

A SUMMARY REPORT RE. THE "HISTORIC" HAVERSTICK LAND USE CASE

This land use case, at its simplest is confusing. Unfortunately, it has been made unnecessarily even more complex by an onslaught of erroneous claims, misunderstandings, and misrepresentations. Your NCC Board hopes this necessarily brief outline will help NCC members better understand the reasons for our actions in this case. (NCC is an umbrella organization covering some twelve square miles which include over sixty local neighborhoods. The Haverstick parcel lies within NCC boundaries.)

Why were we so involved? Answer: "Have you ever made a mistake and then realized you needed to find a way to, at least partially, rectify it? Here's the backstory:

In 2005, Developer Paul Kite received, over strong community protest, a rezoning of 13.37 acres on the NE corner of Haverstick and 86th to build a 686K sq. ft. big box grocery store with 31 large condos. Land development for the buildings and expansive parking lot would require near-clear cutting of the woods, leaving only 27 trees remaining. Kite did not develop the plan, however, that zoning (herein referred to as the "Kite" project) would remain in place until built or some other rezoning was approved.

Keystone Construction Co. purchased the land in 2011. Their proposed development (herein referred to as the "Alexander") was presented to the community in 2016. Rezone plans called for a 60K sq. ft. two story mixed use (retail/office) building fronting 86th St. with 360 parking spaces on 5.8 acres at the lower half of the parcel. There were no plans offered on the upper half of the 13.37 acres. The community resisted this plan (#A). Keystone then returned with a petition to rezone only the lower half (5.8 acres) with the mixed use, plan (#B). Again, the community, supported by NCC, strongly opposed the rezoning. In a very rare move, the Metropolitan Development Commission (MDC) denied the petition.

(Sidebar: Procedures for rezoning: Rezoning petitions are heard by the MDC (sometimes with a preliminary hearing by a hearing examiner who makes recommendations.) The MDC votes either to approve or denied the petition. (This is NOT the final step as claimed by some remonstrators.) All MDC decisions are automatically sent to the City County Council (CCC) for "certification". The CCC has the last word on proposed zoning ordinances. Most of the time the CCC "rubber stamps" MDC rulings; however, remonstrators can ask their District Councillor to request that CCC "call down" a case for full hearing. It is believed that, while approval or denial decisions can be called down for CCC hearing, only approval decisions have been called down in the past.

It was then that the NCC Board began to wonder if it had been a mistake to oppose "Alexander" after we heard that Keystone would move ahead and build the disastrous "Kite" plan. (Since "Alexander" was denied, the "Kite" zoning was still in place and valid.) The NCC Board asked to meet with Keystone officials where we strongly urged that the case be brought back with a less intense residential use for the 60K sq. ft. building earlier proposed. The meeting was unsuccessful. It was devastating to think the "Kite" plan would be developed. City Administrators made it clear that there would be no legal way to stop development of the Kite plan since the "replacement" Alexander project had been denied by the MDC.

In January of this year, a rare circumstance provided another opportunity to possibly rectify our mistake and avoid the "Kite" project being built at Haverstick. Due to a "clerical" error the Alexander case was to come before the Council. (Actually, it was substantially more than a "clerical" error. Project "A" was erroneously sent for certification; however, the MDC had heard and denied Project "B". (a difference of several acres). Councillor Colleen Fanning had learned that there could be a request for a call down to have a full hearing on Project "B", a legal process within Council rules and procedures. It would be unusual in that no one could remember a request for a call down on an MDC negative vote.

Councillor Fanning said she would not request the call down for hearing unless the community wanted it. To ascertain the community's position on the issue, she called a meeting of representatives from four groups who had expressed concern about the Haverstick proposal: NCC, Nora Alliance (NA), Driftwood Hills Neighborhood Association (DHNA) and Indiana Forest alliance (IFA). A professional zoning specialist outlined the two options available: Seek a call down and try to overturn the MDC's denial of the Alexander or let the Council rubberstamp the MDC denial. In the latter case, the Kite zoning would still be valid on the land and subject to development. After much discussion, representatives agreed (two of whom with some reservation) to ask Councillor Fanning to request that the Council call down the Alexander case. Shortly thereafter, DHNA and IFA representatives changed positions and said they would oppose the effort. NCC and NA continued to support the need for a call down.

Subsequently, NCC, NA leadership, two "volunteer" DHNA resident spokespersons (not appointed by either the then DNHA president nor through a community meeting), and the then DHNA president met at least twice. The purpose was to talk about issues to be requested in settlement negotiations should the call down be successful. The DHNA spokespersons

continued to state strong opposition to the call-down, which, of course, was their right. (In one meeting they said they cared only about traffic and safety, that they didn't care about trees.)

One of the chief complaints of the DHNA resident spokespersons was that there was not a hearing at the CCC meeting where the call down vote was to take place. While true that there was not a "formal" hearing, everyone at the meeting was given an opportunity to speak prior to the call down vote. After lengthy talks from the attendees, the CCC voted to call down the MDC's denial of the Alexander petition.

Council rules and procedures provide that the two opposing parties should hold pre-negotiation discussions to try to reach an agreement prior to a Council call down hearing. Several meetings took place with NCC and NA participating. Again, DHNA spokespersons have complained that they were "shut out of the negotiations". Of course they were not invited to participate. It would be irrational and irresponsible to allow those who openly and vigorously oppose the goals of a settlement. The DHNA persons clearly wanted the process to fail. It would have been unethical to spend our time, the City's time, and even the developer's time in a false and dishonest process. It should be noted, however, that the DHNA then current president and abutting neighbor was a strong advocate for DHNA's stated concerns about traffic and safety in the neighborhood. In fact the full negotiation team made that issue the number one item in settlement discussions.

After many hours of productive discussions between NCC and NA representatives and the developer, many significant changes to the Alexander plan were agreed upon, eliminating the need for a full Council hearing. Some of those changes: reducing the footprint of the mixed use building, moving said building to the west in order to save a significant tree canopy and a heavily wooded ravine from being bulldozed, reducing the parking spaces, adoption of a residential use only commitment for the north portion of the parcel (density to be within those designated in the Comprehensive Plan), donation of a fund for traffic calming devices on Haverstick and 91st St., exit driveway designed to prohibit right turns of commercial traffic north into the DHN neighborhoods, signalized crosswalk at Haverstick/86th St., highly defined tree preservation/mitigation plan, and others. The developer agreed to work with the City on improving the signalization of Haverstick/86th intersection and the entire Keystone/86th interchange. It is believed that, while not a complete fix, improved signalization would certainly help alleviate to some degree existing congestion.

The CCC voted to accept these changes and to renew the Alexander zoning.

Unfortunately, DHNA and IFA have filed a lawsuit against the Council claiming that the call down was not legal. Were they to be successful, the Alexander project would die and the Kite plan zoning would be valid. Again, the City administration has been clear that there is no legal way to stop the development of the Kite project should the Alexander be dead. The plaintiffs have asked for a change of venue which will cost the taxpayers a great deal of money.

Stay tuned.

Ruth R. Hayes, NCC President
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