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Testimony of Stuart Barr, Lerch Early & Brewer, Chtd. on behalf of The Lansdale Family, owners of property located at 500 Olney Sandy Spring Road (MD Route 108)

In Opposition to Zoning Text Amendment 09-01, Sandy Spring/Ashton Rural Village Overlay Zone – Prohibited Uses

April 21, 2009 Montgomery County Council Public Hearing

Good evening members of the Council. I am Stuart Barr with Lerch, Early & Brewer. I am honored to be here today representing the Lansdale Family and their property at 500 Olney Sandy Spring Road (MD Route 108) in Sandy Spring. The Lansdale property is zoned C-2 (General Commercial) and is located within the Sandy Spring/Ashton Rural Village Overlay Zone. The Lansdale family opposes this Zoning Text Amendment since it directly affects their property, its potential available uses, and its corresponding value.

The Lansdale Family has lived in Montgomery County and owned this and other property in Sandy Spring for almost 100 years. In the 1990s, prior to the adoption of the 1998 Sandy Spring/Ashton Master Plan, the Lansdale Family worked extensively and cooperatively with the planning staff, Planning Board, and County Council on the master plan recommendations for the Lansdale properties. The property that is the focus today was previously zoned industrial (I-1) and was rezoned to C-2 as part of the comprehensive Sectional Map Amendment following the adoption of the Master Plan in 1998. Shortly thereafter, the Council adopted the overlay zone in the same comprehensive fashion. The property is located between the Sandy Spring and Ashton village centers. For the past 10-15 years, the Lansdale Family has relied on the uses which are allowed in the C-2 zone and not prohibited by the overlay zone to determine the family's potential use of the property.

As everyone is aware, Siena Development Corporation has proposed a self-storage facility use on the Lansdale property, and a preliminary plan of subdivision was approved by the Planning Board earlier this year. Currently, self-storage is permitted by right in the C-2 zone and not prohibited by the overlay zone. This ZTA proposes to eliminate self-storage as a permitted use. While the ZTA applies to the entire overlay zone and addresses multiple uses, it directly targets the Lansdale property and is clearly a piecemeal attempt to stop the proposed self-storage facility project.

This Zoning Text Amendment should not be considered a referendum on the proposed use for the Lansdale property. The question is not whether a proposed self-storage facility use on the Lansdale property is a good idea or not. The question is whether this type of Zoning Text Amendment is a good idea or not. This type of Zoning Text Amendment is a poorly crafted bill for a variety of reasons.

The list of prohibited uses does not make sense. What is wrong with a car wash in the overlay zone? Or a dry cleaner? Or a furniture store? Or a self-storage facility, if it is creatively and appropriately designed? The list is arbitrary.

The proposed ZTA interferes with the existing regulatory process. The proposed use on the Lansdale property still must undergo site plan review, which has demanding standards. Site plan review will address concerns about compatibility, scale, and design. We ask the Council to deny the ZTA and let the site plan review process go forward.

This is not good planning. The overlay zone is a byproduct and integral part of the master plan process. An amendment to the overlay zone also should be a product of a comprehensive master plan review process. The trend in the County does not favor the piecemeal Zoning Text Amendment approach as a way of conducting planning. When there has been a choice recently between planning by ZTA and planning by *bona fide* amendments to the master plan, master plans get amended.

This is not good for business. Adoption of this type of ZTA sends the message that when a project is controversial, the land use table becomes debatable and discretionary. Zoning law must have some reliability. Applicants and property owners rely on the use table to tell them how property can and cannot be used before undertaking the expensive and arduous entitlement process. This type of ZTA further erodes any level of confidence applicants have in a fair process.

In order of preference, we ask the Council to:

1. Reject the ZTA entirely as piecemeal legislation that would be more appropriate in the context of an amendment to the Master Plan, involving a comprehensive master plan process, or perhaps as part of the comprehensive Zoning Ordinance rewrite.
2. Adopt the ZTA but only with the addition of noxious uses, such as adult entertainment and pawn shops, and without the addition of self-storage use since the ZTA improperly targets a pending project.
3. Adopt the ZTA, as amended above, but with a more appropriate and realistic grandfathering provision. Grandfather projects either at submission or approval of a preliminary plan of subdivision, if subdivision is required, or at submission of a use and occupancy permit application if subdivision is not required.

Thank you very much for your consideration.