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Sent via E-Mail Delivery (maureen.walker@gaitthersburgmd.gov)

Maureen Walker
Acting Housing & Community Development Division Manager
Department of Community, Neighborhood, and Housing Services
City of Gaithersburg
City Hall
31 South Summit Avenue
Gaithersburg, MD 20877

Re: Eugene B. Casey Foundation's (the "Foundation") Rezoning and Schematic Development Plan (SDP) application for Rosedale Apartments (Z-10030-2025, the "Application"); Request for Waiver from Affordable Housing Ordinance (the "Waiver")

Dear Ms. Walker:

In connection with the above-referenced Application and pursuant to Section 24-13.5 of Chapter 24, Article 13 of the Gaithersburg City Code (the "Affordable Housing Ordinance"), the Foundation hereby requests a waiver from the City's Affordable Housing Ordinance due to the lack of a reasonable relationship or nexus between the Application and the Ordinance. As explained in greater detail below, the Foundation through this Application is alternatively meeting and exceeding the City's affordable housing intentions, policies, and requirements established in the Affordable Housing Ordinance through the restriction of 75% of the residential dwelling units in the proposed Project (as further defined below) to occupancy by qualified low- and moderate-income residents (50-80% AMI as defined by IRS Rev. Proc. 96-32). This voluntary commitment by the Foundation exceeds the City's minimum requirement of 15% affordable units under the Zoning Ordinance by five (5) times. This Waiver has been mutually determined by City Staff and the Foundation to be technically necessary to facilitate the approval of the Application.

By way of background, the Foundation owns the properties identified as Parcel 940, Parcel N738 and Parcel N881 on Tax Map FS63 (attached hereto for easy reference), located in the southwest quadrant of MD 355 and Interstate I-370 (collectively, the "Property"). Parcels N738 and N881 (addressed as 2 O'Neill Drive and 3 Nancy Place, respectively), are improved

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with the Rosedale Apartments, comprised of 192 garden-style multi-family rental units, while Parcel 940 is currently vacant). Parcel 940 was annexed into the City and concurrently zoned Corridor Development (“CD”)¹ on May 20, 2024, pursuant to Resolution No. R-27-24 (the “Annexation”). With the Application, the Foundation is now seeking approval of a local zoning map amendment to rezone Parcel N738 (currently zoned R-18 (Medium density planned residential) and Parcel N881 (currently zoned R-20 (Medium density residential) to the CD Zone so that the entire Property is uniformly zoned CD. The Application also seeks approval of an SDP for the combined Property, replacing the existing Rosedale Apartments (which were built in 1972 and are becoming obsolete and beyond upkeep, repair, and renovation) and improving Parcel 940 with a new multi-family housing project comprised of up to 429 multi-family rental apartment units (a net gain of 237 units) in two phases with a mix of 1-, 2-, and 3-bedroom units (the “Project”). The phasing will allow for no tenant displacement as existing residents will be able to move to new apartment units built on Parcel 940 prior to demolition of the existing Rosedale Apartments. The Project will be operated by the Foundation through a Section 501(c)(3) charitable mixed-income housing entity that will restrict 75% of the units to occupancy by qualified low- and moderate-income residents per the IRS Code as described above, with the remaining 25% of units to be provided as market-rate units (allowing for Project residents who attain incomes in excess of the above-referenced income limits to remain).

As part of the Annexation of Parcel 940, the City and Foundation entered into an Annexation Agreement, recorded in the Land Records of Montgomery County in Book 68184 at Page 46 (the “Annexation Agreement”). In accordance with Section 24-251 of the City’s prior Zoning Ordinance, §4 of the Annexation Agreement exempted Parcel 940 from the City’s Affordable Housing Ordinance. The granting of such a waiver for Parcel 940 was based on the Foundation’s voluntary commitment to restricting 75% of the units to occupancy by qualified low- and moderate-income residents as described above. Parcel N738 and N881 are not exempted from the Affordable Housing Ordinance since they were not subject to the Annexation.

Consistent with the waiver per the Annexation Agreement, the Waiver requested now will ensure that the affordable housing at the Project will function uniformly for the Property. The Waiver is justified because otherwise there is no reasonable relationship or nexus between the Project and the affordable housing provisions of the City Code, with the alternative manner of the Foundation in providing affordable housing across the Property meeting and exceeding and replacing the affordable housing requirements of the City. As part of the granting of the Waiver, the Foundation agrees to incorporate §4 (copied below) of the Annexation Agreement into a declaration of covenants recorded in Land Records against the entire Property. The code sections referenced below relate to the prior Zoning Ordinance and will be updated to reflect the current Zoning Ordinance.

4. *AFFORDABLE HOUSING.*

¹ Prior to annexation into the City, Parcel 940 was zoned CRT-0.75, C-0.25, R-0.75 H-80 Zone under the Montgomery County Zoning Ordinance.

APPLICATION OF CITY LAW. In accordance with Section 24-251 of the City Code, Casey's commitment to provide affordable housing consisting of rental units as set forth above and herein exempts the Property from the affordable housing ordinance as applied to rental units, now contained in Article XVI of the City Code and as amended. In the event that any portion or portions of the Property are converted to for-sale residential dwelling units, the for-sale units will be subject to the City's regulations relating to providing affordable housing for new residential projects. In addition, if the provision of affordable rental housing changes on the Property, either by Casey or any successive property owner, such that the required proportion of the rental units restricted to occupancy pursuant to the IRS Guidelines is reduced to 15% or less (as described above, but currently requiring that 75% of the units be between 50 – 80% AMI) then the City's Affordable Housing requirements in effect at the time of such change, if they require a proportion of rental units so restricted to 15% or more, shall be applied to the Property.

Based on the foregoing, we respectfully request that the City grant this Waiver along with the approval of the Application.

Very truly yours,

**Selzer Gurvitch Rabin Wertheimer
& Polott, P.C.**

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By: _____
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Matthew M. Gordon

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