

**THE BETHESDA CENTRAL BUSINESS DISTRICT (CBD)
&
THE TOWN OF CHEVY CHASE:
AN HISTORICAL SKETCH
by
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INTRODUCTION

In the 1970’s the Town of Chevy Chase confronted the challenge of reining in potentially explosive growth in the Bethesda Central Business District (CBD) that threatened to fundamentally transform our residential neighborhood and its environs.

The citizens of our Town joined together, and with the leadership of the Town Council and in alliance with other civic organizations, effectively addressed that challenge. We created stable and effective boundaries and buffers around the Bethesda CBD, reduced its zoning envelope by 80 percent, and assured that large office buildings would not overwhelm the character of our community.

This is a brief sketch of how we did it.¹

¹ During this period I was an active participant in these events, and so can recount many of them from personal experience. I joined the Town Zoning Committee in 1971, and became its chair in 1972; was elected to the Town Council in 1973 and became its chair in 1974; and was a founding member and chair

THE CHALLENGE OF THE BETHESDA CBD TO THE TOWN

In the early 1970s the Bethesda Central Business District was zoned to permit 63 million square feet of development. How much development is that?

To give you some idea, the Pentagon (the headquarters of the U. S. Department of Defense), which is the largest office building in the world by floor area and employs about 32,000 people, has 6.5 million square feet of floor area. So the Bethesda CBD was zoned to permit the equivalent of 10 Pentagons.²

Or if you prefer a more comparable form of development, think of the office complex of Rosslyn, in Arlington, VA, which has around 10 million square feet of floor area. So the Bethesda CBD was zoned to permit about seven Rosslyns.

In other words, as a practical matter the Bethesda CBD confronted by the Town of Chevy Chase in the early 1970s was zoned in a manner to permit absolutely no check on the density of development. The legal property rights established through the County Council's zoning authority theoretically would have permitted property owners to build to densities without constraint to account for the impact on the adjacent residential neighborhoods.

How could such a thing happen in a county that likes to pride itself on sound planning and land use policies? The answer is that it happened through political trickery.

“County Above Party (CAP)” and the Diggs Council

In 1962 leaders of the business and development interests in Montgomery County – big property owners, merchants, real estate developers, builders, financiers, zoning lawyers, etc. – formed a slate of candidates for the County Council which they called “County Above Party (CAP).” They put out a sample ballot in the closing days of the election that urged county voters to “rise above partisanship and politics” and vote for people who would be fiscally prudent and put the county's well-being above narrow special interests.

In fact, the presumably “non-partisan” slate they endorsed were all strong pro-development candidates. The entire pro-development slate was elected, and the newly formed County Council, under the leadership of Kathryn E. Diggs (the “Diggs Council”),

of the Bethesda Coalition of civic organizations, formed to address common issues with the Bethesda Central Business District (CBD). In 1978 I was elected to the first of two terms on Montgomery County Council, and served as Council president, and president of the Metropolitan Washington Council of Governments.

² Of course, the Pentagon facility, with only five stories above ground (and two below ground), sprawls over some 280 acres, whereas the Bethesda CBD has just 400 acres. So in order to pack all that office space into the Bethesda CBD, you would have to essentially build another 9 Pentagons on top of the existing one. At seven stories per Pentagon (five stories above ground, two below ground), that would be about 68 stories, or a massive building reaching some 700 feet high.

began to rezone land indiscriminately. The radical up-zoning in Bethesda to 63 million square feet of floor area was emblematic of what happened all over the County, and citizens of the County have been paying the price – figuratively and literally – ever since.

Town Zoning Committee

In 1972 the Town Council asked me to chair the Town Zoning Committee and to address some pending zoning cases in the Montgomery Triangle (bordering Montgomery Lane), considered to be a key buffer against the expansion of the CBD into our residential neighborhood. At that point, the Elm Street cluster that constituted the real estate division known as “Section 8” was not part of the Town, but it was nonetheless on the front line of the Town’s border.

And so the Town worked closely with energetic leaders from that neighborhood to prevent the Montgomery Triangle from developing into the kind of large office buildings which a developer had personally threatened to “march down East West Highway like a Chinese Wall!”

We were regularly told that it would be impossible to go up against the professional zoning attorneys and development interests in our quest to have the single-family dwellings in the Montgomery Triangle act as a low-density buffer between our residential neighborhood and the expanding CBD. And everyone was stunned when we won those cases.

However, the experience taught us an important lesson: we might win such scatter-shot battles, but still lose the war. We were up against massive financial interests and their armies of paid professionals. While we, as volunteer citizens (and professionals of various stripes in our own arenas), could take them on head-to-head on specific cases, there were simply too many battles for us – volunteers with day jobs and families to care for -- to fight against those professionally paid forces with any hope of success in the long run.

We needed a strategy.

FORMULATING A TOWN STRATEGY FOR THE BETHESDA CBD

The overriding lesson we took away from those early zoning battles, even though we won them, was that we needed to approach this challenge comprehensively and strategically.

To be sure, residents facing specific challenges from Bethesda development – in some instances literally on their doorstep -- would be most concerned with the immediacy of those problems, and would want to do whatever they could to prevent them or mitigate them. But we learned from experiences that a patchwork of isolated pockets of residents negotiating specific issues was insufficient, even when successful.

The challenge of the Bethesda CBD was massive. We were all in this together and needed to understand the entirety of the challenge we jointly confronted, and the best means of mobilizing and leveraging our collective resources and energies to be effective and successful in achieving our goals.

The first thing we needed to do was be clear on our vision for Bethesda. What did we want it to be? We focused on three elements: 1) boundaries and buffers, 2) density and height, and 3) the character and quality of development.

Boundaries and buffers

It was essential to establish clear and permanent boundaries and stabilizing buffers around the entire Central Business District in order to protect the residential neighborhoods from further commercial encroachment.

Property owners and developers in the Bethesda CBD were intent on expanding its footprint beyond the existing commercial core, and that meant incursion directly into our residential neighborhoods. I saw developer plans to extend commercial office construction several blocks into our residential neighborhoods encompassing 46th, 45th, and 44th Streets, as well as significant parts of Elm and Willow down to Leland Street. One strategy was for developers to buy houses and let them run down, so that they could point to a “change in the neighborhood” that would justify a zoning change to higher density.

We needed boundaries and buffers that were grounded in law, embedded in County policy, and physically compelling.

Working with our allies surrounding the Bethesda CBD, we sketched the perimeters of these boundaries and the options for specific tools that could be used to establish them along with the kinds of buffers appropriate to each segment of the proposed cordon. With a comprehensive cordon encircling the entire CBD, we could then envision the entirety and how the different segments related to one another, which enabled us to allocate responsibility to different civic groups and neighborhood clusters for fleshing out the specifics.

The Town of Chevy Chase naturally took principal responsibility for that portion of the CBD cordon that reached from Montgomery Lane and East West Highway in the north, to Bradley Boulevard in the south. The key elements of this segment of the cordon included Montgomery Triangle transitional single-family dwellings converted to commercial use; the B & O railway right-of-way and hiker-biker trail (which became part of the Capital Crescent Trail); Elm Street Park; Farm Women’s Market and adjacent parking lots; and St. John’s Episcopal Church and its immediate neighbors.

Density and height

Having established the clear limits of the footprint of the CBD – and effectively cordoned it off with appropriate boundaries and buffers – our second target was the density and height of development within that cordon, i.e. of the central business district properly defined. But how was the appropriate level of density to be defined?

The answer was the concept of “carrying capacity.”

Carrying capacity defined broadly means the natural, environmental and human-made capital, or infrastructure, as well as intrinsic values related to it, for any given area of land. In concept, therefore, carrying capacity referred to sustainable public systems for transportation, water and sewer, environmental quality, education, recreation, parks, green and open space, and other aspects of quality of life.

As a practical matter, we relied heavily on the most measurable indicators of carrying capacity, relating them to measurable indicators of development, such as square footage of building floor areas, number of dwelling units, traffic, employment, and students. These were the features most likely to stand up in court when our decisions were challenged by developers and landowners, as we knew they would be.

Character and quality of development

Having established the desirable confines of the CBD and limits on density and height of development that could be accommodated without overburdening the carrying capacity, we then focused on the character and quality of development. What kind of buildings, streets, sidewalks, open spaces and amenities did we actually want within the CBD?

We wanted the CBD to continue to contain businesses and clusters of activity that served the surrounding residential neighborhoods.

The Bethesda commercial district first emerged as a cross-roads cluster of small stores that served travelers and the surrounding farming community. The planned development of Chevy Chase beginning in the 1890s was consciously designed “new town” of its time, to be comprised of moderately sized single-family houses with apartment buildings and commercial establishments serving the residences to be located in nearby commercial centers such as Bethesda and Friendship Heights.

In the early 20th century, the Bethesda commercial area grew along with the residential communities it served, providing an array of neighborhood retail services such as laundries and dry cleaning, toys and sports shops, local automobile services, pet stores, groceries, etc. That residential service orientation was suddenly disrupted in the 1960s, when the Diggs Council undertook its radical up-zoning intended to shift the emphasis of businesses in Bethesda away from serving surrounding neighborhoods toward extracting as much profit as possible from the land, principally through high-rise commercial office space.

We were under no illusion that such a shift in the mix of business orientation was inevitable, and even desirable ... up to a point. What we opposed was the kind of radical shift the Diggs Council had foisted on us, in which high rise offices threatened to completely overwhelm local neighborhood services and transform Bethesda into a “downtown” with little regard for the “new town” character and feel of the residential neighborhood. That’s what drew us to this area in the first place.

In short, we wanted the CBD to be an attractive, friendly, welcoming, safe, and usable place.

In keeping with this vision, we also wanted an overall shape and contour to the physical development such that the highest and densest buildings were located in the center of the CBD, and then tapered down to a low-rise, less dense and more human scale at the perimeters where the commercial area intersected with the residential neighborhoods.

STRATEGIC TARGETS

Another key element of our strategy was to identify critical targets for our activities based on a precise understanding of how key policy decisions were made, who made them, and how we could affect them.

We quickly learned from experience how innocent we had been about how the development process worked in Montgomery County. We tended to believe the county’s “own press” about its enlightened government and a planning processes. To be sure, Montgomery County was light years ahead of many local communities in the United States in this regard. But we were naïve to believe that simply making the appropriate argument to the right “authorities” would carry the day. Certainly strong, valid, logical, and effectively argued positions were absolutely essential. But they were not enough.

The development process –land use decisions, implementation and management – is an inherently political process, in the sense that politically elected officials had the authority to pass the laws and establish the mechanisms by which decisions were made and implemented. This was a reality the development interests had long understood and acted on, as demonstrated by their clever capture of the County Council through the “County Above Party” ploy in the 1960s, and by their generous financial contributions to their chosen political candidates. Citizens unfamiliar with local politics and government, and who had never been engaged in local planning and development issues, took far longer to grasp this reality.

We identified several strategic targets, all of which important and interconnected and needed to be addressed in a carefully orchestrated manner if our strategy was to be effective in achieving our goals and vision for the Bethesda CBD.

Ongoing land use decisions

The immediate priority was to keep a close eye on the parade of policy decisions and specific land use issues that directly affected the Town, such as pending zoning cases that had a big impact on our borders.

Bethesda CBD Sector Plan

But the principal target at this point was the upcoming Bethesda CBD Sector Plan, which was the main policy instrument that would shape county land use decision-making for the next twenty years.

We began active engagement with the county planning process two years in advance of the scheduled adoption of the Bethesda CBD Sector Plan scheduled for adoption in 1976, and focused intensely on every key issue that came before the Planning Board in the formulation of that plan. We were quite aware that the legal authority for approving the Sector Plan, part of the broader Bethesda-Chevy Chase Master Plan, rested with the County Council, and we would prepare for that as well.

But we were also aware that decisions and recommendations made by the Planning Board would fundamentally shape the way the Council approached its decision-making task, and that it would be exceedingly difficult to alter the trajectory of decision-making for Bethesda once the Planning Board had completed its rendition of the Sector Plan.

County growth policy and management

We also realized that the key to long-term success was to assure that the county government had in place a sound package of land use policies and the tools and capacities to effectively implement them. The Sector Plan was a critical part of this package of laws and policies, but far from the only one.

While the master plans set the stage for development, it was just as important to assure that appropriate laws, policies and practical tools were in place to assure that effective implementation actually followed the plans that the County Council adopted.

Upcoming county elections

Perhaps the most critical long-term target for achieving and sustaining all other goals, was to assure that the County Executive and County Council supported sound land use planning for the entire county, including the Bethesda CBC. We had two aims here. The first was to plan and organize with plenty of advance time to have a significant influence on the upcoming elections for County Council and County Executives. And the second was to make it clear to the incumbent Executive and Council that we intended to play a serious role in that election.

We believed in the democratic process. And one of our advantages was that the people who lived here were also voters and could – if they made up their minds to do so – assure that the candidates elected to office had the interests of the entire community at heart.

Key county entities

In the meantime, it was essential to continually cover all of the principal county decision-making entities, including the:

- Planning Board³, especially in its formulation of the Bethesda Sector Plan, which set the stage and the agenda with its recommendations to the County Council;
- County Council, the principal county decision maker in planning and land use matters;
- County Executive, frequently underestimated for the influence he has in shaping land use decisions, despite playing second fiddle to the Council in these matters;
- State legislature, the ultimate authority in determining the basic legal and administrative structures by which the county operates to shape its own land use institutions and policies, as well as key authority in specific areas of land use policy.⁴

MOBILIZATION AND ACTION

We identified four key levels on which we needed to mobilize resources and act effectively in addressing these principal targets.

Town Council and Residents

First, and most important, we needed get our act together in our home base: the Town Council and Town residents.

The front line of resource mobilization was the citizens of the Town and the neighborhoods adjoining the Town that were also adjacent to the Bethesda CBD.

³ The Montgomery County Planning Board is comprised of the five Montgomery County members of the ten-member Maryland National Capital Park and Planning Commission, a bi-county agency with Prince George County established by state law.

⁴ Maryland is a “Dillon’s Rule” state (named after John Forrest Dillon, the 19th century Iowa Supreme Court justice who articulated it), a legal theory which holds that under the U. S. Constitution states are archly preeminent over their local governments. (*Clinton v Cedar Rapids and the Missouri River Railroad*, (24 Iowa 455; 1868) The essence of Dillon’s Rule is that states hold all the constitutional authority regarding the structure and authority of their local governments, which are merely “creatures of the states.” The constitutional logic of this position is strongly buttressed by the fact that the U.S. Constitution does not even mention local government. Maryland has chosen to use its constitutional authority with fairly generous allocations of “home rule” power to local governments. Nonetheless, it retains substantial power to influence key arenas of local decision-making, including many affecting land use.

There was virtual unanimity in the Town that we needed to forcefully address the challenge of development coming from the Bethesda CBD. Nearly every voter in the Town was a property owner, and respected property rights. The question was whether there was a fair balance in which *all* property rights, as well as the rights of people living and working in the area, were respected.

The “County Above Party” political ploy was still fresh in the minds of citizens, who understood full well that the “property rights” in Bethesda had soared to 63 million square feet solely as the result of those property owners and their allies gaining control of the County Council through political trickery and radically up-zoning their properties. If those big property owners could up-zone the CBD in that manner, why couldn’t we ordinary citizens and small property owners gain control of the County Council and correspondingly downzone that same property to a level conducive to the overall interest of the community, including our rights as property owners?

Our Town government was an invaluable instrument to be employed on behalf of the Town’s citizens in confronting this challenge. Here we had a formal legal structure that in which citizens could energetically exchange ideas about the nature of the threat facing our community, debate what should be done about them in public campaigns, and elect the leaders that seemed best suited to lead that fight.

There were also potential downsides to having a Town government.

For one thing, some citizens had a tendency to become complacent in assuming the Town Council was diligently looking out for their interests beyond the Town’s borders, in the higher levels of government. In reality, some councilmembers did and some didn’t.

Part of the problem was that the Town Council, themselves unpaid volunteers, relied on a staff of just three people, including a part-time Town manager who was also a resident of the Town. Preoccupation with “housekeeping functions,” such as waste disposal and street and tree maintenance, absorbed all of the time of the staff, and most of the attention of the councilmembers themselves.

One of my priorities when I served on the Town Council during this period was to professionalize the Town’s operations, in part by hiring a full-time professional manager and seeking permanent and suitable office space for Town administration and public meetings. The intent was both to improve the quality and efficiency of Town services and citizen engagement, and also to create a support structure the Town could use to better represent the its interest in the higher levels of government, especially with regard to critical land use issue.⁵

⁵ To this end, I chaired the Maryland Municipal League Committee on the Functions of Municipal Government which produced a report in 1974 on *The Challenge to Municipal Government*. The committee recommended that cotemporary municipal government needed to move beyond its narrow focus on “housekeeping” functions and “begin to see itself as an active coordinator of community resources to anticipate problems and meet community needs,” including representing its citizenry in higher levels of government. While serving later on the County Council, I and my council colleagues worked with the

At first our new full-time, professional Town Manager did not engage much in activities representing the Town. But by giving greater and more professional attention to the “housekeeping” functions, our beefed up professional staff did help free up and support volunteer time for representation activities. And over time, the professional Town staff was increasingly engaged in the support of representational activities as well, which improved the Town’s overall effectiveness in pressing our case with the county and state.

Civic organizations surrounding the Bethesda CBD

The second tier of mobilization included the civic organizations and resident associations in neighborhoods adjacent to the Bethesda CBD. Everyone who lived in the vicinity of the Bethesda CBD was potentially affected by the massive density of development and neighborhood encroachment that the Diggs Council up-zoning threatened. But each group was focused on its own particular concerns and segment of the CBD. Many people didn’t really know which way to turn. And all of us were citizen volunteers short on time and energy. The obvious answer was to organize. And thus we created the Bethesda Coalition comprised of civic organizations surrounding the Bethesda CBD.⁶

Greater Bethesda-Chevy Chase (BCC) Community

The third tier of mobilization was the entire greater Bethesda-Chevy Chase (BCC) community, including local governments, special taxing districts, and civic and neighborhood associations. One of the key civic organizations in this broader coalition was the Citizens Coordinating Committee on Friendship Heights, which provided the model for the Bethesda Coalition.⁷

County-wide civic and political groups

The fourth tier of mobilization included county-wide civic and political groups, such as the Allied Civic Group and the Montgomery County Civic Federation. We also created

Town Council to construct the Leland recreational complex, setting aside the space we now have for a permanent Town Hall in the Lawton Center building.

⁶ The composition and agenda of this coalition has varied over the years. The membership of the Coalition of Bethesda Communities expanded its scope to encompass a wider swath of the greater Bethesda-Chevy Chase Community, including Battery Park, Bethesda Crest, Chevy Chase Section 3, Chevy Chase West, Citizens Coordinating Committee on Friendship Heights, East Bethesda, Edgemoor, Edgevale, Edgewood Glenwood Citizens Association, Kenwood, Locust Hill, Maplewood Civic Association, Parkwood, Sacks, South Bradley Hills, Town of Chevy Chase, Town of Somerset, Village of Chevy Chase and Village of Drummond.

⁷ The Citizens Coordinating Committee on Friendship Heights, Inc., which remains to this day one of the most effective citizens organizations in the county in protecting local residential areas from overweening commercial development, includes Chevy Chase Village, Chevy Chase West, Drummond, Green Acres-Glen Cover, Kenwood (the subdivision), Kenwood House Coop, Kenwood Condominium, Kenwood Place Condo, Somerset, Sumner, Westmoreland, Westward Mews, Westwood Mews and Wood Acres.

new *ad hoc* coalitions to enlist a broad range of individuals and organizations throughout Montgomery County with shared interests in sound land use policy and management and the preservation of residential neighborhoods.

OUTCOMES AND CONSEQUENCES

The fruits of the Town's efforts during this period were manifest.

We had enormous success in shaping the Bethesda CBD Sector Plan of 1976, which largely embodied our vision of what we wanted the CBD and surrounding residential community to be.

We achieved nearly all of our goals in *establishing clear boundaries and buffers* for the Bethesda CBD. For the first time, people living in the Town and other residential areas adjacent to the CBD had a feeling of security that aggressive commercial development would not be encroaching into their neighborhoods.

The Town was successful in firmly establishing a boundary and buffer zone along its segment of the CBD cordon. It began with the Montgomery Triangle transitional single-family dwellings converted to commercial use, and the B & O railway right of way and hiker-biker trail (which became part of the Capital Crescent Trail). This connected to the new Elm Street Park, which was one of the deliberately designed new boundaries and buffers for the CBD. It extended to the Farm Women's Market and adjacent parking lots, and on to St. John's Episcopal Church and its immediate neighbors.

We achieved nearly all of our goals in *radically reducing the zoning density* of the Bethesda CBD. The 63 million square feet of zoning was cut to 12 million square feet, a hefty 80 percent reduction. As one might expect, the big property owners and developers fought *any* reduction in zoning with all the formidable resources at their disposal. They resorted to all of the conventional arguments against any loss of property value: the government has no right to take property; the taking was confiscatory; it violated county law, state law, federal and natural law; it was unconstitutional. And, of course, they sued. And they lost all the way up to the Supreme Court, which refused to hear their appeal.

So in the end, radical down-zoning we advocated was held to be legal and constitutional, just as the radical up-zoning by the Diggs Council that had given the big property owners their windfall in the first place was also legal and constitutional, even if achieved through political trickery. In both cases, zoning policy and decisions affecting property values had been determined by a democratic, legal and constitutional political processes, and that, in the United States, is how property rights are determined.⁸

⁸ Property law is a highly complex field, and the subject of strong beliefs and opinions. The key principles generally applied by U. S. courts in assessing the legality and constitutionality of down-zoning and other public policy actions that reduce property values have to do with whether the actions are based on rational, fair, impartial and legally compatible considerations and leave the property owners with some economic use of their land.

We achieved most of our goals regarding the *character of development* for the Bethesda CBD. The 1976 Sector Plan generally worked to protect key businesses, spaces, amenities, and clusters of activity that served the surrounding residential neighborhoods, and encouraged the addition of others. It established standards and mechanisms to encourage attractive buildings and public spaces and amenities, and generally good architectural design.

The new sector plan also specified the tapered, pyramid shape and contour of physical development we had sought. Thus the density was to be greatest in the center of the CBD at Wisconsin and Old Georgetown Road where the Clark Building now stands, tapering down toward the residential neighborhoods (using the new CBD 1, 2, 3 zones based on floor area ratios, or FAR's).

We were also successful in promoting *long-term improvements in County growth policy and management*, including the refinement of existing concepts, tools and metrics, and the addition of new ones. By the mid-1980s, the County was equipped with a formidable array of instruments for sound growth management.⁹

And we were also successful in electing a county executive and county council majority (yours truly included) committed to sound land use management and the preservation of residential communities.

POST-SCRIPT: WHAT COMES NEXT?

The purpose of this historical sketch is to provide background on the role of the Town of Chevy Chase in addressing the challenge of the Bethesda Central Business District in the 1970s and 1980s, but it is worth noting some of the key developments since that time.

In 1981 the Bethesda CBD Sector Plan of 1976 was amended to incorporate staging of additional development along with supporting infrastructure.

In 1994 the Bethesda CBD Sector Plan underwent a complete revision, adding significantly to the zoning envelop which now permits 27 million square feet of floor space, significantly above the 12 million square feet in the 1976 plan. As of 2015, some 23 million square feet of that zoning envelop had been development in the Bethesda CBD.

The 1994 Bethesda CBD Sector Plan was also subsequently amended to address more specifically adjustments in the Woodmont Triangle.

⁹ Examples include the Adequate Public Facilities Ordinance, Annual Growth Plan, new CBD zones, the use of floor area ratios (FAR), incorporation of staging into land use plans, zones and site plan reviews as well as the county capital improvements program, and more regular and meaningful citizen participation, among others.

And last year, the Planning Board began preparing yet another revision of the Bethesda CBD Sector Plan, scheduled to be sent to the County Council in early 2016 and to be adopted by the Council by the end of the year. According to Planning Board staff, the staff draft further increases allowable development in the zoning envelope to 33 million square feet, building owners and developers have requested further increases that would total to 38 million square feet, and in preliminary work sessions the Planning Board has approved further additions that would raise the Bethesda CBD zoning envelope as high as 40 million square feet (six Pentagons, or four Rosslyns), and significantly raise building height limits.

In short, as 2016 begins the Bethesda CBD appeared well on its way to permitting development more than three times what the County Council in 1976 deemed compatible with the area's carrying capacity and with the preservation and quality of life of residential areas. It is on course to nearly double the density already on the ground, and move back up to nearly two-thirds of the radical up-zoning carried out by the Diggs Council in the 1960s.