1 COUNCIL MEMBER STULLICH: I'm sorry.

2 I did have another comment.

3 MAYOR FELLOWS: Ms. Stullich?

4 COUNCIL MEMBER STULLICH: I just
5 wanted to be clear because Mr. Kabir spoke about
6 condition number four. But my concerns are with
7 condition number three as well.

8 So I don't think that the
9 circumstances are particularly -- sorry. Are you
10 wanting to interrupt me or say something?

11 MS. FERGUSON: No. I'll wait.

12 COUNCIL MEMBER STULLICH: I don't
13 believe that the circumstances at this property
14 are that it's necessary to alleviate those
15 circumstances. It is what it is. It's a
16 standard property.

17 Sorry. I feel like you do want to say
18 something.

19 MS. FERGUSON: A denial or an approval
20 generally speaking in a case of this nature where
21 there has been a lot of back and forth about it
22 and you have had a lot of discussion this

1 evening, you would generally refer that for a
2 written resolution that you could then approve.

3 You could take your general motion and
4 then have a resolution, a formal written
5 resolution that you would then approve. Because
6 there are obviously legal requirements that need
7 to be stated.

8 Sitting up here on the dais, you are
9 not addressing matters as you would normally do
10 in a written decision.

11 That would be put together for you by
12 staff and by me, and then you would be able to
13 look at it and approve or not approve the final.
14 It's called being referred for document or
15 referred for a decision.

16 Especially when we have had the kind
17 of conversation that we have had this evening,
18 you would probably want to do that.

19 COUNCIL MEMBER STULLICH: Thank you,
20 Ms. Ferguson. I think you understood what I was
21 trying to get to, which was the concern that we
22 are clear about -- if my motion passes that we're

1 clear about the reasons.

2 Because a lot of different things are
3 said at the dais and we're not always able to say
4 things in the proper manner. So your
5 recommendation or description of the next step
6 should my motion pass sounds very good.

7 Should I have formulated my motion in
8 a different way to allow for that?

9 MS. FERGUSON: You could vote to deny
10 based on the record before you, that the criteria
11 are not fulfilled, and refer it for document to
12 come back to Council for a final.

13 MAYOR FELLOWS: So we'll consider the
14 motion she made earlier to deny.

15 MS. FERGUSON: You could do that.

16 COUNCIL MEMBER STULLICH: Right.

17 Thank you.

18 COUNCIL MEMBER DENNIS: Explain that
19 again.

20 MAYOR FELLOWS: Ms. Ferguson, Mr.
21 Dennis just asked for that explanation one more
22 time.

1 MS. FERGUSON: You could make the
2 motion to deny based on the fact that you cannot
3 make the required findings based on what's been
4 presented to you, they have not been fulfilled,
5 and refer it for document, the formal written
6 resolution to come back to you for final
7 approval.

8 COUNCIL MEMBER DENNIS: So that would
9 have to be an amendment to the standing motion?

10 MS. FERGUSON: The City manager has
11 just been noting that very same thing actually.

12 COUNCIL MEMBER STULLICH: Okay. So
13 can I say that I would like to amend my motion?

14 MS. FERGUSON: Yes. Generally
15 speaking, if your second is agreeable, you could
16 do that.

17 COUNCIL MEMBER STULLICH: Okay. So I
18 would like to amend my previous motion to include
19 the language that the City attorney just stated,
20 that it would be to refer the matter for
21 documentary support? I'm sorry.

22 MS. FERGUSON: Your motion would be

1 that you move to deny the application as the
2 required findings have not been met, and you're
3 referring for document so that the written
4 resolution can be prepared and brought back to
5 you for final approval.

6 COUNCIL MEMBER STULLICH: Thank you.
7 That is my amended motion.

8 MAYOR FELLOWS: Acceptable to the
9 second?

10 COUNCIL MEMBER WOJAHN: Yes.

11 MAYOR FELLOWS: All right. The motion
12 has been amended.

13 Other comments before we vote?

14 I've had a request for roll call.

15 Dr. Kabir?

16 COUNCIL MEMBER KABIR: No.

17 MAYOR FELLOWS: All right. Mr.

18 Wojahn?

19 COUNCIL MEMBER WOJAHN: Yes.

20 MAYOR FELLOWS: Mr. Brennan?

21 COUNCIL MEMBER BRENNAN: Yes.

22 MAYOR FELLOWS: Mr. Dennis?

1 COUNCIL MEMBER DENNIS: No.

2 MAYOR FELLOWS: Ms. Stullich?

3 COUNCIL MEMBER STULLICH: Yes.

4 MAYOR FELLOWS: Mr. Day?

5 COUNCIL MEMBER DAY: No.

6 MAYOR FELLOWS: Ms. Mitchell?

7 MAYOR PRO TEM MITCHELL: No.

8 MAYOR FELLOWS: That is 4-3. The

9 motion fails.

10 From other comments I've heard
11 certainly an interest in remanding for many
12 reasons.

13 Would someone like to make that
14 motion?

15 Mr. Wojahn?

16 COUNCIL MEMBER WOJAHN: Mr. Mayor, I'd
17 like to move that we remand to the APC for
18 further consideration of criteria two, three, and
19 four.

20 And I'd like to ask that the, I'm
21 trying to think of a way to articulate this, but
22 that the APC be certain to consider the current

1 status as a single-family house.

2 And that these criteria be considered
3 in that light with the understanding that, and
4 maybe you can help me articulate this better, to
5 look at whether or not the departure is necessary
6 given that fact.

7 MAYOR FELLOWS: Actually I have a
8 question. In the previous one where we were
9 referring it to staff to record a document that
10 records our decision, it would also seemingly be
11 good to refer to staff to record the many
12 concerns that Council Members raised about this,
13 to record them all and have the APC consider all
14 of those concerns rather than having Mr. Wojahn
15 try to remember them.

16 MS. FERGUSON: You could certainly ask
17 that the remand referral be placed into writing
18 for your final okay so that it would be clear to
19 all of you that what you wanted remanded to the
20 APC had in fact been included.

21 COUNCIL MEMBER WOJAHN: Okay. Thank
22 you.

1 MAYOR FELLOWS: So moved?

2 COUNCIL MEMBER WOJAHN: So moved.

3 COUNCIL MEMBER STULLICH: Second.

4 MAYOR FELLOWS: Second by Ms.

5 Stullich.

6 Additional comments, Mr. Wojahn?

7 COUNCIL MEMBER WOJAHN: I think we've
8 discussed this enough. Thank you.

9 MAYOR FELLOWS: All right. Other
10 comments?

11 Do you want another roll call on this
12 one?

13 COUNCIL MEMBER KABIR: No.

14 MAYOR PRO TEM MITCHELL: Yes, Mr.

15 Mayor.

16 MAYOR FELLOWS: All right. We'll take
17 a roll call.

18 Dr. Kabir?

19 COUNCIL MEMBER KABIR: Yes.

20 MAYOR FELLOWS: Mr. Wojahn?

21 COUNCIL MEMBER WOJAHN: Yes.

22 MAYOR FELLOWS: Mr. Brennan?

1 COUNCIL MEMBER BRENNAN: Yes.

2 MAYOR FELLOWS: Mr. Dennis?

3 COUNCIL MEMBER DENNIS: Yes.

4 MAYOR FELLOWS: Ms. Stullich?

5 COUNCIL MEMBER STULLICH: Yes.

6 MAYOR FELLOWS: Mr. Day?

7 COUNCIL MEMBER DAY: Yes.

8 MAYOR FELLOWS: Ms. Mitchell?

9 MAYOR PRO TEM MITCHELL: Yes, Mr.

10 Mayor.

11 MAYOR FELLOWS: It's unanimous in
12 support for remand.

13 Thank you all very much. That
14 concludes the hearing.

15 (Whereupon, the above-entitled matter
16 went off the record at 8:54 p.m.)

17

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19

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21

22

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: ORAL ARGUMENT CPD-2014-01

Before: City Council of College Park, MD

Date: 01-27-15

Place: College Park, MD

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.

Neal R. Gross

Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

15-G-14

Departure Application Number CPD-2014-01
4618 College Avenue, College Park, MD
Applicant: Steven Behr

CITY COUNCIL OF THE CITY OF COLLEGE PARK
ORDER OF REMAND

IT IS HEREBY ORDERED by the Council of the City of College Park, after review of the administrative record and a hearing on January 27, 2015, that application CPD-2014-01 by Steven Behr for a departure from Section 27-563 of the Zoning Ordinance, requesting a departure of 11.4-feet from the required 22-foot driveway width from a parking lot to a street for a commercial use at the property located at 4618 College Avenue is:

REMANDED, pursuant to §190-10 of the City Code, to the Advisory Planning Commission “APC”) to take further testimony, allow public comment, and reconsider its decision. Having reviewed the record, the City Council has determined, among other things, that all of the criteria required for granting a departure under Sec. 27-239.01(b)(7) have not been addressed by the Advisory Planning Commission, and further there is insufficient evidence in the record that the revisions to the site plan with respect to no parking signs on the property will also apply to the residents at 4620 College Avenue, who have concurrent rights to use a large portion of the driveway through the driveway easement, both of which require that additional testimony and public comment be taken and that the Advisory Planning Commission make appropriate amendments to its recommendation.

I. Sec. 27-239.01(b)(7) of the County Zoning Ordinance contains the criteria that must be met to grant a departure. The recommendation issued by the APC does not include reference to Sec. 27-239.01(b)(7)(iv). This criterion requires that the applicant show the departure will not impair the visual, functional, or environmental quality or integrity of the site or of the surrounding neighborhood. This criterion is not included in §190-9 of the City Code, but is a requirement of the County Zoning Ordinance and so must be addressed.

II. Use of the driveway – The record demonstrates that there is a joint driveway agreement that allows use of the driveway by occupants of the applicant’s property and of 4620 College Avenue. The record also demonstrates that, of the 16.6 feet of driveway width at the narrowest point between the two houses, only 5 feet of width is designated for the exclusive use of the applicant’s property, with joint use applying to the remainder of the 11.6 feet. The APC has determined that a departure should be conditioned on no parking signs placed on applicant’s property along the driveway and at the entrance, to keep this narrow area open for the up to nine residents. There is insufficient evidence in the record to demonstrate that the occupants of the adjacent property will be controlled by this, and no signage is required or agreed to be posted along the adjacent property, so it is unclear how required compliance with this condition can be met, therefore calling into question whether the Sec. 27-239.01(b)(7) criteria are fulfilled.

On remand, the APC hearing and record shall provide sufficient facts to support findings of fact and conclusions of law with respect to the requirements of Sec. 27-239.01(b)(7)(iv) of the County Zoning Ordinance, and to ensure that the departure conditions can be applied to the full extent required for compliance.

All interested persons who wish to do so shall be allowed to register as a person of record for this matter. Due to the requirement for review of additional criteria for the granting of the departure, prior to taking further testimony and additional public comment, an informational mailing to comply with Sec. 27-125.01 is required. The hearing will be de novo with respect to the matters remanded.

15-G-15

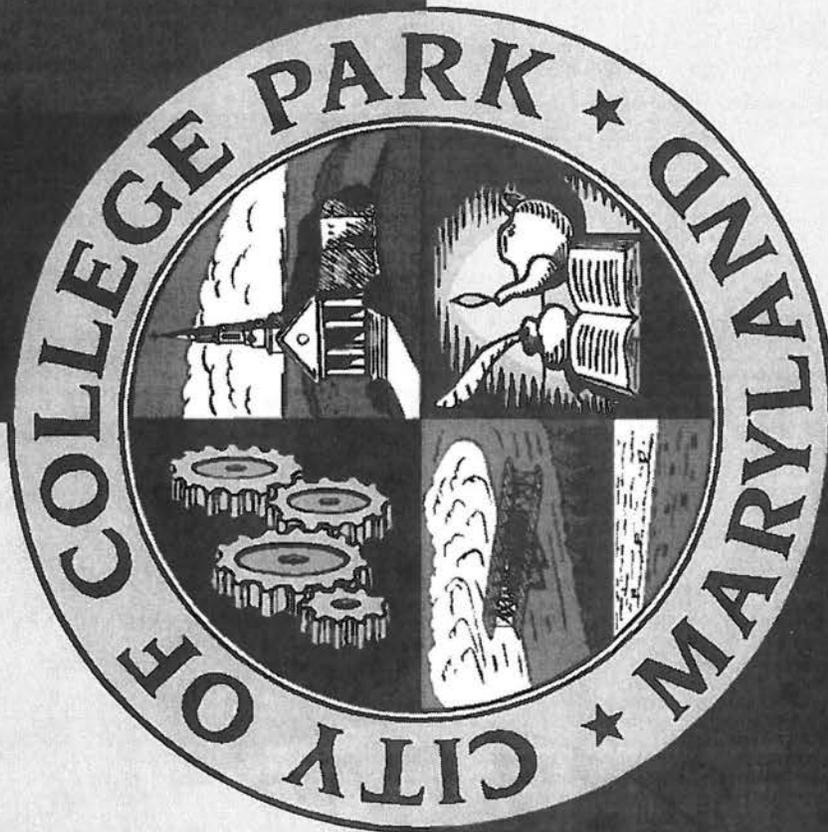
MOTION:

I move that the City Council formally adopt the colorized version of the original Seal of the City of College Park, using the designated color values, to serve as the official seal of the City of College Park.

City of College Park Color Seal Color Values			
Seal Color	PMS Number	Color Build Formula	RGB Values
Dark Green	357	79c 0m 67y 56K	RGB 0-100-70
Light Green	354	76c 0m 100y 11k	RGB 44-163-67
Gold		0c 31m 100y 0k	RGB 253-183-20
Blue		81c 9m 11y 0k	RGB 0-170-211
Dark Gray	413	2c 0m 0y 28k	RGB 187-192-196
Light Gray	429	0c 0m 6y 18k	RGB 214-214-204
Brown		16c 38m 57y 0k	RGB 214-163-120
Tan	468	9c 11m 21y 0k	RGB 230-219-199

15-G-16

GOLD



GOLD

15-G-09

**(Motion To Be Provided
Next Week)**

15-G-17

I move that the City Council send a letter to the 21st District Delegation expressing support for Senate Bill 369 and House Bill 932 which would allow the Class D (on-sale) Beer and Wine License currently held by Plato's to be converted to a Class D (on- and off-sale) Beer and Wine License in the 7100 or 7200 block of Baltimore Avenue, subject to the applicant entering into a Property Use Agreement with the City in substantially the form attached; and that the Council authorize the City Manager to sign the PUA.

DISCUSSION

Senator Rosapepe has introduced SB 369 to allow the Class D (on-sale) Beer and Wine License currently held by Plato's, to be converted to a Class D (on-and off- sale) Beer And Wine license and transferred to a new "wine bar" venue in the 7100 or 7200 block of Baltimore Avenue. The new venue would include both a wine bar style restaurant, and sales of beer and wine for carry out. This bill has been scheduled for a public hearing before the Senate Education, Health, and Environmental Affairs Committee on Friday, February 27, 2015 at 1:00 p.m. The Prince George's County Delegation has cross-filed House Bill 932 for the same purpose. A hearing is scheduled before the Economics Matters Committee on Monday, February 23, 2015.

Council has requested a property use agreement (PUA) be adopted prior to Council action in support of these Bills.

The attached PUA reflects the unique aspects of the business plan as it is conceived at this time and the fact that Mr. Akaras has not yet applied for a liquor license, does not have the final selection or layout of the premises, and has not completed a menu or final plan for food service, but is requesting support of the Senate and House bills. It was determined by the Council that an initial PUA should be developed to allow for support of the state legislation, with Mr. Akaras to return at the time of the filing for the Off Sale license with the Board of License Commissioners to finalize these items.

The proposed business plan may include entertainment, such as acoustic music. Mr. Akaras has indicated an intention to request an exemption from the Special Entertainment Permit requirement. The PUA is drafted to include the requirement that he obtain a Special Entertainment Permit, or an exemption from that permit, pending a BOLC determination. An exemption will allow persons under 21 to remain after 9:00 p.m. No cover charge is allowed. Security will be as required if an entertainment license is necessary.

With approval of the PUA, the Mayor should be authorized to send a letter reflecting the Council's position to the 21st District Delegation.

Attachments:

- (1) PUA
- (2) Proposed Legislation, SB 369, HB 932
- (3) Letter to 21st Delegation

PROPERTY USE AGREEMENT

THIS PROPERTY USE AGREEMENT (the "Agreement") is made as of the _____ day of _____, 2015, by and between Patak Holdings, LLC, and Antoni Akaras, Managing Member, (collectively "Licensee"); and the CITY OF COLLEGE PARK, a Maryland municipal corporation (the "City").

WITNESSETH

WHEREAS, James R. Puckett and Debra A. Puckett, are the owners of the real property located at 7131 Baltimore Avenue, College Park, Maryland 20740 (the "Property"); and

WHEREAS, Licensee is a contract purchaser of the Property; and

WHEREAS, the Property is located within the corporate limits of the City of College Park, Maryland; and

WHEREAS, Licensee currently has a Class D (On Sale) Beer and Wine License for the property located at 7150 Baltimore Avenue, College Park, Maryland 20740; and

WHEREAS, Licensee has requested the City's support for the adoption of State Bill 369, which would authorize One Class D (On-Sale) Beer and Wine License issued for premises in the 7100 Block of Baltimore Avenue in the City to be converted into a Class D (On- and Off-Sale) Beer and Wine License for Premises that are located in the 7100 to 7200 Block of Baltimore Avenue in the City;

WHEREAS, Licensee intends to apply to the Board of Liquor License Commissioners of Prince George's County, for the Class D (On- and-Off Sale)

Beer and Wine License if it is authorized for the Property, or another property located in the 7100 to 7200 block of Baltimore Avenue, to be operated as a restaurant and wine bar with off sales of beer and wine, and has requested the City's support for the enabling legislation; and

WHEREAS, the City agreed to support the enabling legislation, subject to the Licensee entering into this Property Use Agreement; and

WHEREAS, in consideration of the covenants contained in this Agreement, the City will support the adoption of SB 369, subject to the terms, conditions and restrictions contained herein.

NOW THEREFORE, in consideration of the foregoing, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Repair and Maintenance of the Property. Once Licensee, or an entity under its control, owns or rents the Property, Licensee shall keep the Property under its control in good order and repair, and free of debris and graffiti.
2. Restrictions. Except with the express written consent of the City, which consent may be withheld in the City's sole and absolute discretion, during the period that Licensee is using or has any interest in the Property, and is using the License, the use of the Property shall be restricted to the operation of restaurant and wine bar with on and off sales, to be named later ("Restaurant") or another substantially similar casual dining restaurant, which receives not more than fifty percent (50%) of its average daily receipts over any three consecutive monthly periods from the on-sale of alcoholic beverages, and which complies

strictly with the restrictions and requirements of the State of Maryland/Prince George's County Class D License. Within six months after the start of operations of the Restaurant, the Licensee and City shall set a final alcohol to food ratio. The calculation of the percentage of alcoholic beverages sold shall include the full cost of any such beverage, and not just the alcohol contained in the beverage. Licensee will provide the City, by January 25 of each year, with summaries of each month's receipts for the sales of alcoholic beverages and food for the preceding calendar year, and, at any time, such information in such form as the City may reasonably require to permit the verification of sales required in this paragraph 2 of this Agreement. Such information need not be prepared by an accountant or auditor, but must be accompanied by a general affidavit signed by the Licensee affirming the accuracy of the information provided. Licensee may be required by the City to provide information to permit verification of the sales ratios required in this paragraph, including daily register receipts and the identity of, and invoices from, its alcohol and food suppliers. Any such information provided by Licensee that is claimed to be confidential shall be so marked by Licensee and the City will treat such record as confidential as allowed by law.

3. Use of Property. Except as otherwise set forth herein, those uses of the Property permitted by the applicable zoning for the Property shall be permitted uses for the purposes of this Agreement. In addition, the Property shall be subject to all of the restrictions imposed by the applicable zoning of the Property.

4. Noises and Nuisances. Licensee shall not permit any nuisance to be maintained, allowed or permitted on any part of the Property, and no use of the Property shall be made or permitted which may be noxious or detrimental to health or which may become an annoyance or nuisance to persons or businesses on surrounding property.

5. Operations. Licensee shall maintain and operate the Restaurant in a manner that all seats are available for dining, and no area is designated solely for the consumption of alcoholic beverages. Alcoholic beverages shall not be sold or served prior to 10:00 a.m. or after 12:00 a.m., Sunday through Thursday, or prior to 10:00 a.m. or after 1:00 a.m. Friday through Saturday. Happy hour or like events shall be limited to 3:00 p.m. to 7:00 p.m. Food from a regular menu must be served at all times that the premises are open for business. At all times, at least 80% of the items listed on the regular menu shall be available for customers to order. The menu of the food to be provided by Licensee shall be provided to the City at the time of application for the Class D (On-and Off Sale) to the Board of License Commissioners. Live music is allowed only inside the Restaurant. Licensee shall ensure music levels that allow patron conversation in a normal tone of voice, and prohibit disruptive or rowdy behavior that disturbs the peaceful enjoyment of the facility by Licensee's patrons and other persons visiting the facility.

Cover and door charges will not be charged by Licensee. Alcoholic beverages shall be served only to diners sitting at tables or counters inside the restaurant facility or on an adjacent outdoor patio, and to patrons standing waiting

for a table. The parties recognize that, during private parties, not all patrons may be seated, but that food will be served. The minimum price for on-sale alcoholic beverages, including 16 oz. beers, shall be \$2.00. Licensee may sell beer in pitchers provided the pitchers of beer are not sold for less than \$12.00 per pitcher and are sold in pitchers for convenience and accommodation. All persons seated at a table at which beer in pitchers is served will be required to produce identification demonstrating an age of at least 21 years. Licensee will maintain all dining areas, including tables and chairs, inside the facility and on a designated patio area. Licensee shall ensure that the interior of the restaurant, including service areas, remain clean and graffiti free. The interior and exterior of the Property shall be rodent free. Licensee shall not allow grease, dirt, trash or graffiti to accumulate on any portion of the exterior of the Property that Licensee controls. Licensee agrees to fully comply with all applicable laws, including without limitation Subtitle 12, "Health", of the Prince George's County Code, and the Code of the City of College Park. Licensee shall not engage in window advertising of the sale of beer or wine, nor off-premises leafleting of cars or on public right of way promoting the sale of beer or wine, with the exception that Licensee may have one permanent exterior sign, subject to prior review and approval of the City, informing the public that beer and wine are available for sale at the Property. All off-premises advertising of specials, happy hours or reduced prices for beer or wine to be consumed on the Premises shall be limited to promotions coupling the sale or service of food with the sale of alcoholic beverages. Nothing in this section is intended to prohibit the Licensee from advertising his package goods in off-

premises advertising. Licensee shall use a scanner system, as allowed by law, designed to recognize false identification prior to making alcoholic beverage sales. The scanner shall be used for all persons who appear to be under the age of thirty five (35) years for off sales and at server's discretion for on-sales. Licensee will not accept State of Maryland vertical type licenses as proof of age.

Licensee shall not rent the facilities to individuals or businesses involved in promoting or making a business or profit from producing musical, band or disc jockey events. Licensee shall not provide tables, such as a beer pong table, whose purpose is for use in drinking games. Licensee shall not sponsor or support drinking games within the Property.

6. Off-Sales. If 7131 Baltimore Avenue is eventual site for the license, Licensee shall limit the space allocated to retail off-sales to a maximum of 1500 square feet of the 3,000 square feet on the first floor and to no more than 500 square feet on the second floor. If another property in the 7100 to 7200 block of Baltimore Avenue is chosen, a similar ratio of floor space for retail off-sales will apply. The Licensee shall present the final layout of the retail and restaurant space for the entire Property to the City Council for review and approval at the time of application to the Board of License Commissioners for approval of the Class D (On-and-Off) Beer and Wine License. Kegs will not be sold off-sale.. Sales of growlers and bottles of beer containing no less than sixteen (16) ounces may be sold. Additionally, sales of single twelve (12) ounce beers may be sold if the cost of said beer is greater than four dollars (\$4.00). No fortified wines, and no individual bottles or cans of beer containing alcohol of more than six percent (6%) costing less than

five dollars (\$5.00) shall be sold. It is expressly understood that Licensee is prohibited from selling cold single beers in buckets or barrels of ice in close proximity to the registers. Licensee shall maintain a security camera for the retail sales area.

7. Application for Class D (On-and-Off) Beer and Wine License.

The City retains the right to review, comment upon and object to the Licensee's application for a Class D (On-and-Off) Beer and Wine License to the Board of License Commissioners.

8. Enforcement. The City shall have the right to enforce, by any proceeding at law or in equity, including injunction, all restrictions, terms, conditions, covenants and agreements imposed upon the Property and/or Licensee pursuant to the provisions of this Agreement. The parties agree that if Licensee should breach the terms of the Agreement, the City would not have an adequate remedy at law and would be entitled to bring an action in equity for specific performance of the terms of this Agreement. In the event of a violation of paragraph 2 of this Agreement, Licensee shall have sixty (60) days from the date of notification of the violation to adjust his operations and achieve compliance, as measured during the sixty (60) day period, with the requirements of paragraph 2 of this Agreement. In the event the City is required to enforce this Agreement and Licensee is determined to have violated any provision of this Agreement, Licensee will reimburse the City for all costs of the proceeding including reasonable attorney's fees. Should Licensee prevail in any action brought by the City to

enforce a provision of this Agreement, the City shall reimburse Licensee for all costs of the proceeding including reasonable attorney's fees.

9. Waiver. Neither any failure nor any delay on the part of the City in exercising any right, power or remedy hereunder or under applicable law shall operate as a waiver thereof nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10. Assignment of License. In consideration for the City voicing no objection to Licensee's application for the new License, Licensee agrees that it shall not sell, transfer, or otherwise assign its rights under the License to any entity or individual for use or operation within the City without the express prior written consent of the City, which consent will not be unreasonably withheld.

11. Assignment. This Agreement shall be binding upon, and shall inure to the benefit of, the respective affiliates, transferees, successors and assigns of the parties hereto. The parties agree that Licensee shall have the right to assign his rights herein to an entity of his choosing, the majority of which is owned by Licensee.

12. Scope and Duration of Restrictions. The restrictions, conditions and covenants imposed by this Agreement shall be valid only so long as Licensee maintains a License at the Restaurant, or some other substantially similar casual dining restaurant.

13. Security. Pursuant to Article 2B, §6-201(r)(19), Licensee may be required to obtain a License for special entertainment or to obtain an exemption.

Prior to seeking a License for special entertainment or an exemption, Licensee agrees that it shall first present to the City its plans for entertainment as well as for any required security. For any activities authorized by such a license or exemption, the Licensee shall have and maintain a Security Plan to prevent the Property and any such activities from posing a threat to the peace and safety of the surrounding area. The Security Plan shall, at minimum, comply with the requirements of the Board of License Commissioners. Any required Security Plan for the Licensee is subject to review and revision annually or upon request by Prince George's County Police, the University of Maryland Police or the City of College Park.

a. Licensee shall diligently enforce ID policies through trained and certified managers and employees. Licensee agrees to take all necessary measures to ensure that under age persons do not obtain alcoholic beverages.

b. All employees for whom the Board of License Commissioners requires TIPS training will be trained within two weeks of hire. All employees operating cash registers for off-sales shall be TIPS trained.

c. All serving, bar, security and management employees will be 18 years or older.

14. Notices. All notices given hereunder shall be in writing and shall be deemed to have been given when hand delivered against receipt of three (3) days after deposit with the United States Postal Service, as registered or certified mail, return receipt requested, postage prepaid, addressed:

(i) If to Licensee:

Antoni Akaras
4704 Harvard Road
College Park, Maryland 20740

With copy to:
Linda C. Carter
6801 Kenilworth Avenue
Riverdale Park, Maryland 20737

If to the City:

Joseph L. Nagro
City Manager
City of College Park
4500 Knox Road
College Park, Maryland 20740

with copy to:

Suellen M. Ferguson, Esquire
Council, Baradel, Kosmerl & Nolan P.A.
125 West Street, 4th Floor
P.O. Box 2289
Annapolis, MD 21404

15. Amendments. This Agreement may not be amended or modified except in writing executed by all parties hereto, and no waiver of any provision or consent hereunder shall be effective unless executed in writing by the waiving or consenting party.

16. Severability. The provisions of this Agreement shall be deemed severable, so that if any provision hereof is declared invalid, all other provisions of this Agreement shall continue in full force and effect.

17. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Maryland.

18. Counterparts. This Agreement may be executed in any number of counterparts each of which shall constitute an original and all of which together shall constitute one agreement.

19. Headlines. The headings or titles herein are for convenience of reference only and shall not affect the meaning or interpretation of the contents of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

WITNESS/ATTEST

PATAK HOLDINGS, LLC

Antoni Akaras, Managing Member

WITNESS/ATTEST

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

By: _____
Joseph L. Nagro, City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Suellen M. Ferguson, City Attorney

SENATE BILL 369

A2

5lr2593
CF 5lr1980

By: **Senator Rosapepe**

Introduced and read first time: February 6, 2015

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County – City of College Park – Class D Beer and Wine License**

3 FOR the purpose of authorizing a certain Class D (on–sale) beer and wine license issued
4 for certain premises in the City of College Park to be converted, on or after a certain
5 date, into a certain Class D (on– and off–sale) beer and wine license for certain other
6 premises in the City of College Park; and generally relating to alcoholic beverages
7 licenses in Prince George's County.

8 BY adding to

9 Article 2B – Alcoholic Beverages
10 Section 9–217(1)(3)
11 Annotated Code of Maryland
12 (2011 Replacement Volume and 2014 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article 2B – Alcoholic Beverages**

16 9–217.

17 (l) (3) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, ON OR
18 AFTER JULY 1, 2015, ONE CLASS D (ON–SALE) BEER AND WINE LICENSE ISSUED FOR
19 PREMISES IN THE 7100 BLOCK OF BALTIMORE AVENUE IN THE CITY OF COLLEGE
20 PARK MAY BE CONVERTED INTO A CLASS D (ON– AND OFF–SALE) BEER AND WINE
21 LICENSE FOR PREMISES THAT ARE LOCATED IN THE 7100 TO 7200 BLOCK OF
22 BALTIMORE AVENUE IN THE CITY OF COLLEGE PARK.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
24 1, 2015.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.





City of College Park
240-487-3501
www.collegeparkmd.gov

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and City Council
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Mayor

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City Council

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Stephanie Stulich
7400 Dartmouth Avenue
301-742-4442

District 4
Alan Y. Hew
9118 Autoville Drive
240-391-8678

Denise C. Mitchell
3501 Marlborough Way
240-475-7196

February 25, 2015

The Honorable James C. Rosapepe
Senator, District 21
James Senate Office Building, Room 314
11 Bladen Street
Annapolis, Maryland 21401

RE: Senate Bill 369/House Bill 932

Dear Senator Rosapepe:

The College Park Council voted on February 24, 2015 to support Senate Bill 369 and House Bill 932. The Council has also adopted a property use agreement with Mr. Antonio Akaras, to provide him with community input regarding his business development plans.

We believe the proposed legislation would provide for development of a new kind of business in the downtown area of College Park. Residents of the City have continuously expressed their hopes for more upscale, convenient and diverse dining and entertainment venues. The unique aspects of the proposed business plan as it is conceived at this time would help achieve these City goals.

Please support the passage of these bills and adopt legislation allowing the implementation of this business plan in Downtown College Park. Thank you for your continued support of the City of College Park.

Sincerely,

Andrew Fellows
Mayor

cc: 21st District Delegation

15-G-18

MOTION:

I move to authorize the City Manager to sign a Memorandum of Understanding with the University of Maryland, subject to the approval of the City Attorney, for City participation in the Partnership for Action Learning in Sustainability (PALS) Program.

DISCUSSION:

PALS is a University of Maryland campus-wide initiative administered by the National Center for Smart Growth. It harnesses the expertise of UMD faculty and the energy of UMD students to help Maryland communities become more sustainable.

The City and PALS staff have identified four courses / projects for the spring 2015 semester:

- Improving Solid Waste Management Practices
- College Town: How the University and City can enhance urban life and the University
- Greenhouse Gas Inventory
- Making Place: Public Art and Design

Staff from Administration, Planning and Public Works will be liaisons for the courses. The cost to the City will be \$15,000.

MEMORANDUM OF UNDERSTANDING
Between
University of Maryland College Park
and
City of College Park

This Memorandum of Understanding ("MOU"), effective on the last date of signature below ("Effective Date"), is hereby entered into by and between the University of Maryland College Park ("UMD"), a public agency and instrumentality of the State of Maryland, located in College Park, Maryland, on behalf of the University of Maryland National Center for Smart Growth Research and Education ("Center") and the City of College Park ("City"), a municipal corporation in the State of Maryland, collectively the "Parties."

Purpose. The Parties share interests in meeting the needs of Maryland residents, businesses, and visitors by studying and addressing known redevelopment, economic development, transportation and parks planning, and general municipal strategies to promote sustainable development. Based on these premises and for good and valuable consideration, the Parties hereby agree as follows:

1. **Scope of Project.** The Partnership for Action Learning in Sustainability (PALS) program ("Program") is a Center for Smart Growth Research and Education initiative to address the needs of local jurisdictions. The City has presented real-life needs and problems ("Projects") to the Center, which has agreed to incorporate four Projects into existing UMD course curricula ("Courses"). UMD students and the Center will propose solutions that may allow the City to resolve existing problems and meet future municipal needs. For the purposes of this MOU, Courses are defined as those: a) that the City will support financially ("Supported Courses"), or b) with which the City will collaborate but will be financed by others ("Approved Courses").
2. **Responsibilities of Parties.**
 - a. For all four Courses and Projects, the City shall be responsible for:
 - i. Discussing and confirming with City officials, departments, agencies and affiliated agencies the City Projects proposed for the PALS programs Courses and collaborating with the Center during this process.
 - ii. Developing a list of accepted Projects and collaborating with the Center to develop a Final Scope of Work for each Course and Project.
 - iii. Identifying which Courses on the list will be Supported or Approved.
 - iv. Identifying a PALS liaison who will serve as the central point of contact, or assign other points of contact, for every Project and Course.
 - v. Providing technical assistance and relevant information in support of the Courses and Projects, including but not limited to existing data and previously prepared reports, findings, architectural plans and maps, stakeholder or public engagement activity summaries, and other information necessary to establish context for each Course and Project.
 - vi. Participating in mid-course reviews of student progress and end-of-semester Project presentations..
 - vii. Collaborating in Center efforts to develop and distribute material that describes the Program to broader audiences.
 - viii. Participating in a Program evaluation effort led by the Center upon Program completion.

- b. For all four Courses and Projects, UMD shall be responsible for:
 - i. Reviewing the City's proposed Projects and collaborating with the City to develop a Final Scope of Work for each Project and Course.
 - ii. Identifying a PALS Liaison who will serve as the central point of contact, or will assign other points of contact, for every Project and Course.
 - iii. Collaborating with the City in identifying which Courses will be Supported or Approved.
 - iv. Incorporating each mutually agreed-upon Project into an existing or new Course and assigning a faculty member to oversee the Project and Course.
 - v. Providing and supervising students to work on the Projects using City-provided and student-generated information and to prepare analyses, recommendations or reports that respond to the Scopes of Work.
 - vi. Preparing and providing the City with final reports and relevant student-generated materials in electronic format (or one copy in paper format, at the City's request). The final reports will present a summary of coursework, key findings, examples of student work, and recommendations for each Project.
 - vii. Collaborating with the City in Center efforts to develop and distribute material that describes the Program to broader audiences.
 - viii. Coordinating the mid-course reviews and end-of-semester Project presentations.

3. **Scope of Work.** The Scope of Work for each of the four Courses and Projects is attached hereto and incorporated herein by reference as Exhibit 1. Each Scope of Work shall be managed by the Center and the City and shall:

- a. Reference this MOU specifically as the "City MOU" and include the program's course number that will reference the Project;
- b. Be signed by an authorized official of each Party. The authorized official for UMD is any Director, Assistant Director, or Contract Manager in the Office of Research Administration, ("ORA"). The authorized official for the City is the City Manager.

4. **Compensation.** For each Supported Project or Course, the City will pay a fixed-price of \$5,000 to UMD. This MOU incorporates a total of 3 Supported Courses amounting to a cost of \$15,000. Any costs above \$5,000 (e.g. for design and printing of multiple copies) will be negotiated between the City and UMD on a case-by-case basis. All payments will refer to the PALS MOU and UMD invoice number, be made payable to the University of Maryland, and sent to the following address:

University of Maryland
 Office of Contract & Grant Accounting
 4101 Chesapeake Building
 College Park, MD 20742-3141

The schedule for payments shall be as defined below:

Amount	Activity	Date
\$5,000.00	Signing of the MOU	February, 2015
\$10,000.00	Completion and delivery of Spring Courses and	June, 2015

	Deliverables	
--	--------------	--

It is understood that the number of Supported Courses may change over the course of the partnership and that the MOU may be amended accordingly. Amendments are to be in writing and agreed to by both parties.

It is also understood that there will be one Approved course offered to be funded by the Center.

5. Term and Termination.

- a. This MOU shall remain in force for a period of fifteen (15) months after the Effective Date and may be renewed or extended by mutual written consent of the Parties.
- b. Either Party may terminate this MOU at any time provided that the terminating Party provides thirty (30) days written notice prior to termination.
- c. Within sixty (60) days following the expiration or earlier termination of this MOU, each Party shall return to the other Party any information or materials it received from the other Party and is not entitled to retain under this MOU. UMD will submit a final report to the City of all funds received and expended for the Courses and will refund any unused and uncommitted funding, but will be entitled to retain funds to cover financial commitments that cannot be canceled without liability to UMD.
- d. The termination or expiration of this MOU shall not affect either Party's rights or obligations that accrued prior to the effective date of termination.

6. Contacts and Notices. Any notice required to be given under this MOU shall be given in writing and delivered (1) in person with documentation of receipt; (2) by facsimile or via email of scanned document (a PDF is sufficient) with documentation of delivery; or (3) by first class mail, postage prepaid and addressed to each party's designated contact, identified below, or such other person a party may subsequently designate in writing. A notice shall be deemed effective when received. Notices shall be delivered to:

For UMD: Ms. Evan Crierie
Assistant Director
Office of Research Administration
3112 Lee Building
College Park, MD 20742
oraa@umd.edu
Phone: 301-405-6269

Copy to Center: Dr. Gerrit Knaap
Director, NCSG
1112 Preinkert Field House
College park, MD 20742
gknaap@umd.edu
Phone: 301-405-6083

For City: Joseph L. Nagro
City Manager
4500 Knox Road

7. General Terms and Conditions.

- a. Modifications. Any modification of this MOU shall be effective only upon the mutual written agreement of authorized representatives of both Parties.
- b. Ownership of Work Product. For Supported Courses and Projects, each Party shall retain ownership of its own work product. Each Party hereby grants to the other Party a non-exclusive, royalty-free, worldwide, perpetual license to use, copy, and distribute any work product and other information provided under this MOU for non-commercial, internal educational and research purposes only. For Approved Courses and Projects, (not financially supported by the City) UMD shall retain ownership of its own work product which it may share with the City at the discretion of PALS in consultation with course faculty. Use of this work product by the City shall only be as agreed to by PALS and course faculty and students, as appropriate, in writing.
- c. No Third Party Beneficiaries. This MOU is for the benefit of the Parties; there are no third party beneficiaries.
- d. Relationship. Nothing in this MOU shall be construed to create a partnership, agency, or joint venture between or among the Parties. Neither Party has authority to make any statements, representations or commitments of any kind on behalf of the other Party except as the Parties may agree in writing.
- e. Assignment. This MOU and any rights and obligations hereunder shall not be assigned without the prior written consent of the non-assigning Party.
- f. Liability. Subject to and without waiving common law and other governmental immunities and the provisions §5-301 et seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland, each Party assumes full responsibility for the acts or omissions of its respective employees, agents, and representatives. ~~IN NO EVENT WILL EITHER PARTY OR THEIR OFFICERS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUSINESS EXPENSE, LOSS OF PROFITS, DAMAGE OR INJURY TO PROPERTY, FOR ANY CLAIMS, DEMANDS OR DAMAGES ARISING OUT OF the performance of or failure to perform any of the obligations under the terms OF THIS MOU EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.~~
- g. Governing Law. This MOU shall be governed by the laws of the State of Maryland without regard to its conflict of laws principles.
- h. Entire Agreement. This MOU constitutes the entire agreement and understanding by and among the Parties on the subject matter presented herein and supersedes any and all prior agreements, understandings, or commitments, written or oral, between the Parties. There are no representations, warranties, agreements or understandings, express or implied, written or oral between the Parties relating to this subject matter that are not fully expressed herein. This MOU may be

Deleted: and will hold the other Party harmless

Formatted: Font: Trebuchet MS

executed in duplicate and each original shall be equally effective. The Parties accept electronic delivery of the executed MOU.

AGREED TO:

CITY OF COLLEGE PARK

**UNIVERSITY OF MARYLAND COLLEGE
PARK**

Joseph L. Nagro
City Manager

Date

Date

ATTEST:

Janeen S. Miller, CMC, City Clerk

Approved as to form and legal sufficiency:

Suellen M. Ferguson, City Attorney

UNDERSTOOD AND AGREED TO BY UMD NATIONAL CENTER FOR SMART GROWTH

Signature

Printed Name

Date

15-G-19

MOTION:

I move that a change order to the existing Consultant Agreement with Charles P. Johnson & Associates (CPJ) dated May 27, 2014 for the Duvall Field project be approved in the total amount of \$80,524.

DISCUSSION:

In May of 2014, CPJ & Romtec were awarded contracts for the replacement of the concessions/restroom building at Duvall Field. Subsequently, a developer contribution was received that provides matching funds for the use of previously encumbered Program Open Space funding. The additional funding will allow the original scope of work to be expanded to include improvements to the plaza area and walkways surrounding the building, including landscaping, lighting and other site amenities. \$44,918 will be used for the preparation of additional design plans and permits, and \$35,606 is allocated for construction management services.

15-G-20

MOTION:

I move to approve a letter of support for HB 584, *Ethics Law - Financial Disclosure Statement by Elected Local Officials of a Municipal Corporation – Confidential Information.*

DISCUSSION:

Legislation enacted by the Maryland General Assembly in 2010 requires local ethics ordinances to be at least as stringent as state law. This includes a requirement for the submission of detailed financial disclosure forms which sometimes deter new candidates from seeking local office and influence current elected officials to decline to seek reelection.

HB 584 would alter certain financial disclosure provisions for elected municipal officials. It would prohibit the disclosure of specified information concerning relatives; interests in specified real property or business entities, or information concerning specified employment or indebtedness. This information is included in the financial disclosure statement filed by an elected local official of a municipal corporation.

This issue is a priority for the Maryland Municipal League, and the First Reading of the bill will be on March 3, 2015 in the Environment and Transportation Committee.



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Mayor

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7400 Dartmouth Avenue
301-742-4442

District 4

Alan Y. Hew
9118 Autoville Drive
240-391-8678

Louise C. Mitchell
3501 Marlborough Way
240-475-7196

February 25, 2015

Delegate Kumar P. Barve, Chair
Environment and Transportation Committee
House Office Building, Room 251
6 Bladen Street
Annapolis, MD 21401

Re: HB 584 Ethics Law - Financial Disclosure Statement by Elected Local Officials

Dear Chair Barve:

The College Park City Council voted on February 24, 2015 to support HB 584, legislation that would prohibit the disclosure of specific financial information not germane to holding a local office. The disclosure requirements for municipal officials under current law may deter candidates from seeking local office, while not creating a public benefit or protection. HB 584 would correct this problem.

On behalf of the City of College Park, I respectfully request your favorable consideration of this legislation.

Sincerely,

Andrew M. Fellows
Mayor

cc: House Environment and Transportation Committee
21st District Delegation

15-G-21

MOTION:

I move to approve a letter of support for HB 682, *Municipalities - Charter Amendments - Referendum and Signatures Required for Petitions.*

DISCUSSION:

HB 682 would allow the City Council to submit to the voters a proposed charter amendment for a binding vote; and would allow the Council to lower from 20% to no lower than 5% the required percentage of qualified voters necessary to petition a proposed charter amendment to a referendum or to initiate a proposed charter amendment.

The State Constitution sets the minimum threshold for citizen petitions at five percent. In 1955 a statute increased the percentage to 20 percent, which is current law. In College Park, the voter rolls include many people (particularly former students) who have moved away from the City but have not changed their voter registration. Therefore, the 20 percent requirement becomes a much higher actual percentage of voters who currently live in the City and are available to sign a petition. HB 682 would allow municipalities to lower the required percentage. It would also allow municipalities to send charter amendments to the voters for a binding referendum.

The bill sponsors include Delegates Peña-Melnyk, Barnes, and Frush. The Maryland Municipal League Legislative Committee has taken a position opposing the bill.

The First Reading of the bill will be on March 3, 2015 in the Environment and Transportation Committee.



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---●---

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9118 Autoville Drive
240-391-8678

Denise C. Mitchell
3501 Marlborough Way
240-475-7196

February 25, 2015

Delegate Kumar P. Barve, Chair
Environment and Transportation Committee
House Office Building, Room 251
6 Bladen Street
Annapolis, MD 21401

Re: HB 682 Municipalities - Charter Amendments - Referendum and Signatures
Required for Petitions

Dear Chair Barve:

The College Park City Council voted on February 24, 2015 to support HB 682, legislation that would allow municipalities to adopt a charter amendment that would lower the required percentage of voters on a petition from the current 20 percent requirement to no lower than five percent. Additionally, it would allow municipalities to have binding referendums on charter amendments.

This legislation was brought to Council's attention by local residents. As you may know, the College Park voter rolls include many people who have moved away from College Park but have not changed their voter registration. This creates a higher bar for residents to successfully petition the government.

On behalf of the City of College Park, I respectfully request your favorable consideration of this legislation.

Sincerely,

Andrew M. Fellows
Mayor

cc: House Environment and Transportation Committee
21st District Delegation

HOUSE BILL 682

L3

5lr0728

By: **Delegates Pena-Melnyk, B. Barnes, Carr, Frush, Gaines, Tarlau, and
A. Washington**

Introduced and read first time: February 12, 2015

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Municipalities – Charter Amendments – Referendum and Signatures Required**
3 **for Petitions**

4 FOR the purpose of authorizing the legislative body of a municipality to adopt a charter
5 amendment that authorizes the legislative body of the municipality to submit a
6 proposed charter amendment to a certain referendum on or after the percentage of
7 signatures of registered voters in a municipality necessary to petition a proposed
8 charter amendment to a referendum or to initiate a proposed charter amendment;
9 and generally relating to municipal charter amendments.

10 BY repealing and reenacting, with amendments,
11 Article – Local Government
12 Section 4–304 and 4–305
13 Annotated Code of Maryland
14 (2013 Volume and 2014 Supplement)

15 BY adding to
16 Article – Local Government
17 Section 4–306.1
18 Annotated Code of Maryland
19 (2013 Volume and 2014 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Local Government**

23 4–304.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) The legislative body of a municipality may initiate a proposed amendment to
2 the municipal charter by a resolution that, except as otherwise provided in this subtitle, is
3 adopted in the same manner as other resolutions in the municipality by a majority of all
4 the individuals elected to the legislative body.

5 (b) The chief executive officer of the municipality shall give notice of the
6 resolution that proposes an amendment to the municipal charter by:

7 (1) posting an exact copy of the resolution at the main municipal building
8 or other public place for the 40 days after the resolution is adopted; and

9 (2) publishing a fair summary of the proposed amendment in a newspaper
10 of general circulation in the municipality:

11 (i) at least four times;

12 (ii) at weekly intervals; and

13 (iii) within the 40 days after the resolution is adopted.

14 (c) **[Unless] EXCEPT AS PROVIDED IN § 4-306.1 OF THIS SUBTITLE, UNLESS**
15 a petition meeting the requirements of subsection (d) of this section is presented to the
16 legislative body of a municipality on or before the 40th day after the legislative body adopts
17 a charter amendment resolution, the amendment shall take effect as a part of the municipal
18 charter on the 50th day after the resolution is adopted.

19 (d) (1) **[A] EXCEPT AS PROVIDED IN § 4-306.1 OF THIS SUBTITLE, A**
20 petition for a referendum on a proposed charter amendment shall:

21 (i) be signed by at least 20% of the qualified voters for the municipal
22 general election; and

23 (ii) request that the proposed amendment be submitted to
24 referendum of the qualified voters of the municipality.

25 (2) Each individual signing the petition shall indicate on the petition the
26 individual's name and residence address.

27 (3) The petition shall be delivered to the legislative body of the
28 municipality by:

29 (i) presentment; or

30 (ii) certified mail, return receipt requested.

1 (4) (i) On receiving the petition, the legislative body shall verify that
2 each individual who signed the petition is a qualified voter for the municipal general
3 election.

4 (ii) **[The] EXCEPT AS PROVIDED IN § 4-306.1 OF THIS SUBTITLE,**
5 **THE** petition has no effect if it is signed by less than 20% of the qualified voters for the
6 municipal general election.

7 (5) If the petition complies with this section, the legislative body shall
8 specify by resolution adopted in accordance with its normal legislative procedure:

9 (i) the day and hours for the referendum; and

10 (ii) the exact text that is to be placed on the ballot.

11 (6) (i) The legislative body may schedule the referendum for the next
12 regular municipal general election or at a special election.

13 (ii) If the legislative body schedules a special election, it shall be held
14 not less than 40 days or more than 60 days after the resolution scheduling the referendum
15 is adopted.

6 4-305.

17 (a) (1) **[By] EXCEPT AS PROVIDED IN § 4-306.1 OF THIS SUBTITLE, BY** a
18 petition presented to the legislative body of a municipality, at least 20% of the qualified
19 voters for the municipal general election may initiate a proposed amendment to the
20 municipal charter.

21 (2) Each individual signing the petition shall indicate on the petition the
22 individual's name and residence address.

23 (b) (1) On receiving the petition, the legislative body shall verify that each
24 individual who signed the petition is a qualified voter for the municipal general election.

25 (2) The petition has no effect if it is signed by less than 20% of the qualified
26 voters for the municipal general election.

27 (c) If the legislative body approves of the amendment in the petition presented
28 under subsection (a) of this section, the legislative body may adopt the proposed
29 amendment by resolution and proceed in the same manner as if the amendment had been
30 initiated by the legislative body and in compliance with §§ 4-303(a) and 4-304 of this
31 subtitle.

 (d) Except as provided in subsection (c) of this section, if the petition complies
with this section, the legislative body, no later than 60 days after the petition is presented

1 to the legislative body, shall specify by resolution adopted in accordance with its normal
2 legislative procedure:

3 (1) the day and hours for the referendum; and

4 (2) the exact text that is to be placed on the ballot.

5 (e) (1) The legislative body may schedule the referendum for the next regular
6 municipal general election or at a special election.

7 (2) If the legislative body schedules a special election, it shall be held not
8 less than 40 days or more than 60 days after the resolution scheduling the referendum is
9 adopted.

10 (f) The chief executive officer of the municipality shall give notice of a submission
11 of a proposed charter amendment by:

12 (1) (i) posting an exact copy of the proposed amendment at the main
13 municipal building or other public place for at least 4 weeks immediately preceding the
14 referendum at which the question is to be submitted; and

15 (ii) on the day of the referendum, posting a similar copy at the place
16 for voting; and

17 (2) publishing notice of the referendum and a fair summary of the proposed
18 amendment in a newspaper of general circulation in the municipality at least once in each
19 of the 4 weeks immediately preceding the referendum.

20 **4-306.1.**

21 **THE LEGISLATIVE BODY OF A MUNICIPALITY MAY ADOPT A CHARTER**
22 **AMENDMENT THAT DOES ANY OR ALL OF THE FOLLOWING:**

23 **(1) AUTHORIZES THE LEGISLATIVE BODY OF THE MUNICIPALITY TO**
24 **SUBMIT TO THE QUALIFIED VOTERS OF THE MUNICIPALITY AT A REGULAR OR**
25 **SPECIAL MUNICIPAL ELECTION A PROPOSED CHARTER AMENDMENT; AND**

26 **(2) LOWERS FROM 20% TO A PERCENTAGE NO LOWER THAN 5% THE**
27 **REQUIRED PERCENTAGE OF QUALIFIED VOTERS OF THE MUNICIPALITY NECESSARY**
28 **TO:**

29 **(I) PETITION A CHARTER AMENDMENT TO REFERENDUM IN**
30 **ACCORDANCE WITH § 4-304 OF THIS SUBTITLE; OR**

1 (II) INITIATE A PROPOSED CHARTER AMENDMENT IN
2 ACCORDANCE WITH § 4-305 OF THIS SUBTITLE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2015.

15-G-22

MOTION:

I move to approve a letter of support for SB 604, *Human Relations – Employment Discrimination – Protection for Interns.*

DISCUSSION:

SB 604 (cross-filed with HB 229) would establish specific protections for interns and applicants for internships from discriminatory acts and provide that an intern has access to a complaint resolution procedure or, under specified circumstances, may file a complaint with the Maryland Commission on Civil Rights. The Act does not create an employment relationship between an employer and an intern for the purposes of remedies or provisions of law.

It is important for students to have internship opportunities that compliment their education in a real world environment and provide valuable job experience. However, under current law unpaid interns may be discriminated against during hiring or in the course of their internship. Additionally, unpaid interns are not currently protected against workplace harassment nor have standing to resolve concerns.

SB604 will provide unpaid interns these protections. This is important to ensure that College Park and the State of Maryland provide safe places to work for everyone, and that all College Park residents are protected if they seek internships to further their educational and career goals.

The bill sponsors include Senator Rosapepe.

The First Reading of the bill will be on March 3, 2015 in the Judicial Proceedings Committee.



City of College Park
240-487-3501
www.collegeparkmd.gov

---●---
Office of the Mayor
and City Council
4500 Knox Road
College Park, MD 20740

---●---
Mayor

Andrew M. Fellows
5807 Bryn Mawr Road
301-441-8141

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City Council

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Fazlul Kabir
9817 53rd Avenue
301-659-6295

Patrick L. Wojahn
5015 Lackawanna Street
240-988-7763

District 2
P. J. Brennan
4500 Knox Road
301-220-1640

Monroe S. Dennis
8117 51st Avenue
301-474-6270

District 3
Robert W. Day
7410 Baylor Avenue
301-741-1962

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District 4
Alan Y. Hew
9118 Autoville Drive
240-391-8678

Denise C. Mitchell
3501 Marlborough Way
240-475-7196

February 25, 2015

Senator Bobby A. Zirkin, Chair
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

Re: Support for SB 604, Human Relations – Employment Discrimination –
Protection for Interns

Dear Chair Zirkin:

The College Park City Council voted unanimously on February 24, 2015 to support SB 604, legislation that would establish specific protections for interns and applicants for internships from discriminatory acts and provide interns access to complaint resolution procedures.

This legislation is necessary to ensure that interns in College Park and throughout the State of Maryland have safe places to work, and that all residents are protected if they seek internships to further their educational and career goals.

On behalf of the City of College Park, I respectfully request your favorable consideration of this legislation.

Sincerely,

Andrew M. Fellows
Mayor

cc: Senate Judicial Proceedings Committee
Senator Jim Rosapepe, 21st District Delegation
Patrick Ronk, President Student Government Association, University of
Maryland College Park

15-G-23

MOTION:

I move to approve a letter of support for HB 376, *Electric Companies – Vegetation Management – Local Law, Rule or Regulation*.

DISCUSSION:

HB 376 would repeal a prohibition against a county or municipal corporation taking specified actions that interfere with or increase the costs of an electric company's work toward compliance with specified vegetation management standards.

The bill sponsors include Delegates Peña-Melnyk and Frush. The Maryland Municipal League Legislative Committee has taken a position supporting the bill.

The First Reading of the bill was scheduled for February 19, 2015 in the Economic Matters Committee, but the bill was held. A new hearing date has not been scheduled.



February 25, 2015

City of College Park
240-487-3501
www.collegeparkmd.gov

The Honorable Dereck E. Davis, Chair
House Economic Matters Committee
Room 231, House Office Building
Annapolis, MD 21401

RE: HB 376, Electric Companies – Vegetation Management – Local
Law, Rule or Regulation

Dear Chairman Davis:

The College Park City Council voted on February 24, 2015 to support HB 376, legislation that would repeal a current prohibition against a county or municipal corporation from taking actions that increase the costs of an electric company's compliance with vegetation management standards.

Although the City has no plans to develop new regulations and generally has a good relationship with Pepco, the City's tree canopy is an important resource. Much of the tree canopy is in the City's public rights-of-way, and the City should be able to craft regulations to protect it.

On behalf of the City of College Park, I respectfully request your favorable consideration of this legislation.

Sincerely,

Andrew M. Fellows
Mayor

cc: Members of the House Economic Matters Committee
Members of the 21st District

Office of the Mayor
and City Council
4500 Knox Road
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Mayor

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15-G-24

MOTION:

I move to authorize City Council support for an *amicus* brief concerning the freedom to marry to be filed with the U.S. Supreme Court that explains to the Court the harm to families and communities resulting from marriage discrimination.

DISCUSSION:

The U.S. Supreme Court has agreed to consider the freedom to marry in their current term. A friend-of-the-court brief is being drafted by the Los Angeles City Attorney's Office that will focus on the harm done to families and communities as a result of marriage discrimination. Joining the brief will be "Mayors for the Freedom to Marry", the "U.S. Conference of Mayors", and individual Mayors and cities nationwide. The City's support will be subject to the City Attorney's review of the brief, which has not yet been received. The deadline for signing-on to the *amicus* brief is Monday, March 2, so Council needs to act on this tonight.

WORKSESSION DISCUSSION:

1. Draft Strategic Plan

Information Report:

1.

Legislative Report

O'MALLEY, MILES, NYLEN & GILMORE, P.A.

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Peter F. O'Malley
(1939-2011)

Edward W. Nysten
(1922-2010)

John D. Gilmore, Jr.
(1921-1999)

February 20, 2015

MEMORANDUM

TO: Bill Gardiner
Assistant City Manager

FROM: Len Lucchi
City Lobbyist

RE: Weekly Report #5

1. **HB229/SB604 – Human Relations – Employment Discrimination – Protection for Interns** – This bill would apply employment discrimination standards to unpaid interns. The House Bill has already had a hearing and the Senate hearing is scheduled for March 3rd. The bill is part of the joint leadership package so it has a good chance of passage.
2. **HB376 – Electric Companies – Vegetation Management – Local Law, Rule, or Regulation** – This bill removes the preemption that prohibits localities from enacting laws regarding vegetation management by utility companies. It had a hearing today. It is not given much of a chance as concerns were voiced about laws that might conflict with Public Service Commission regulations.
3. **HB 584/SB283 – Ethics Law – Financial Disclosure Statement by Elected Local Official of a Municipal Corporation** – This bill is a priority of the Maryland Municipal League. It would shield certain information contained in financial disclosure statements. The hearings have not yet been held so it is unknown whether the counties will want to be included in the bill. The State Ethics Commission, while not taking a position on the bill, has expressed some concerns about its provisions.
4. **HB682 – Municipalities – Charter Amendments – Referendum and Signatures Required for Petitions** – This bill would authorize a municipality to set a lower threshold of signatures to petition a municipal charter amendment to referendum. It is opposed by the Maryland Municipal League Legislative Committee, thereby decreasing its chances of passage.

5. **HB932/SB564 – Prince George’s County – City of College Park – Class D Beer and Wine License PG 317-15** – This bill would allow for the transfer of a license so that a wine bar can be established at the corner of Route One and Guilford Avenue. It has been accepted as a late-filed bill by the Prince George’s County House Delegation and has not yet been considered by the Senate Delegation.