**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

**OFFICE OF
THE GENERAL COUNSEL**

**Agenda Date: October 26, 2006
Item # 7
Reconsideration Request**

**FAX (301) 495-4646
(301) 495-2173**

October 20, 2006

REQUEST FOR RECONSIDERATION**MEMORANDUM**

TO: Montgomery County Planning Board

VIA: Debra Yerg Daniel, Associate General Counsel
301.495.4646

FROM: Tariq El-Baba, Associate General Counsel
301.495.4646

RE: Reconsideration Request For White Flint Crossing
Preliminary Plan No. 120060310
Site Plan No. 820060170

I. BACKGROUND**Actions Sought To Be Reconsidered:**

Preliminary Plan No. 120060310 and Site Plan No. 820060170.

- Date of Hearings: April 27, 2006
- Action Taken: Approval of Preliminary Plan and Site Plan

Parties Seeking Reconsideration:

1. John J. Fitzgerald, Jr. and Fitzgerald Auto Malls.
2. Esther P. Gelman, President, Gelco Consultants, Inc.¹

¹ A review of the record of the applications suggests that Ms. Gelman is not, in fact, a party of record: she is not included on the mailing list; the public file contains no written communication from Ms. Gelman to the Planning Board or its Staff concerning the applications; and, she did not testify in person at the hearing. (As the Board may recall, Mr. Orens testified at the hearing that

Planning Board Votes

Preliminary Plan:

Motion to approve the Preliminary Plan made by Commissioner Wellington, seconded by Commissioner Perdue.

Commissioners Berlage, Perdue, Wellington, and Robinson voting in favor of the motion. Commissioner Bryant necessarily absent.

Site Plan:

Motion to approve the Site Plan made by Commissioner Wellington, seconded by Commissioner Robinson.

Commissioners Berlage, Perdue, Wellington, and Robinson voting in favor of the motions. Commissioner Bryant necessarily absent.

II. BASES FOR RECONSIDERATION

Grounds for reconsideration, as specified in the Planning Board's Rules of Procedure, are as follows:

1. A clear showing that the action of the Board did not conform to relevant law or its rules of procedure; or
2. Evidence indicating that certain pertinent and significant information relevant to the Board's decision was not presented at the public hearing before the Board or otherwise contained in the record, together with a statement detailing why such information was not timely presented; or
3. Such other appropriate compelling basis as determined by the Board.

Ms. Gelman had been scheduled to appear on Mr. Fitzgerald's behalf but was unable to do so due to an unexpected and severe illness.) The Planning Board's Rules of Procedure state that only a party of record may make a request to reconsider a Board action. Planning Board Rules of Procedure § 11. Although Ms. Gelman's letter requesting reconsideration does not state that she is writing the letter on behalf of Mr. Fitzgerald, it does expressly assert that Mr. Fitzgerald expected that Ms. Gelman would represent his views at the public hearing in his absence. Ms. Gelman has verbally informed the Board's Legal Staff that she intended the request to be filed on Mr. Fitzgerald's behalf and Mr. Fitzgerald's Counsel has confirmed that he reviewed her letter before it was issued to the Board. Based on the foregoing, in Legal Staff's opinion, the Board may consider the request submitted by Ms. Gelman as being a request on behalf of Mr. Fitzgerald, who is a party of record.

The Planning Board, in its sole discretion, is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

III. RECOMMENDATION

As is noted above, the Board is in receipt of two requests for reconsideration of the Board's approval of the subject plans. Both requests were untimely filed. The Planning Board's Rules of Procedure require that, "unless waived by the Board for just cause, [requests for reconsideration] must be received by the Planning Board within 10 days of the date of the final decision." Planning Board Rules of Procedure § 11 (emphasis added). The Preliminary and Site Plan Resolutions are both dated September 28, 2006. As such, to be considered timely, any request for reconsideration must have been received by the Board no later than October 8, 2006. The request submitted by Mr. Fitzgerald's Counsel, Stephen J. Orens, Esquire, dated October 10, 2006, was received in the Office Of the Chairman on October 10, 2006. Ms. Gelman's request, dated October 8, 2006, was received in the Office of the Chairman on October 11, 2006. Therefore, as a threshold matter, before the Board can consider either of the requests for reconsideration, it must find just cause for the untimeliness of each of the submittals and waive the 10-day filing requirement.

As to the substance of the requests, in legal staff's opinion, there exists no legal deficiency in the Planning Board's actions approving the Preliminary and Site Plans that requires reconsideration. However, if the Planning Board determines that the reconsideration request demonstrates that any one of the above-enumerated grounds has been met, the Board may grant the request.

IV. ATTACHMENTS

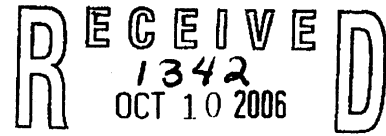
- Attachment One: Reconsideration Request Letter submitted by Stephen J. Orens, Esquire, dated October 10, 2006
- Attachment Two: Reconsideration Request Letter submitted by Esther P. Gelman, dated October 8, 2006
- Attachment Three: Applicant's Opposition to Reconsideration Requests, dated October 18, 2006
- Attachment Four: Preliminary Plan Resolution, dated September 28, 2006
- Attachment Five: Site Plan Resolution, dated September 28, 2006
- Attachment Six: Letter in Opposition to Reconsideration Request, dated October 18, 2006, from Mr. John Fry, President, Fallstone Homeowners Association

MILES & STOCKBRIDGE P.C.

Stephen J. Orens
301-517-4828
sorens@milesstockbridge.com

October 10, 2006

Dr. Royce Hanson, Chair
Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: Request for Reconsiderations of Approved Preliminary Plan (-120060310)
and Site Plan (8-20060170) – White Flint Crossing

Dear Dr. Hanson:

We represent Mr. John J. (Jack) Fitzgerald, Jr. and Fitzgerald Auto Malls ("Fitzgerald"). For over forty years Fitzgerald has operated an automobile dealership showroom and facility at 11411 Rockville Pike, directly across from the White Flint Crossing property ("White Flint Crossing"). On September 28, 2006 the Planning Board Resolutions approving the above referenced plans were mailed to parties of record. Mr. Fitzgerald, a party of record, received copies of those Resolutions on October 4, 2006.

For the reasons detailed below we hereby request reconsideration of the Planning Board's approval of both plans.

The Planning Board public hearings on both the Preliminary Plan of Subdivision and the Site Plan for White Flint Crossing were held on April 27, 2006. Both plans were approved, subject to conditions. The approved preliminary and site plans include an extension of a master planned business district street known as Executive Boulevard, extending from Woodglen Road through White Flint Crossing to Rockville Pike.

On behalf of Mr. Fitzgerald and his company, we presented testimony and produced exhibits in opposition to the plan approvals at the April 27, 2006 public hearings before the Planning Board because the Executive Boulevard extension proposed by the White Flint Crossing applicant and approved by the Planning Board does not comply with either the Master Plan recommendation or the County's road code standards for a business district street. Most importantly, the approved alignment and right of way for the extension of Executive Boulevard cannot be implemented without affecting an uncompensated taking of Fitzgerald's protected right to maintain its primary access to Rockville Pike.

Dr. Royce Hanson, Chair
October 10, 2006
Page 2 of 4

The now approved White Flint Crossing plans are subject to a Planning Board imposed condition, Condition 9(b) that requires White Flint Crossing to:

“reconstruct the access point on the east side of this intersection (Rockville Pike and Executive Boulevard extended) serving the existing automobile dealership, Fitzgerald Auto Mall (‘Fitzgerald’) within the Rockville Pike Right of way.”

The word “reconstruct” in the Planning Board Resolutions is a euphemism for “relocate” as there are no physical reasons why the Fitzgerald driveway, on the other side of Rockville Pike from the proposed terminus of Executive Boulevard, would have to be “reconstructed.” The Planning Board decision requiring the relocation of a non-applicant’s primary access to Rockville Pike confers a benefit on the applicant, White Flint Crossing, at Fitzgerald’s expense and that condition should never have been considered at a hearing that Mr. Fitzgerald and his principal consultant were not able to attend. The sole purpose behind the condition, which will severely disrupt Fitzgerald’s business operations, was the Board’s determination that relocation of the auto dealership’s primary Rockville Pike access was necessary to accommodate the installation of a traffic signal that is only warranted because of the projected White Flint Crossing traffic.

The Planning Board’s April 27, 2006 public hearing was conducted over our objection in the absence of both Mr. Fitzgerald, a party of record and his longtime consultant Esther Gelman. Mrs. Gelman, who was scheduled to appear at the hearing on Mr. Fitzgerald’s behalf, was hospitalized at the time of the hearing in the intensive care unit of Cedar-Sinai Hospital in California with a life threatening illness. On Mr. Fitzgerald’s behalf, we requested that the hearing be postponed until either he or Mrs. Gelman could appear to provide a historical context for Mr. Fitzgerald’s opposition and present testimony about the significant adverse impact and anticipated economic injury to Fitzgerald that will flow from the Board’s actions as they relate to the extension of Executive Boulevard.

Even though we informed the Planning Staff and the Board that both Mr. Fitzgerald and Mrs. Gelman were unable to attend and that Mrs. Gelman had personal knowledge of specific significant facts to present as part of her testimony on behalf of Fitzgerald, the Board proceeded with its scheduled hearing. As a result of its refusal to postpone the hearing, the Board was deprived of testimony that we submit would have been compelling and in the absence of that testimony the Board approved a preliminary plan condition requiring that Fitzgerald’s forty year old primary access driveway to Rockville Pike be taken for the benefit of White Flint Crossing and that, over Fitzgerald’s objections, a new driveway must be constructed north of its existing placement at a location that will be unsafe and will substantially interfere with Fitzgerald’s daily operations and business needs.

We also urge reconsideration because an analysis by our transportation consultant of the traffic report prepared for the White Flint Crossing project discloses a significant undercounting of the external trips associated with the project. This undercounting is generated by two factors.

Dr. Royce Hanson, Chair
October 10, 2006
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The first factor is a function of an anomaly in the LATR Guidelines that permits the inclusion of just 3,000 additional square feet of floor area over a threshold of 200,000 square feet for retail developments to reduce retail trips by over 13% (over 230 trips) in the evening peak hour. This may be a permissible device, based on the LATR but such a reduction of trips based on an increase in square footage without further justification based on studies of comparable projects (as suggested in the LATR) defies common sense.

The second factor is a function of the fact that the proposal is a "mixed use" project consisting of retail and residential components. It is accepted practice that for such projects there are some trips that will occur within the project and not add to traffic on the external roads. However, consideration has to be given to the relative magnitude of the trips generated by each component. In this case the traffic report simply reduces the retail trips by 25% without considering the potential for the residential component to absorb this many trips. It turns out that the 25% reduction in retail trips is twice as many trips as are generated by the residential component. Thus, in other words, the reduction applied to the retail trips completely absorbs the trips generated by the residential component and assumes a further reduction of 190 trips that can not be absorbed.

When these two factors, that we consider to be errors in the traffic report, are combined, they account for over 400 trips in the evening peak hour that are not accounted for on the external road system. Such an undercounting has to have a significant impact on the capacity calculations for the "total" traffic condition and the conclusions reached based on these calculations.

We have expressed other concerns in meetings prior to the public hearing, but we believe the factors outlined above are sufficient to merit reconsideration of the applications.

We continue to believe that the traffic studies submitted by White Flint Crossing do not adequately address the circulation patterns in the area and significantly underestimate the impact of the traffic generated by this development. The Planning Board also did not factor into its deliberations the request by Council member Floreen to delay regulatory issues pending the outcome of a revised White Flint Sector Plan which is now underway.

We urge that the Planning Board move reconsideration so that it can have the benefit of the missing presentation by a non-applicant party whose property rights are significantly and adversely affected by the conditions imposed on the White Flint Crossing plans.

MILES & STOCKBRIDGE P.C.

Dr. Royce Hanson, Chair
October 10, 2006
Page 4 of 4

Thank you for considering our request. We look forward to hearing from the Planning Board.

Very Truly Yours,

MILES & STOCKBRIDGE P.C.

By: 

Stephen J. Orens

Cc: The Honorable Wendy C. Perdue, Esquire
The Honorable Allison Bryant, Ph.D
The Honorable John M. Robinson, Esquire
The Honorable Meredith K. Wellington, Esquire
Ms. Rose Krasnow
Mr. Michael Ma
Ms. Linda Komes
Ms. Dolores Kinney
Mr. Shahriar Etemadi
Mr. Ed Axler
Mr. John J. Fitzgerald, Jr.
Mr. George Rose, Esquire
Mrs. Esther Gelman
Mr. Perry Berman
Mr. Stephen G. Petersen, P.E.
Mr. Steven Robins, Esquire

GELCO

Esther P. Gelman
President

CONSULTANTS, INC.

Oct 8, 2006

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OCT 11 2006

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dr. Royce Hanson, Chair
MNCPPC
8787 Georgia Ave.
Silver Spg., Md. 20910

Dear Dr. Hanson and Commissioners:

I write to request your agreement to Reconsider the Board's Approval of White Flint Crossing Plan 120060310 and Site Plan 8-200600170.

When the date was set, Jack Fitzgerald, whose property is severely impacted and damaged by the decision, knew he was scheduled to be in Chicago. He was content that I would represent his views. He was especially concerned that what transpired at a meeting which only he and I and Steve Robins, attorney for White Flint Crossing, were present.

I went to Los Angeles for a few days, expecting to return Sept. 19. However on Sept. 15, I became so ill that ambulance service took me to Cedars-Sinai Hospital where I was placed in isolation for an infectious disease – monitored 24 hours a day. The illness was so severe that the bill for the first 12 days, with no surgery and no physicians' services included, was over \$91,000.

When I could rouse myself enough to make a phone call, I called Mr. Robins to explain the situation, requesting a 2 week delay. His immediate response, with no formalities about "feeling better," was: "There is no advantage to my client to delay."

Quite the contrary, he saw enormous benefit in my not being present so he could claim at a later time, that we had not met. We met with Mr. Robins, with the principals of White Flint. Mr Fitzgerald met with both the engineer and architect of White Flint Crossing.

At our meeting with Mr. Robins, Mr Fitzgerald told him that the specific development – a hotel, office building, residential building did not matter to him. His only concern was the left turn at the median break. Mr. Robins gave us his word of honor that the new development would not recommend any change in the median break.

There are many more reasons for Reconsideration which our attorney will address. But I must add that in my 40+ years of covering the Commission as a reporter, a commissioner,

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Phone: (301) 299-4490 • Fax: (301) 299-5775 • E-Mail: Gelco@ioip.com

a Council member and as a consultant, I have never witnessed the granting of a new application based on the destruction of the operation of an existing business.

Sincerely yours,

A handwritten signature in cursive script that reads "Esther Gelman". The letters are fluid and connected, with a prominent "E" at the start and a long, sweeping "u" at the end.

Esther Gelman



SUITE 460 | 3 BETHESDA METRO CENTER | BETHESDA, MD

ATTORNEYS

ATTACHMENT THREE

STEVEN A. ROBINS
DIRECT 301.657.0747
SAROBINS@LERCHEARLY.COM

October 18, 2006

BY TELECOPIER AND HAND DELIVERY

The Honorable Royce Hanson, Chairman and
Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

**Re: White Flint Crossing Preliminary Plan No. 120060310 and Site
Plan No. 820060170**

Dear Dr. Hanson and Member of the Board:

Our firm represents White Flint Crossing LLC, the Applicant for Preliminary Plan of Subdivision No. 120060310 and Site Plan No. 820060170 for the White Flint Crossing Development ("WFC"). The Planning Board approved both of the plans at the public hearing held on April 27, 2006. The Resolutions were issued on September 28, 2006. As the Board knows, WFC has been the subject of extensive review, first as part of the local map amendment that was approved by the Planning Board and ultimately the County Council, sitting as the District Council on September 20, 2005 and thereafter by the Planning Board as part of the comprehensive reviews for the preliminary plan and site plan. We received a copy of the letter from Stephen Orens, counsel for John J. Fitzgerald and Fitzgerald Auto Malls ("Fitzgerald") dated October 10, 2006, requesting that the Planning Board grant reconsideration of the approvals. We object to this request and respectfully urge the Planning Board to deny the reconsideration.

As a threshold matter, this request violates the Board's Rules of Procedure – it is untimely. Section 11 of the Rules of Procedure (the "Rules") requires that if a party of record desires reconsideration, such request must be received by the Board within 10 days from the date of the Board's final decision. In this case, the Board's Resolutions are dated September 28, 2006. A reconsideration request must have been received by the Board by October 8, 2006 in order to be timely. This request – that involves a letter dated October 10, 2006 and thus received even later than that – is not timely.¹ Furthermore, as part of the reconsideration request, Mr. Orens did not present any

¹ The Applicant also is aware of a letter from Esther Gelman (one of Fitzgerald's advisors) to the Board, supporting Mr. Orens' request for reconsideration. This letter is time stamped as being received by M-NCPPC on October 11, 2006. It also is untimely.

The Honorable Royce Hanson, Chairman and
Members of the Montgomery County Planning Board
October 18, 2006
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justification for missing this deadline. On the contrary, Mr. Orens contends that he received both Resolutions on October 4, 2006, well within the time frame to file the reconsideration request. Significantly, Mr. Orens even had five additional months from the hearing date until the Resolutions were mailed to decide if he would file a reconsideration request. Yet, the filing deadline prescribed by the Rules still was missed. As a jurisdictional matter, the Board's Rules mandate denial of this reconsideration request.

In his letter, Mr. Orens clearly attempts to reargue the very same case that he presented at the April 27, 2006 hearing. At that hearing, Mr. Orens was accompanied by George Rose, Esquire, Vice President of Fitzgerald, Perry Berman (a land planning advisor), and Stephen Peterson (a traffic engineer) and he was afforded ample time to present his case. The Board carefully and comprehensively reviewed and addressed all of the issues raised by Fitzgerald at the hearing (that lasted for hours), including but not limited to a preliminary matter regarding Fitzgerald's request to postpone the hearing and thereafter on Fitzgerald's objections as raised in his letter, particularly his primary objection – the alignment of Executive Boulevard. The Board considered, in great detail, Fitzgerald's positions and reached its decision to approve both plans based on the testimony at the hearing, evidence contained in the record and Technical Staff recommendations. The reconsideration process is not intended to provide a platform for a dissatisfied party to be able to rehash arguments or attempt to take a second bite at the apple.² Accordingly, there is no relevant or material evidence that is being presented by

² While not relevant to Fitzgerald's request for reconsideration, the Applicant feels compelled to address certain comments raised by Fitzgerald in its correspondence with the Board. Throughout this process, the Applicant attempted to arrange meetings with the Fitzgerald team. While some meetings were held very early on in the process (or as part of another previous application involving a portion of the WFC property), unfortunately, this effort resulted in little to no success. We repeatedly informed Mr. Orens that time was of the essence regarding the April 27, 2006 hearing date (particularly since the hearing already had been postponed at least one time). We attempted to schedule meetings on this matter; however, it became very clear that Fitzgerald was not interested in meeting unless the master planned alignment for Executive Boulevard as shown on the Applicant's plan (and determined by the Board to conform to the Master Plan) was revised to reflect a major shifting of the road to the south – an alignment that the Board found to be contrary to the Master Plan. Mr. Orens informed the Applicant that without this modification, there was no purpose in meeting and he would oppose the WFC project before the Planning Board on April 27, 2006. The Applicant made one last effort to meet before the scheduled hearing, but with no success.

The Honorable Royce Hanson, Chairman and
Members of the Montgomery County Planning Board
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Fitzgerald in his request that was not or could not have been brought to the attention of the Planning Board at its April 27, 2006 hearing (nor is there any showing that the action of the Board did not conform to relevant law or to the Rules). Fitzgerald's reconsideration request fails to satisfy any of the standards outlined in Section 11 of the Rules that must be met for the Planning Board to grant a request for reconsideration. This is separate and apart from the timeliness of the request as mandated by the Rules that Fitzgerald also failed to satisfy.

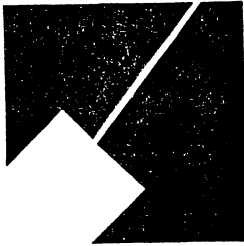
Reconsideration is not warranted. As a primary matter, the request is untimely. Fitzgerald is represented by counsel who is aware of the Board's Rules of Procedure and its time limitations and had ample time to determine if a reconsideration request would be filed. Furthermore, this reconsideration request is an attempt to reargue the very same issues that were comprehensively reviewed and decided by the Board at the hearing, including but not limited to, the alignment of Executive Boulevard. The Planning Board already has considered all of the arguments made by Fitzgerald and its well reasoned and thorough decisions for both the Preliminary Plan and Site Plan should stand. There is no compelling basis to grant this request.

Thank you in advance for considering WFC's position on this matter.

Sincerely,


Steven A. Robins

Cc: The Honorable Wendy Perdue, Esq.
The Honorable Allison Bryant, Ph.D
The Honorable John M. Robinson, Esq.
The Honorable Meredith K. Wellington, Esq.
Rod Lawrence
Faroll Hamer
Rose Krasnow
Catherine Conlon
Dolores Kinney
Tariq el Baba, Esq.
Stephen Orens, Esq.



SEP 28 2006

MCPB No. 06-17
Preliminary Plan No. 120060310
White Flint Crossing
Date of Hearing: April 27, 2006

MONTGOMERY COUNTY PLANNING BOARD**RESOLUTION¹**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is required to review preliminary plan applications; and

WHEREAS, on September 6, 2005, White Flint Crossing LLC ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create one lot on 4.33 acres of land located on the East side of Rockville Pike (MD 355), approximately 460 feet south of the intersection with Nicholson Lane ("Property" or "Subject Property"), in the North Bethesda Garrett Park master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120060310, White Flint Crossing ("Preliminary Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on April 27, 2006, Staff presented the Application to the Planning Board at a public hearing for its review and action (the "Hearing"); and

WHEREAS, prior to the Hearing, Staff had issued a memorandum to the Board, dated March 21, 2006, setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

¹ This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, in reaching its determination on a preliminary plan application, and in making the required findings, the Planning Board must consider and apply the purposes and applicable regulations of Montgomery County Code Chapter 50;

WHEREAS, pursuant to Montgomery County Code § 50-35(f), following a public hearing on the application, the Planning Board shall, by majority vote and based upon the evidence and testimony contained in the record, approve, approve subject to any conditions or modifications or disapprove a preliminary plan application; and

WHEREAS, on April 27, 2006, following the Hearing, the Planning Board APPROVED the Application subject to certain conditions, on motion of Commissioner Wellington; duly seconded by Commissioner Perdue; with a vote of 4-0, Commissioners Berlage, Perdue, Wellington, and Robinson voting in favor (Commissioner Bryant necessarily absent); and

WHEREAS, on April 27, 2006, the Planning Board concurrently considered Site Plan No. 820060170 for the Subject Property ("Site Plan"), and, following its action on the Preliminary Plan Application, the Board approved the Site Plan subject to conditions; and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120060310 to create one lot on 4.33 acres of land located on the East side of Rockville Pike (MD 355), approximately 460 feet south of the intersection with Nicholson Lane, in the North Bethesda Garrett Park master plan area, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to 223,000 square feet of retail, including 203,000 square feet of gross, leasable retail space, and up to 440 multi-family dwelling units, including 15% MPDUs.
- 2) Compliance with the specifications and requirements of the approved development plan for Zoning Application G-830, County Resolution No. 15-1144.
- 3) No clearing, grading or recordation of plats prior to approval of the Certified Site Plan.
- 4) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.

- 5) The proposed development shall comply with the conditions of the forest conservation plan. The Applicant shall satisfy all conditions prior to recording of plat(s), or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits, as applicable.
- 6) Prior to building permit release for Point Tower (Building "A"), compliance with all exterior/plaza and interior noise mitigation recommendations and detailed building shell analysis as specified in report entitled "Phase I Traffic Noise Analysis – White Flint Crossing" Report #5283 by Polysonics Corporation dated 1/26/2006:
 - a. Certification from an acoustical engineer that the building shell for residential dwelling units will, if constructed in accord with the specified acoustical criteria, attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
 - b. Commitment by the builder to construct in accordance with the acoustical design criteria as specified in the noise report. An acoustical engineer must approve any changes to the building shell construction that may affect acoustical performance in writing with copy to MNCPPC staff prior to implementation and verify that the noise criteria will still be met.
- 7) Dedicate 15 feet of right-of-way for a total of 75 feet from the centerline of Rockville Pike (MD 355) with recordation of the plat.
- 8) Applicant shall provide for the extension of Executive Boulevard between Woodglen Drive and Rockville Pike as follows:
 - a. Record plat to reflect dedication of 76.5 feet of right-of-way for the master-planned extension of Executive Boulevard between Woodglen Drive and Rockville Pike with recordation of the plat.
 - b. Prior to recordation of plat, Applicant to record a declaration of covenants ("Declaration") for future dedication of an additional 3.5 feet of right-of-way for Executive Boulevard on adjoining Lot P16 and Parcel 978 along the northern property line of the subject property. Declaration to be reviewed and approved by MNCPPC staff and MCDPWT prior to recordation. Dedication shall occur upon rezoning or redevelopment of Lot P16 and Parcel 978.
 - c. Construct Executive Boulevard between Rockville Pike and Woodglen Drive with a commercial business district road alignment and cross-sectional design as approved by the Montgomery County Department of Public Works and Transportation (DPWT) in their letter dated March 17,

2006, and in accordance with the *North Bethesda/Garrett Park Master Plan* recommendations. The cross-sectional design should include the following:

- i. Four lanes for a pavement width of 46 feet at Woodglen Drive that is gradually increased to a width of 50 feet at Rockville Pike per waiver from DPWT.
 - ii. A one-foot northerly offset of the centerline compared to the existing Executive Boulevard at its intersection with Woodglen Drive, per waiver from DPWT.
 - iii. An eight-foot-wide shared-use path with concrete pavers, a panel and street trees on the north side.
 - iv. A 5-foot-wide sidewalk and outdoor café area on the south side.
 - v. The design requirements of the Maryland State Highway Administration (SHA) in their letter dated March 31, 2006 for the intersection of Executive Boulevard and Rockville Pike.
- d. Executive Boulevard shall be constructed and opened to general traffic prior to the release of any use and occupancy permits for the high-rise apartment units in Building "A", or the Point, as well as all interim traffic control improvements at Rockville Pike, as required by SHA as stated in their letter dated March 31, 2006, and in coordination with the Montgomery County Department of Permitting Services (DPS).
- 9) Applicant shall provide improvements at the intersection of Rockville Pike and the future Executive Boulevard as follows:
- a. Install a traffic signal at the intersection of Rockville Pike and Executive Boulevard, when determined by SHA to be warranted. Additional traffic counts and an updated warrant analysis shall be performed six months after Executive Blvd is open to traffic to determine if a traffic signal at this intersection is warranted. Final decision on installing a traffic signal at this intersection will be determined by SHA.
 - b. As part of the traffic signal installation, if required by the SHA, reconstruct the access point on the east side of this intersection serving the existing automobile dealership, Fitzgerald Auto Mall ("Fitzgerald"), within the Rockville Pike right-of-way. In addition, Applicant shall work with Fitzgerald on a plan to reconfigure that portion of the existing Fitzgerald

parking lot that is directly impacted by the relocation of the access point. Applicant shall pay all reasonable expenses associated with such reconfiguration.

- c. In the interim before a traffic signal is installed, design and construct the intersection of Executive Boulevard and Rockville Pike to prohibit through and left turns from eastbound Executive Boulevard. All other turning movements shall continue to be permitted.
 - d. Construct a left-turn storage bay/lane from southbound Rockville Pike into the driveway on the east side serving Fitzgerald Auto Mall, before Executive Boulevard is opened to the public.
- 10) Show on the site plan an eight-foot-wide clear space (outside the door swing and other streetscape elements) along the east side of Woodglen Drive's public right-of-way to allow users of the North Bethesda Trolley Trail to pass by the site frontage.
 - 11) The Applicant must enter into a traffic mitigation agreement (TMA) with the Planning Board and DPWT to participate in the North Bethesda Transportation Management District (TMD). The TMA must be signed and executed by all parties prior to the issuance of the initial building permit for the project and shall continue in force in perpetuity.
 - 12) Applicant shall provide 20 bicycle parking spaces, of which six spaces shall be inverted-U or hitch racks installed as part of the streetscape improvements along Executive Boulevard and Woodglen Drive; 14 spaces shall be bike lockers installed in the parking garage.
 - 13) Compliance with the conditions of MCDPWT letter dated March 17, 2006, unless otherwise amended.
 - 14) Compliance with the conditions of SHA letter dated March 31, 2006, unless otherwise amended.
 - 15) Access and improvements as required to be approved by MDSHA prior to issuance of access permits.
 - 16) Access and improvements as required by MDSHA prior to issuance of access permits. Final approval of the number of dwelling units, MPDUs, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.

- 17) Compliance with the conditions of approval of the MCDPS stormwater management approval dated July 5, 2005.
- 18) Provide a minimum of 18' sidewalk along Woodglen Drive and Executive Boulevard extended with tree pits and landscaped areas.
- 19) Provide a minimum of 15' sidewalk along the festival street for safe and desirable pedestrian circulation on the site.
- 20) Screen open sections of parking in the garage from the existing townhouses along Woodglen Drive. Block headlights from shining into the windows of the homes. In addition, provide cut-offs inside the garage to prevent any light from spilling over into the townhouses.
- 21) Encourage undergrounding the utility poles to allow for optimum sidewalks and adequate tree planting areas.
- 22) Encourage meeting the amenity requirements on-site with any additional amenities devoted to the future North Bethesda Trolley Trail facility planned for the west side of Woodglen Drive.
- 23) The Adequate Public Facility (APF) review for the preliminary plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board opinion.
- 24) Other necessary easements.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, the testimony of the Applicant and speakers in favor of and in opposition to the Application, and other evidence contained in the Record, which is hereby incorporated in its entirety into this Resolution, the Montgomery County Planning Board FINDS that:

1. *The preliminary plan substantially conforms to the master plan.*

The proposed preliminary plan is subject to the North Bethesda Garrett Park Master Plan and the White Flint Sector Plan (collectively the "Master Plan").

a) Master Plan Objectives

The stated objectives of the Master Plan for the subject area are to:

- i. Develop White Flint as the main urban center of North Bethesda: Located within the White Flint Sector Sub Area 6, the proposed development will include the construction of the extension of Executive Boulevard from Woodglen Drive to Rockville Pike. The proposal will add a street grid to create a more interconnected local street network in the White Flint Metro Station area. The Master Plan recommends that Executive Boulevard be extended to cross Rockville Pike and connect to Huff Court. This street is classified by the Master Plan as a business district street with an 80-foot right-of-way and four planned through lanes. The planned roadway was proposed as a segment of the ultimate street system in White Flint.
- ii. Promote mixed-use development near the Metro station to ensure the 24-hour vitality of the area: The proposed development is the type of mixed-use development envisioned by the Master Plan, which recommends, at page 52, a more intensive mixed-use development pattern for White Flint with the "emphasis on employment east of the Pike and housing west of the Pike. The tallest buildings are proposed adjacent to the Pike, stepping down in height to the east and west" The presence of both residential and retail uses in a setting with an attractive public realm will contribute to the liveliness of the area at various times of the day and week.
- iii. Include a significant transit serviceable residential component: The proposed development will provide 440 new residential units within a 10-minute walk of the White Flint Metro Station. The project will also provide MPDUs in an amount equal to 15% of the number of dwelling units constructed. Because the Subject Property was rezoned from the C-2 zone to TS-M zone, the Preliminary Plan proposes mixed-use, transit-oriented development with a greater residential density than could otherwise be achieved. The 1992 master plan was flexible in calculating the affordable housing mix. For this project, the number of MPDUs was calculated using the new MPDU legislation. The plan is consistent with the Planning Board recommendations, the binding elements in the zoning case and Development Plan, and the Master Plan. Affordable housing has been very hard to attain in the Bethesda/North Bethesda areas (due to buy-outs, etc.). This project will construct 15 percent or 66 MPDUs on-site.
- iv. Ensure a lively pedestrian environment: The proposed development will add to the pedestrian "friendliness" of White Flint. The design includes a festival street for use by the residential, commercial, and employment communities, which provides pedestrian connections to future Executive Boulevard extended, Security Lane, and Rockville Pike through the development.

b) Density of Development

With respect to density of development, the Master Plan limits the FAR to 2.0 (in the TS-M recommended areas within the White Flint Sector Plan), with a maximum cap of 2.4, provided that the increase is all residential and is at least 50 percent affordable housing. The proposed FAR is 2.29 and the Board finds, based on Staff's analysis, that the proposed development meets the intent of the master plan.

c) Executive Boulevard

An express recommendation of the Master Plan is to "[e]xtend Executive Boulevard east to meet Huff Court." Master Plan at 51. As a condition of its approval of the instant Application, the Planning Board requires Applicant to construct the master-planned segment of Executive Boulevard between Woodglen Drive and Rockville Pike through the subject site in order to provide essential vehicular circulation and access. Staff advised the Board that they had analyzed the alignment of Executive Boulevard from Woodglen Drive to MD 355 and that they had determined that the Applicant's alignment complies with the recommendations of the Master Plan. Staff and the Applicant informed the Board that the proposed alignment, including a proposed one-foot offset of the centerline of the road, is supported by M-NCPPC, DPWT, and SHA staff.

The Planning Board heard testimony and received evidence from the Applicant, Staff, and a representative of Fitzgerald Auto Mall (in opposition to the alignment). Having considered all the relevant testimony and evidence, the Board finds that the proposed alignment of Executive Boulevard extended through the Subject Property is in substantial conformance with the alignment recommended in the Master Plan. In arriving at the latter finding, the Board relies, in part, on Figure 10, at page 291 of the Master Plan (Proposed Ultimate Street System – White Flint). That Figure makes clear that the Master Plan recommends that the master-planned portion of Executive Boulevard, between Woodglen Drive and Rockville Pike was intended to align with the existing Executive Boulevard west of Woodglen Drive. Figures 18 and 19, contained in the White Flint Sector Plan Area section of the Master Plan, also support that view. Evidence and testimony of record demonstrates that the centerlines of the two segments of Executive Boulevard will be substantially aligned. The Board concurs with Staff that the final alignment for the extension of Executive Boulevard east of Rockville Pike may be determined in the future and finds that the Planning Board is not required to make such a determination through this Application.

The Board rejects Fitzgerald's arguments that Code § 50-30(c) requires the Board to establish, at the time of its review of this Application, the final alignment of Executive Boulevard east of Rockville Pike, in order to coordinate that segment of the

master planned road with the proposed extension west of Rockville Pike. In support of its position, the Board notes that Staff and Applicant's consultant advised the Planning Board—and the Board concurs—that the proposed alignment through the Subject Property does not preclude options on the east side of MD 355 for minor offset of the centerline or other roadway alignment options that may be necessary to address site conditions on the east side of MD 355.

The Applicant testified that, as a part of the Woodglen Commons application, concerning property to the north of the Subject Property, the Applicant was required to identify the location at which Executive Boulevard extended would cross into the Fitzgerald property and that there was no objection at that time or during the rezoning case for the Subject Property.

The Preliminary Plan proposes 76.5 feet of right-of-way dedication for Executive Boulevard extended and is conditioned on the recordation, prior to recordation of the plat, of a declaration of covenants for future dedication of an additional 3.5 feet of right-of-way for Executive Boulevard extended on adjoining Lot P16 and Parcel 978 to the north of the subject site, which properties are owned by the Applicant. The Board finds that the present dedication of 76.5 feet substantially conforms to the Master Plan recommendation for an 80-foot right-of-way. Moreover, the Board finds that the requirement for future dedication of 3.5 feet of the right-of-way ensures that the approval is consistent with Chapter 50 minimum street width requirements and, therefore, no waiver is required for a reduction in the width of right-of-way. The Board notes that Staff and the Applicant informed the Board that the initial dedication area is sufficient to provide all the necessary road improvements. The ultimate 80-foot right-of-way will allow for future widening of the shared-use path on the north side of the road if sidewalk cafes are proposed when the northern property develops.

Associated with the alignment of Executive Boulevard extended is the issue of the Executive Boulevard/MD 355 intersection, and its potential impact on the access point to Fitzgerald's Auto Park facility. During its deliberations at the Hearing, the Board addressed Fitzgerald's concerns regarding the staff-recommended condition, which had required Applicant to reconstruct Fitzgerald's driveway. The Board spent a great deal of time discussing and soliciting testimony on various aspects of the Executive Boulevard/MD 355 intersection, including the existing access point to Fitzgerald's property. The Board is persuaded, based on the testimony of its Staff and the Applicant's civil engineer, that the Maryland State Highway Administration ("SHA") has jurisdiction over all median modifications and access points within the Rockville Pike right-of-way. As such, if in the future SHA approves a signalized intersection, the existing Fitzgerald property access point shall be relocated, as required. At the Hearing, the Board crafted a condition that, in the event SHA requires the installation of a traffic signal, requires the Applicant to: (1) reconstruct the aforementioned access point; (2) work with Fitzgerald on a plan to reconfigure that portion of the existing

Fitzgerald parking lot that is directly impacted by the relocation of the access point; and (3) pay all reasonable expenses associated with such reconfiguration. The Board finds that such a condition is reasonable, promotes safety, and is fair to Fitzgerald, in that the Applicant will bear the reasonable costs of reconfiguring those directly impacted portions of Fitzgerald's parking lot.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

a) Pedestrian and Bicycle Facilities

Adequate sidewalks exist or will be provided along the adjacent roadways and internal streets, with pedestrian access directly from Rockville Pike to the proposed promenade mid-block between Executive Boulevard extended and Security Lane. In addition to the existing bikeway along Woodglen Drive, the master-planned bikeway will be constructed along the extension of Executive Boulevard between Woodglen Drive and MD 355.

b) Available Bus Service

Transit service is available along the segment of Rockville Pike fronting the site via Ride-On routes 5, 38, and 46, and Metrobus route J-5. No transit service operates along Woodglen Drive.

c) North Bethesda Transportation Management District ("TMD")

The proposed development is located within the boundary of the TMD. Therefore, the Applicant is required to enter into a Traffic Mitigation Agreement to participate in the TMD to assist the County in achieving and maintaining the 39% non-auto-driver mode share for employees and 30% non-driver mode-share goal for multi-family residents. As conditioned, the Applicant must enter into a traffic mitigation agreement with the DPWT and M-NCPPC.

d) Traffic Signal Warrants at New Rockville Pike and Executive Boulevard Intersection

The Applicant's traffic engineer prepared a traffic signal warrant study for SHA's review. Evidence of record shows that five of the signal warrant conditions for minimum vehicular volumes in the Manual of Uniform Traffic Control Devices were met using the projected traffic generated by the proposed development. In a March 31, 2006 letter to Transportation Planning Staff, the SHA states that it "does not support the installation of a traffic signal at the MD 355/Executive Boulevard intersection. However, in the same letter, the SHA did agree to review any updated Traffic Signal Warrant Studies that are

submitted by the developer at least six months after Executive Boulevard extended to MD 355 is open to traffic.

e) Local Area Transportation Review

Staff advised the Board that a traffic study was required to satisfy Local Area Transportation Review ("LATR") because the proposed development generates 30 or more total peak-hour trips during the weekday morning or evening peak periods. The traffic conditions analyzed included the existing, background, and total future traffic conditions. Staff informed the Board that the study determined that the calculated critical lane volumes for all analyzed intersections are less than the intersection's applicable congestion standard and advised the Board that the proposed development meets LATR requirements.

The Board questioned Staff regarding concerns raised at the Hearing by representatives of Fitzgerald and the Garrett Park Estates-White Flint Park Citizens' Association ("Citizens' Association"), generally contesting the adequacy of the traffic study. Transportation Planning Staff generally testified that the methodology used in analyzing the instant Application is consistent with that utilized for other large mixed-use developments. Staff walked through its analysis, justifying, based on the proposed uses, the reductions in trips that it factored into the analysis. Staff testified that LATR uses the reductions in trips that it factored into the analysis. Staff testified that LATR guidelines were not used to calculate trip generation rates because those guidelines are only accurate for a development of up to 200,000 square feet, which square footage the proposed development exceeds. Staff confirmed that it instead used ITE trip generation rates, as is its practice for larger developments. The Citizens' Association representative conceded that the Staff is permitted to utilize that methodology in its analysis of such cases. With respect to the count of existing trips, Staff confirmed that counts were performed as a part of the traffic study and that the fact that the Citizens' Association may have had a different result in counts it performed is of little consequence as such counts can vary from day to day. Additionally, both Staff and the Applicant confirmed that the analysis was performed, consistent with applicable guidelines, based on the gross leasable figure of 203,000 square feet.

The Board, having considered the arguments of all parties and its Staff, and relevant evidence of record, is persuaded that Staff followed the proper methodology in analyzing the instant Application.

f) Executive Boulevard/Rockville Pike Intersection

During its deliberations at the Hearing, the Board addressed Fitzgerald's concerns regarding the staff-recommended condition, which had required Applicant to reconstruct Fitzgerald's driveway. The Board spent a great deal of time discussing and soliciting testimony on various aspects of the Executive Boulevard/MD 355 intersection,

including the existing access point to Fitzgerald's property. The Board is persuaded, based on the testimony of its Staff and the Applicant's civil engineer, that the Maryland State Highway Administration ("SHA") has jurisdiction over all median modifications and access points within the Rockville Pike right-of-way. The record is clear that the SHA does not support the installation of a traffic signal at that intersection at the present time, for reasons set forth in a letter dated March 31, 2006 to Transportation Planning Staff. That letter also makes clear the position of SHA that motorists exiting the Fitzgerald Auto Park should be allowed to turn left, onto southbound Rockville Pike. Having heard the concerns of Fitzgerald that the extension of the MD 355 median northward would inhibit or render unsafe such left turns from Fitzgerald Auto Park, the Board obtained a commitment from the Applicant that no such median extension would be constructed until, and if, traffic lights are approved and installed at the intersection. The Board notes, however, that the conditions as proposed and approved did not and do not require such a northward extension of the median. The above-discussed SHA letter is clear that the only turning movement prohibited in the intersection is the left turn from eastbound Executive Boulevard onto northbound Rockville Pike; the conditions of approval are consistent with this SHA requirement.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*
4. *The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Staff advised the Board that forest conservation requirements of 0.89 acres of afforestation shall be met through use of credits for shade tree canopy onsite and within surrounding rights-of-way. The approval of this Application is conditioned upon the satisfaction of all conditions of the associated forest conservation plan prior to the recordation of the plat or issuance of sediment and erosion control permits, as applicable.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site*

The Department of Permitting Services, through letter dated July 5, 2005, advised the Applicant that the stormwater management concept for the site is acceptable.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 36 months from its Initiation Date (as defined in Montgomery County Code

Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plan for all property delineated on the approved preliminary plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that the date of this Resolution is SEP 28 2006 (which is the date that this Resolution is mailed to all parties of record); and

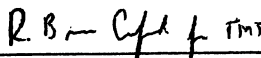
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

At its regular meeting, held on **Thursday, September 14, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Wellington, seconded by Commissioner Perdue, and with Commissioners Perdue, Wellington, and Robinson voting in favor, and with Chairman Hanson and Commissioner Bryant abstaining. This Resolution constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan No. 120060310, White Flint Crossing**.

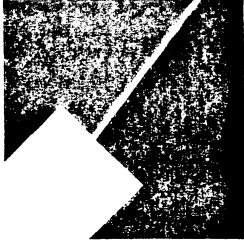
Adopted by the Montgomery County Planning Board this 14th day of September 2006.



Royce Hanson
Chairman, Montgomery County Planning Board



Trudye M. Johnson
Executive Director



SEP 28 2006

MCPB No. 06-18
Site Plan No. 820060170
White Flint Crossing
Date of Hearing: April 27, 2006

MONTGOMERY COUNTY BOARD**RESOLUTION**

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is required to review site plan applications; and

WHEREAS, pursuant to Montgomery County Code § 59-D-3.4 (b), following a public hearing on the application, the Planning Board must, by resolution, approve, approve with conditions or disapprove a proposed site plan; and

WHEREAS, the Planning Board, in reaching its decision on a site plan, must determine that the site plan meets all the requirements of Code Section 59-D-3.4(c); and

WHEREAS, on October 19, 2005, White Flint Crossing, LLC, ("Applicant"), filed an application for approval of a Site Plan for 440 multi-family dwelling units, including 66 MPDUs, and 223,000 square feet of retail on 5.91 gross acres of TSM-zoned land on the west side of Rockville Pike, approximately 460 feet south of its intersection with Nicholson Lane, ("Property" or "Subject Property"); and

WHEREAS, on September 20, 2005, the District Council approved zoning application, G-830, and its Development Plan for the reclassification from the C-2 zone to the TSM-zone for the Subject Property; and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820060170, White Flint Crossing ("Application" or "Site Plan"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staffs of other governmental agencies, on April 27, 2006, Staff

presented the Application to the Planning Board at a public hearing for its review and action (the "Hearing"); and

WHEREAS, on April 14, 2006, prior to the Hearing, Staff had issued a memorandum to the Board setting forth its analysis of, and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record ("Record") on the Application and approved the Application subject to certain conditions, on Motion of Commissioner Wellington, duly seconded by Commissioner Robinson, with a vote of 4-0, Commissioners Berlage, Perdue, Wellington, and Robinson voting in favor (Commissioner Bryant necessarily absent)

WHEREAS, on April 27, 2006, the Planning Board concurrently considered Preliminary Plan No. 120060310 for the Subject Property ("Site Plan"), and, prior to its action on the Site Plan Application, the Board approved the Preliminary Plan subject to conditions; and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board approved Site Plan No. 820060170 for up to 440 multi-family dwelling units, (including 15% MPDUs), and up to 223,000 square feet of commercial development on 5.91 acres in the TS-M zone, subject to the following conditions:

1. Development Plan Conformance

The development shall comply with the binding elements of Development Plan G-830. The ground floor of each building shall be in commercial use, except for residential lobbies and other ancillary residential uses associated with the residential buildings. The amount of commercial development shall not be less than 130,000 square feet.

2. Preliminary Plan Conformance

The development shall comply with the conditions of approval for Preliminary Plan 120060310.

3. Building Height

Buildings heights shall be measured as shown on Site Plan 820060170, and as amended as follows: The measuring point used to measure the height of Building C shall be shown along Executive Boulevard at the curb grade opposite the middle of the front of the building to the highest point of the roof surface of the flat roof, per Section 59-A of the Zoning Ordinance.

4. Architecture

Buildings shall be constructed in substantial conformance with the architectural plans and elevations prepared by Torti Gallas & Partners, as revised and dated March 6, 2006, and as subsequently amended by the following conditions: (a) The top of the Point Tower, which is intended to be developed as a landmark, shall be designed and constructed in substantial conformance with the approved elevations, and (b) All service areas will be completely enclosed within the buildings and will be equipped with garage doors to fully screen view of loading activities.

5. Streetscape Improvements

The plans shall be revised to address the comments of DPS contained in the March 20, 2006 memorandum from Navid to Komes.

6. Transportation Division Memo

Conditions of M-NCPPC Transportation Planning Division memo dated April 6, 2006.

7. Public Art

Prior to submission of the certified site plan, the Applicant shall present a fully developed and detailed program for the public art component to the Art Review Panel for approval, and shall revise the site plan drawings to incorporate the approved public art.

8. Certified Site Plan

Prior to certified site plan approval of site and landscape/lighting plans, the following revisions shall be included and/or information provided, subject to staff review and approval:

- a. All building setbacks shall be clearly dimensioned on the site plan.
- b. Provide adequate spot elevations in the plaza, paseo and along walkways, to ensure ADA accessibility and positive drainage. Provide spot elevations at the top and bottom of all walls and steps and ramps.
- c. Add the required number of bicycle and motorcycle parking spaces to the development data table and locate them on the plan.
- d. The location of all required handicap accessible parking spaces shall be identified on the plan.
- e. Demonstrate that all light fixtures shall be full cut-off fixtures or shall be able to be equipped with deflectors, refractors or reflectors, on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential property.
- f. Additional trees and landscape planting shall be added to soften the plaza area and pedestrian walkway from Rockville Pike to the Plaza.
- g. Provide construction details for the trellis and screens proposed along the south façade of the building along the Service Lane.

- h. Provide a section through the planter/planting bed for all trees planted over top of structures that demonstrates that all trees planted over structure will have enough soil volume to encourage growth and maintain the health of the trees.
- i. The pedestrian area of the sidewalk on the south side of Executive Boulevard shall be a minimum of seven-feet wide, free of café seating.
- j. Details for a new attractive bus shelter as approved by DPWT and MNCPPC staff shall be added to the plans.
- k. The location of the benches along Rockville Pike shall be revised with a better orientation to the pedestrian space.
- l. The Recreation Facilities chart shall be amended in conformance with the chart provided at page 15 of the Staff Report. Provide details of the fitness equipment to be included in the indoor fitness facility in conformance with the standards contained on page 44 of the *Recreation Guidelines*.
- m. The Shared Parking Analysis Table, which appears on the site plan, shall be revised in accordance with the table entitled "White Flint Shared Parking Analysis per Section 59-E-3.1", which is located on page 14 of the Staff Report.
- n. The west elevation of the building along Woodglen Drive shall be revised and annotated to ensure that parking will not be visible from Woodglen Drive and from the confronting residential development. Special attention shall be given to screening the view of parked and moving vehicles and lighting within the garage.
- o. The east elevation of Buildings A and B, which front onto Rockville Pike, shall be revised to provide an "activated edge" and will minimize expanses of blank walls at the pedestrian level. The elevations shall be clearly annotated to demonstrate the location of windows, doorways, etc.
- p. Special consideration shall be given to the architectural design of all four sides of the penthouse on the Point Tower, to ensure that the highly visible top of the building is designed as an area landmark as envisioned by the Master Plan. The final design of the penthouse shall be included in the certified site plan.
- q. The plans shall be amended to reflect the relocation of the existing overhead utility lines and poles on the east side of Woodglen Drive to the west side of Woodglen Drive or shall be located underground.
- r. The Public Amenity Plan shall be revised to eliminate the following areas from the passive and active recreation area calculations: the residential lobby of Building A, internal access corridor between the parking structure and the Paseo, the island in the center of the vehicular drop-off from the area, and the areas in the public right-of-way created by the right-of-way truncation.

- s. The location of the garage intake and exhaust vents shall be added to the plans. Special consideration shall be given to the location of these vents so as not to impact the use of the pedestrian areas or to adversely impact the health of landscape plant materials. Every reasonable effort shall be made to relocate and/or reduce the number of grates proposed in the sidewalk along Rockville Pike.
- t. A plan shall be submitted that demonstrates that a safe barrier-free route exists or will be provided between the interim parking facility and Rockwal I and II until the permanent parking facility is completed.
- u. The Applicant shall provide a letter to the Development Review staff from the Old Georgetown Village Condominium ("OGVC") confirming that adequate evergreen planting has been planted by the Applicant on the Old Georgetown Village Condominium property boundary, consistent with OGVC's request in its letter to the Chairman, dated April 4, 2006, and Applicant's proffer at the Hearing.

9. Master Plan Compatibility

- a. Provide a minimum of 18-foot wide sidewalk along Woodglen Drive and Executive Boulevard extended, with tree pits and landscaped areas.
- b. Provide a minimum of 15-foot wide sidewalk along the festival street for safe and desirable pedestrian circulation on the site.

10. Forest Conservation

The proposed development shall comply with the conditions of the forest conservation plan. The applicant shall satisfy all conditions prior to recording of plat(s), or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permits:

- a. Submission of financial security to M-NCPPC for tree planting needed to meet afforestation requirement.
- b. Approval of Maintenance and Management Agreement by M-NCPPC staff prior to first inspection of planted areas.
- c. Required site inspections by M-NCPPC monitoring staff per Section 110 of the Forest Conservation Regulations, as applicable.

11. Noise Study

Prior to building permit release for Building A, the "Point Tower", compliance with all exterior/plaza and interior noise mitigation recommendations and detailed building shell analysis as specified in report entitled "Phase I Traffic Noise Analysis - White Flint Crossing" Report #5283 by Polysonics Corporation dated 01/26/2006:

- a. Certification from an acoustical engineer that the building shell for residential dwelling units will, if constructed in accord with the specified acoustical criteria, attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn.
- b. Commitment by the builder to construct in accordance with the acoustical design criteria as specified in the noise report. An acoustical engineer must approve any

changes to the building shell construction that may affect acoustical performance in writing with copy to MNCPPC staff prior to implementation.

12. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated September 8, 2005.¹³ Development Program

Applicant shall construct the proposed development in accordance with the Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of certified site plan. The Development Program shall include a phasing schedule as follows:

- a. Streetscape improvements including paving, lighting, street furniture and tree planting for Woodglan Avenue, Executive Boulevard, Rockville Pike (including the rain garden), Festival Street, and the service lane shall be installed as site construction is completed, but no later than six months after issuance of the first use and occupancy permit for buildings with frontage on the applicable street. A copy of the use and occupancy permit shall be provided to site plan enforcement staff within 10 days of issuance so that staff can initiate the inspection process.
- b. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
- c. Phasing of dedications, stormwater management, sediment/erosion control, pedestrian paths, trip mitigation or other features.
- d. The Plaza (and associated pedestrian access walkways) including all paving, planting, lighting, fountain, site furnishings and public art shall be completed no later than six months after the issuance of the first use and occupancy permit for buildings A or B. A copy of the use and occupancy permit shall be provided to site plan enforcement staff within 10 days of issuance so that staff can initiate the inspection process.
- e. The rooftop courtyard and recreation amenities proposed for the courtyard and in interior spaces within the residential buildings shall be completed no later than 6 months after the issuance of the first use and occupancy permit for residential units in buildings A or C. A copy of the use and occupancy permit shall be provided to site plan enforcement staff within 10 days of issuance so that staff can initiate the inspection process.

14. Demolition, Clearing and Grading

No demolition, clearing, or grading, prior to M-NCPPC approval of certified site plan of plans, except for the existing hotel structure.

BE IT FURTHER RESOLVED THAT the Board hereby grants the Applicant's request to (1) reduce the amount of parking required for the retail use, pursuant to Section 59-E-3.32; and (2) to reduce the residential parking requirement by 15%, pursuant to Section 59-E-3.33; and

BE IT FURTHER RESOLVED, that all site development elements shown on White Flint Crossing plans stamped by the M-NCPPC on March 6, 2006, shall be required except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and other evidence contained in the Record, which is hereby incorporated in its entirety into this Resolution, the Montgomery County Planning Board FINDS that:

1. *The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Montgomery County Code § 59-D-1.64.*

The Board finds that the Site Plan is in conformance with the approved development plan, G-830, for the TS-M zoned property, as approved by the District Council on September 20, 2005. Below, are listed the binding elements and a brief discussion demonstrating the conformance:

(i) Development of the property shall be limited to 649,114 square feet of development (that includes 60,000 square feet of cellar space). The total amount of residential development on the property (including the number and percentage of MPDUs) may increase as a result of the conversion of commercial to residential use so long as the ground floor of each building remains commercial (except for residential lobbies and other ancillary residential uses associated with those buildings at the ground level). The minimum amount of commercial development will be 130,000 square feet.

The proposed site plan includes 649,114 square feet of development, including approximately 59,900 square feet of cellar space. The first floor of each building is proposed and approved for commercial use. A total of 163,100 square feet of the project (not including cellar space) will be devoted to commercial uses.

(ii) The Applicant shall provide up to 15% of the total number of residential units as MPDUs depending on the amount of the density bonus achieved by the Applicant pursuant to Chapter 25A of the Montgomery County Code, as amended 2004. The total number, mix and location of the residential units, including the MPDUs, shall be determined at site plan. All MPDUs shall be provided on site.

The Site Plan Application proposed and the Board approves up to 440 dwelling units including 15% MPDUs. The MPDUs include the same proportional mix of unit types as the market rate units. A letter dated April 10, 2006 from Montgomery County Department of Housing and Community Affairs states that the number, mix, and ratio of the MPDUs, as presented, is acceptable.

(iii) The following maximum height limitations shall apply to the development: (i) up to 24 stories for the building A located at the northeast corner of the property along Rockville Pike, (ii) up to six stories for the building(s) located along Woodglen Drive and (iii) the height of the parking structure located west of Festival Street, if any, shall be no greater than the height of the adjacent residential building(s) along Woodglen Drive. The final determination of the height, in feet, of each of the buildings referenced on the development plan shall be made at site plan.

The following building heights were proposed and are approved by the Board: (i) Building A, located in the northeast corner of the site along Rockville Pike, will be 24 stories and 289 feet tall, as measured from the level of the approved street grade for Executive Boulevard extended, opposite the middle of the front of the building to the top of the flat portion of the roof. (The approved height does not include the rooftop penthouse structure housing mechanical equipment.) Building C, located in the northwest corner of the site, between Executive Boulevard, the service lane, Woodglen Drive and Festival Street varies in height with the grade and will be between six and seven stories. In conformance with the binding element, the height of the building along Woodglen Drive is six stories. The proposed and approved height of the building is 84 feet, measured from the level of the approved street grade opposite the middle of the front of the building along Executive Boulevard. The layout of the buildings has changed since the development plan was approved. The majority of the parking is now located below grade in an underground parking structure, rather than in a seven-story, above grade parking structure as conceptually represented on the Development Plan. The portion of the building west of Festival Street is primarily residential, with an integrated level of parking above the grocery store. The height of the building is consistent across the block, approximately 84 feet tall. However, because the site slopes from northwest to southeast, an additional floor is possible along Festival Street. This change in grade was recognized at the Development Plan stage and is represented on the approved Development Plan. Although the height of Building B was not specified in the Binding Elements of the Development Plan, the submitted architectural drawings indicate that the building will be 2 stories and 82 feet tall, as measured from the street grade along Rockville Pike opposite the middle of the front of the building to the highest point of the roof.

Staff informed the Board that, subsequent to the approval of the Development Plan, plans were submitted and reviewed by MCDPWT for the extension of Executive Boulevard. Staff further informed the Board that MCDPWT has determined that the pavement width for Executive Boulevard must be a minimum of 46 feet wide, increasing to 50 feet near its intersection with Rockville Pike. As a result, the width of the sidewalk on the south side of Executive Boulevard has decreased from 20 feet to 18 feet. Staff advised the Board that such a reduction is, in its expert view, acceptable; the Board concurs with the Staff position.

2. *The Site Plan meets all of the requirements of the zone in which it is located.*

The Planning Board finds that the Application meets all of the standards and requirements of the TS-M Zone. In its Staff Report, Staff presented a data table, which listed the Zoning Ordinance development standards requirements for the TS-M Zone, the standards approved in the Development Plan and the development standards proposed for approval. The Board finds that the Site Plan meets all of the requirements of the TS-M Zone, based on the aforementioned data table and other relevant information contained in the Staff Report describing the requirements of the TS-M Zone, and Staff and Applicant Hearing testimony. The development standards approved by the Planning Board are set forth below:

Approved Development Standards
(TS-M Zone)

Development Standard	Approved by Planning Board for Site Plan No. 820060170 and Binding on Applicant
Min.Gross Tract Area (sf.):	257,309 (5.907 ac.)
-Exec. Blvd. Dedication	42,112
-MD 355 Dedication	26,535
Net Lot Area (sf):	188,662 (4.33 ac.)
Gross Floor Area (sf.)	
-Commercial retail on or above grade	163,100
-Commercial-cellar space (not incl. In FAR)	59,900

-Total Commercial	223,000
-Base Residential	349,274
Total FAR square Footage	512,374 (1.99 FAR)
Bonus Residential Density	76,840 (22% of base)
Total Residential incl. MPDUs	426,114
Total FAR square footage plus Bonus Residential Density	589,214 (2.29 FAR)
Total square footage incl. cellar space	649,114
Number of Residential Units	
-Market Rate	374
-MPDUs	66 (15% of Total)
Total Number of Residential Units	Up to 440
Open Space (%/sf):	
-Public Use Space	10%/18,867
-Active/Passive Rec. Space	25%/47,165
Total Open Space	35%/66,032
Maximum Building Height:	
-Building A	24 Stories (289 feet)
-Building B	2 Stories (82 feet)
-Building C	6-7 Stories (84 feet)
Building Setbacks (ft.):	
-Building A - Rockville Pike	10
-Building A – Exec. Blvd.	1
-Building B - Rockville Pike	10
-Building B – Service Lane	11'-6" (from curb)
-Building C –	20 (from curb)

Woodglen Dr.
 -Building C – Exec.
 Blvd. 18 (from curb)

Parking (Residential-
 market rate):
 (37) Eff. Units 37
 @1sp./unit
 (206) 1BR @1.25 258
 sp/unit
 (122) 2 BR 183
 @1.5sp/unit
 (9) 3 BR@ 2.0 sp/unit 18

Parking (Residential-
 MPDUs):
 (7) Eff. Units 4
 @.5sp./unit
 (36) 1BR @.625 23
 sp/unit
 (21) 2 BR @.75sp/unit 16
 (2) 2BR + 3
 Den@1.5sp/unit
 Total Residential
 Parking 461*, **

Parking-Commercial
 (See table on page 14
 of Staff Report)

Total Commercial and
 Residential Parking 1,550**

*15% credit taken for proximity to Metro per Section 59-E. 3.33(a).

**The total number of residential parking spaces provided will be based on final unit count.

3. *The location of the building and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe and efficient.*

a. Buildings

Staff advised the Board that a podium of mid-rise buildings has been introduced to shape a strong pedestrian-focused public realm in and around the project. The scale of the podium ranges from 4-7 stories and is comprised of ground floor retail uses and residential uses above. At one location within the development, the Applicant proposes a "point tower", to create a landmark gateway for the southern edge of the White Flint area. Staff advised the Board that such an approach to crafting urban blocks and districts is a proven method of making successful high-density neighborhoods, citing successful examples of this approach in Vancouver, Seattle, San Diego, and Toronto.

A majority of the project's ground floor space will be devoted to various retail uses, restaurants, and an anchor retail space that is proposed to house a "Whole Foods" grocery store. Additionally, a partial second floor of retail will be provided along the eastern half of the project. The retail and restaurant uses are envisioned to serve the surrounding residential neighborhood to the west, the residential component of the project itself, and the employees of several office buildings both to the north and south of the Property.

A residential component, consisting of two to three buildings of varied character and scale will be located above the retail element. A landmark hi-rise residential building with a two-story retail podium is proposed at the corner of Rockville Pike and Executive Boulevard. A smaller two-story mid-rise building is proposed adjacent to this building, also along Rockville Pike. A third building is proposed along Woodglen Drive in the form of a four to seven story mid-rise residential/retail building. The third building will contain two-story retail along a portion of its perimeter and single story retail along Executive Boulevard and part of Woodglen Drive.

The majority of the project's parking will be housed in a below-grade parking structure that is accessed from the new Service Lane and from Executive Boulevard. A smaller portion of the project's parking will be located in an above-grade parking structure in the western block that will be accessed from Woodglen Drive.

Service access for the project is handled discreetly along a proposed Service Lane at the project's southern edge. Service points for both the project and the adjacent office buildings to the south are located along this narrow street. This service approach removes this use from the more public street edges around the project.

The project is envisioned as both a Smart Growth Project, sited near the White Flint Metro and certified by the Smart Growth Alliance, and a Green Development. The project is foreseen to be capable of achieving at least 21 LEED points. This achievement clearly heightens the project's status as a green development in addition to its many smart growth qualities. The green building features that will achieve the LEED points are currently under investigation to determine the most appropriate set of green development features that the project will be able to provide.

b. Open Space

The plan proposes approximately 10% (18, 866 sf) of the site will be in public open space, meeting the 10% minimum requirement. The open space is located primarily along both sides of the Paseo (Festival Street) adjacent to the improved public right of way along Rockville Pike and includes the pedestrian accessway between Rockville Pike and the internal plaza. Approximately 25% of the site is devoted to Active and Passive Recreation Space, again meeting the minimum 25% requirement of the TS-M zone. The active and passive recreation space includes the courtyard and swimming pool area associated with Building C, a majority of the internal Plaza area, landscape areas and sidewalks along the service drive, narrow strips of sidewalk 1-2 feet in width along the Woodglen and Executive Boulevard frontages, the residential lobby of Building A, and an internal corridor between the parking structure and the Paseo. Staff advised the Board that, in its expert view, internal corridors, building lobbies and on parking lot islands do not fulfill the intent of passive and active recreation space; and, therefore, Staff had recommended the addition of a condition, which requires that the plans be revised to demonstrate on the certified site plan plans that requirements for both the amount and nature of the public use and active and passive recreation space are fully met.

The proposed stormwater management concept consists of on-site channel protection measures via underground storage; on-site water quality control via separator sand filters or Stormfilters and a possible green roof. On-site recharge will not be required. Stormwater Concept was approved by DPS on July 5, 2005 and reconfirmed on March 15, 2006.

c. Landscaping and Lighting

The proposed landscape of the White Flint Crossing Project, as amended by the conditions above, is designed to provide an engaging and pedestrian-friendly urban experience and is adequate, safe, and efficient. In keeping with the North Bethesda Master Plan, it places special emphasis on human scale and ease of access appropriate to the developing urban fabric of the White Flint transit stop

area while at the same time relating to the program of the proposed buildings. Streets and sidewalks are sufficiently separated from the automobile and sheltered by canopy trees to provide pedestrian safety and comfort. Café areas and small places for public gathering and relaxation are arranged throughout the project to foster active, busy, and safe public space.

Detailing of the site is intended, like the architecture, to be contemporary, while also establishing a unique character for the White Flint Community. Details such as small-sized stone and concrete pavers, small benches, and hedges and varied ground covers; all work toward providing a rich walking experience.

Environmental sustainability is emphasized throughout. A biofilter "Rain Garden", along Rockville Pike, provides for sustainable treatment of stormwater while lessening irrigation needs, revealing ecological process, and providing a place to display native plantings in an ornamental manner. Native plants are used throughout the development wherever possible. Non-invasive, non-native plantings are proposed only where site conditions are too difficult for native plantings. Paving materials and site structures are sourced locally whenever possible and sustainable production is favored in the selection process.

In the center of the project is a main plaza and primary gathering space. Its dynamic oval shape juxtaposed with the axial routes of the Paseo street and the walkway connection to Rockville Pike provides a multi-use space for strolling, relaxing, café seating, and small community events and performances. Its design theme is inspired by the geological significance of the White Flint name.

d. Recreation

The project meets the requirement for recreation as shown in the Recreation Amenity Analysis Table, included at page 15 of the Staff Report. As noted above, the Board has conditioned its approval of the site plan on the provision by the Applicant of additional details on the certified site plan in order to ensure the internal recreation facilities meet the guidelines.

e. Vehicular and Pedestrian Circulation

The Board finds that, as conditioned, the vehicular and pedestrian circulation will be adequate, safe and efficient. This plan encourages the development of active urban streets and improves the quality of the pedestrian environment by providing enhancement of the streetscape as envisioned by the master plan.

Careful consideration has been given to pedestrian and vehicular movements in and around White Flint Crossing. Executive Boulevard will be extended from

Woodglen Drive to Rockville Pike as part of the subject development. In addition the "superblock" formed by the surrounding roadways will be broken down into a smaller block by introducing an internal "Festival" street known as the Paseo. All the perimeter and internal sidewalks systems will incorporate special streetscape treatment including special paving, lighting and landscape planting. Following is a detailed description of the major pedestrian and vehicular spaces proposed as part of White Flint Center.

i. Executive Boulevard extended from Woodglen Drive to Rockville Pike:

The extension of Executive Boulevard from its current terminus at Woodglen Drive east to its intersection with Rockville Pike represents the implementation of a significant Master Plan recommended road improvement.¹ Executive Boulevard will be constructed as a four-lane (46-50 feet of paving) wide roadway. It is envisioned that parallel parking will be provided along both sides of the street until such time that traffic volumes require the lane be used for circulation.

Streetscape improvements will be provided on both sides of the street. A shared-use sidewalk, a minimum of eight-feet-wide will be located on the north side of Executive Boulevard. A five-foot wide tree panel with shade trees located approximately 24 feet on center underplanted with shrub masses and ground cover is proposed. Pedestrian scale street lighting is proposed. A small café area approximately 8 feet in width is proposed along the Whole Foods grocery store frontage. The Board's approval of the Application is subject to a condition that requires that the sidewalk on the south side of Executive Boulevard be a minimum of seven feet wide, free of café seating.

Associated with the alignment of Executive Boulevard extended is the issue of the Executive Boulevard/MD 355 intersection, and its potential impact on the access point to Fitzgerald's Auto Park facility ("Fitzgerald"), which is located on

¹ The Planning Board received correspondence and testimony in opposition to the proposed alignment of Executive Boulevard Extended. The Board also received correspondence and Hearing testimony from the Applicant on this issue. In addition, Staff testified in support of the proposed alignment. Having considered all the evidence and testimony of record, the Board found the proposed alignment to be in substantial conformance with the Master Plan. The Board's master plan substantial conformance finding, including the bases for that finding, is included as a part of the Board's Preliminary Plan Opinion for White Flint Crossing; master plan conformance is not a required finding at site plan review.

the east side of Rockville Pike, across from the Subject Property.² During its deliberations at the Hearing, the Board addressed Fitzgerald's concerns regarding a staff-recommended Preliminary Plan condition, which had required Applicant to reconstruct Fitzgerald's driveway. The Board spent a great deal of time discussing and soliciting testimony on various aspects of the Executive Boulevard/MD 355 intersection, including the existing access point to Fitzgerald's property. The Board is persuaded, based on the testimony of its Staff and the Applicant's civil engineer, that the Maryland State Highway Administration ("SHA") has jurisdiction over all median modifications and access points within the Rockville Pike right-of-way. The record is clear that the SHA does not support the installation of a traffic signal at that intersection at the present time, for reasons set forth in a letter dated March 31, 2006 to Transportation Planning Staff. That letter also makes clear the position of SHA that motorists exiting the Fitzgerald Auto Park should be allowed to turn left, onto southbound Rockville Pike. Having heard the concerns of Fitzgerald that the extension of the MD 355 median northward would inhibit or render unsafe such left turns from Fitzgerald Auto Park, the Board obtained a commitment from the Applicant that no such median extension would be constructed until, and if, traffic lights are approved and installed at the intersection. The Board notes, however, that the Preliminary Plan conditions, as proposed and approved, did not and do not require such a northward extension of the median. The above-discussed SHA letter is clear that the only turning movement prohibited in the intersection is the left turn from eastbound Executive Boulevard onto northbound Rockville Pike; the Preliminary Plan conditions of approval are consistent with this SHA requirement.

² During its deliberations at the Hearing, the Board addressed Fitzgerald's concerns regarding a staff-recommended Preliminary Plan condition, which had required Applicant to reconstruct Fitzgerald's driveway. The Board spent a great deal of time discussing and soliciting testimony on various aspects of the Executive Boulevard/MD 355 intersection, including the existing access point to Fitzgerald's property. The Board is persuaded, based on the testimony of its Staff and the Applicant's civil engineer, that the Maryland State Highway Administration ("SHA") has jurisdiction over all median modifications and access points within the Rockville Pike right-of-way. As such, if in the future SHA approves a signalized intersection, the existing Fitzgerald property access point shall be relocated, as required. At the Hearing, the Board crafted a Preliminary Plan condition, which, in the event SHA requires the installation of a traffic signal, requires the Applicant to: (1) reconstruct the aforementioned access point; (2) work with Fitzgerald on a plan to reconfigure that portion of the existing Fitzgerald parking lot that is directly impacted by the relocation of the access point; and (3) pay all reasonable expenses associated with such reconfiguration. The Board finds that such a condition was reasonable, promotes safety, and is fair to Fitzgerald, in that the Applicant will bear the reasonable costs of reconfiguring those directly impacted portions of Fitzgerald's parking lot.

ii. "Festival Street" also known as the Paseo:

Staff advised the Board that the Festival Street is a private street that has been introduced into the project to break down the scale of the block framework and to offer an important mid-block pedestrian connection from Nicholson Lane to Security Lane. It is envisioned as a multi-use public space that will provide limited automobile access through the property and more importantly, will frequently be restricted to pedestrian use for weekend functions and special events in conjunction with the Public Plaza.

Staff noted that the Festival Street is conceived to be similar in character to a "Mixed Street", as described in the Master Plan. It will include a row of parallel parking spaces on the west side of the street and will be a relatively narrow, (approximately 28 feet wide including parking) bollarded, tree-lined street that emphasizes the pedestrian and de-emphasizes the automobile. The entire width of the street from building face to building face is proposed to be paved using concrete pavers, granite banding, and flush granite curbs. The special paving extends across the crosswalks proposed at either end of the Paseo. Decorative bollards and steel or bronze pots filled with seasonal plantings help define the limits of the vehicular space. No garage access is proposed from the Paseo at this time. Street trees, approximately 24-feet on center, and special decorative, pedestrian scale street lighting is also proposed.

iii. The Public Plaza:

The Public Plaza is located in the center of the project and is the primary public space element around which the entire project is focused. Staff informed the Board that the Plaza is envisioned as an urban room physically defined by the five-six story residential/retail buildings that surround it and encircled by two-story retail shops which define its public character. Restaurants and outdoor café seating will be located around its perimeter and will substantially contribute to its animation.

Physically, the space will include a combination of hardscaped plazas, landscaped areas, outdoor café seating areas, an elaborate fountain, and programmable space for public functions that will be open and inviting to all. The primary piece of public art designed by artist Jim Sanborn will be installed in the Public Plaza. The space is connected to Rockville Pike, Executive Boulevard, the Service Lane, and to Security Lane by a series of specially designed landscaped sidewalks. Access to the underground parking garage will be provided directly to the Public Plaza.

iv. Rockville Pike:

The proposed buildings will be set back approximately 10 feet from the Rockville Pike right-of-way, creating a strong street edge which defines the pedestrian zone. The proposed sidewalk along Rockville Pike will vary slightly in width with the fenestration of the adjacent building façade from 14'-21'. This strong orientation to the street contributes to the goal of making this portion of Rockville Pike into an Urban Boulevard and the main street for North Bethesda. The Board's approval is subject to a condition that requires this edge be "activated" and that long expanses of blank building walls at pedestrian scale be avoided.

Staff informed the Board that large overhead utility lines are located along both sides of Rockville Pike. The overhead lines are located high enough so as not to prohibit the planting of street trees. The proposed streetscape treatment includes street trees (approximately 25 feet on center), hedges and ground cover planting, concrete pavers with decorative granite insets, bands of stone paving at the pedestrian walkway to the Plaza, decorative street and pedestrian scale lighting, benches, a new bus shelter, several pieces of public art and the introduction of an innovative "rain garden".

The location of a 24 story, "point tower" building along Rockville Pike, at its intersection with Executive Boulevard extended, will act as a an important landmark and will help distinguish the southern edge of the White Flint Urban District.

v. Woodglen Drive:

Existing Woodglen Drive consists of an 85 foot wide right-of-way. Buildings will be set back approximately one foot from the right-of-way and about 20 feet from the curb. The six-story building proposed along Woodglen Drive consists of grocery store at the ground level with one floor of parking and four floors of residential above. Parallel parking along the curb is anticipated along Woodglen Drive. Overhead utility lines will either be relocated to the west side of the road or as recommended in the preceding conditions, will be located underground.

A 10-foot wide sidewalk consisting of concrete pavers and granite cobble panels and decorative inserts is proposed. The decorative paving extends across the garage entrances and in the crosswalk across the service drive. The sidewalk will also function as an interim bike path until the bike path is constructed on the west side of Woodglen Drive. For this reason, DPWT has requested that the proposed outdoor café area be eliminated from the Woodglen frontage. Street trees, approximately 30-feet on center underplanted with masses of shrubs and groundcovers and decorative pedestrian scale street lighting are also proposed.

vi. Service Lane:

A Service Lane forms the southern boundary of the project site connecting Woodglen Drive with Rockville Pike. Access to the parking garage and to building loading areas is provided via the Service Lane. In addition underground vaults for stormwater management and garage intake and exhaust vents are proposed to be located in this area.

Pedestrian access is provided along both sides of the service lane by relatively narrow, five-foot-wide, colored concrete sidewalks, appropriate to the secondary scale of the street. The sidewalk treatment continues across the driveway entrances to the parking garage and loading areas featuring saw-cut joints in a pattern to safely demarcate and differentiate the vehicular zone. Tightly spaced (approximately six feet on center) Ginkgo trees line both sides of the narrow Service Lane creating a more pedestrian friendly route. A series of trellis' and screens planted with vines soften the blank facades of the building at pedestrian level. The Board's approval of the Site Plan is subject to a condition that requires construction details for the trellis and screens be added to the certified site plan plans. A unique and highly desirable element of the service lane is the proposed lighting. Lighting in this area is proposed to be provided by light fixtures suspended on overhead cables and by ground mounted light bollards.

vii. Secondary pedestrian connections:

- Staff advised the Board that a series of proposed pedestrian connections will help contribute to the urban nature and pedestrian friendly character of the development. A barrier free accessible route has been provided from Rockville Pike directly to the plaza area. This connection is also important in that it provides visual access from the Pike into the public plaza and its shops and restaurants. A connection to the Rockwall I and II office buildings and Security Lane has been introduced from the Festival Street to an existing pedestrian connection to Security Lane.

4. *Each structure and use is compatible with other uses and other Site Plans and with existing and proposed adjacent development.*

The Board's approval is subject to conditions of approval requiring that views of the parking garage be completely screened from view of the abutting residential development existing on the west side of Woodglen Drive. The Board finds that, with the implementation of such screening, each proposed structure and the mixed-use nature of the development is compatible with other uses and other Site Plans and with existing and proposed adjacent development. The Board notes that the record includes correspondence from the Fallstone Homeowners' Association—which confronts the Subject Property across Woodglen Drive—

expressing significant support for the project. The Board addresses, in its Preliminary Plan Opinion, concerns raised by speakers related to traffic and transportation-related matters. To the extent such matters are considered issues of compatibility, the Board incorporates herein the relevant Preliminary Plan findings.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation.*

Forest Conservation requirements are being met by the provision of 0.89 acres of afforestation consisting of shade tree canopy on-site and within the surrounding road rights-of-way.

6. The Board finds, pursuant to Section 59-E-3.1(b)(3), that shared parking internally, and the shared parking arrangement between the subject development and adjacent Rockwal I and II office buildings is possible and appropriate at the location proposed. A portion of the Subject Property is currently developed with a surface parking lot, with a portion of the spaces currently needed to meet the parking requirement for Rockwal I and II. Staff informed the Board that the Applicant, or an affiliate thereof, owns the Rockwal I and II property and that 133 spaces must be provided on the Subject Property to satisfy the parking requirements for Rockwal I and II. The Board relies, in significant part, on the Shared Parking Analysis on page 14 of the Staff Report in arriving at its finding.

7. Pursuant to Section 59-E-3.4(a) of the Zoning Ordinance, "off-site parking spaces for development constructed in accordance with a building permit filed after June 28, 1984, may be approved by the director/planning board if . . . (2) the property proposed to be used for such required parking is plat-restricted, deed-restricted or is a meeting center restricted under a joint use agreement" Staff advised the Board that the Applicant had provided staff with a copy of deed demonstrating that the Subject Property is encumbered by a deed restriction, which guarantees the availability of the a certain amount of parking to future users of Rockwal I and II.

Y11-01112 11001 07 2A 0510777A
In a letter to Staff, dated March 21, 2006, the Applicant proposed an interim parking plan, which, during construction of the subject development, will make available sufficient parking in a nearby lot, owned by an affiliate entity of the Applicant. That lot is located less than 100 yards from the Subject Property. In addition, the Applicant proposed to make valet parking services available.

8. Pursuant to Section 59-E-3.32(a), the Planning Board approves a 15% reduction in the standard parking requirements, finding that the entrance of the proposed use is located within 1,600 feet of a metrorail entrance.

9. Pursuant to Section 59-E-3.33(a), for "multiple-family dwelling units, townhouses fourplex units, and individual living units in personal living quarters, the director/planning board may approve a 10 percent reduction in the standard parking requirement provided in Section 59-E-3.7, if such units are located within a central business district or transit station development area." In addition, "a 5 percent reduction is also allowed where such units are located within 1,600 feet of a metrorail station entrance as defined by Section 59-E-3.21." Finding that the Subject Property is zoned TS-M and is located within 1,600 feet of the entrance to the White Flint Metrorail entrance, the Board approves the above-noted parking reductions.

BE IT FURTHER RESOLVED, that this site plan shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this written opinion is SEP 28 2006 (which is the date that this opinion is mailed to all parties of record); and


BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

At its regular meeting, held on **Thursday, September 14, 2006**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Wellington, seconded by Commissioner Perdue, and with Commissioners Perdue, Robinson, and Wellington voting in favor, and with Chairman Hanson and Commissioner Bryant abstaining. This Resolution constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Site Plan No. 820060170, White Flint Crossing**.

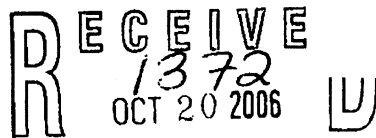
Adopted by the Montgomery County Planning Board this 14th day of September
2006.

A handwritten signature in black ink, appearing to read "Royce Hanson", written over a horizontal line.

Royce Hanson
Chairman, Montgomery County Planning Board

A handwritten signature in black ink, appearing to read "R. M. Johnson", written over a horizontal line.

Trudye M. Johnson
Executive Director



OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

October 18, 2006

Dr. Royce Hanson, Chairman
and Members of the Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

**Re: White Flint Crossing Preliminary Plan No.
120060310 and Site Plan No. 820060170**

Dear Dr. Hanson and Members of the Board:

I am writing this letter on behalf of the Fallstone Homeowners' Association (the "Association") of which I am the president. The Association recently received a copy of the letter from Stephen Orens, the attorney for Fitzgerald Auto Malls, who asked the Planning Board to reconsider its approvals of the above plans. We oppose the request and urge the Planning Board to deny it.

Our community is located to the west of the White Flint Crossing proposed development, across Woodglen Drive. We are most directly impacted by this development. Our community has participated in the development approval processes since the zoning case and found the developer, JBG Companies, to be very approachable and receptive to addressing the Association's concerns about the project. Throughout the approval process, JBG Companies has continued to keep our community informed about the project. They have met with us, shared plans and continued to be a good neighbor. As a result, we think that White Flint Crossing is a good project that benefits our community.

The Association opposes Fitzgerald Auto Malls' reconsideration request because all the issues raised in it have already been raised and addressed during the site plan and preliminary plan process and

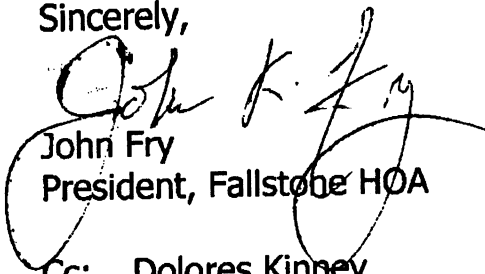
Dr. Royce Hanson
Members of the Planning Board
October 17, 2006
Page 2

at the hearing for both plans. It is clear that Fitzgerald Auto Malls primarily objects to the extension of Executive Boulevard in the location shown on the White Flint Crossing plans. The Planning Board and its staff (and DPWT staff) have fully considered the issue and the Planning Board have rendered a thoughtful decision to maintain the alignment of Executive Boulevard as shown on the White Flint Crossing plans. We understand that this is the correct Master Plan alignment and that any future alignment to the east of Rockville Pike would be finalized when or if the Fitzgerald Auto Malls' property redevelops. There is nothing about the Planning Board's decision that needs to be reconsidered.

We object to any action, including the present request for reconsideration that will further delay the project. We think White Flint Crossing will benefit our community, particularly the new Whole Foods store, and we do not want to jeopardize that with delay. Also, as an association, we have devoted a significant amount of time to this development. While we certainly value the process here in Montgomery County, we feel strongly that all processes and procedures have been followed and that all parties have been given ample opportunity to present their issues and concerns to the Board without the need for another unnecessary and duplicative review. This project should move forward to the construction phase now and we urge your support for this position. We appreciate your consideration of our position and would request that this letter be placed in the record for both plans. As neighbors that are directly affected by the White Flint Crossing proposal, we respectfully request that the Planning Board deny Fitzgerald Auto Malls' request for reconsideration.

Dr. Royce Hanson
Members of the Planning Board
October 17, 2006
Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "John Fry", with a large, stylized flourish extending from the end of the signature.

John Fry
President, Fallstone HOA

Cc: Dolores Kinney
Rose Krasnow
Linda Komes
Tariq el Baba, Esquire
Rod Lawrence (JBG Companies)