



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
ITEM #
11/29/07



MEMORANDUM

DATE: November 19, 2007

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Catherine Conlon, Subdivision Supervisor (301-495-4542)
Development Review Division *CC*

REVIEW TYPE: Preliminary Plan Amendment

APPLYING FOR: Establishment of a Phasing Schedule for the Plan and Adequate Public
Facilities Validity Periods

PROJECT NAME: North Bethesda Town Center (LCOR-White Flint)

CASE NO. 12004049A

REVIEW BASIS: Pursuant to Chapter 50, the Subdivision Regulations

ZONE: TS-M and I-1

LOCATION: On the east side of Rockville Pike (MD 355) between Marinelli Road and
Old Georgetown Road (MD 187)

MASTER PLAN: North Bethesda-Garrett Park

APPLICANT: LCOR White Flint, LLC

ATTORNEY: Linowes and Blocher

FILING DATE: September 7, 2007

HEARING DATE: November 29, 2007

Staff Recommendation: Approval, subject to the following conditions:

- 1) Replace existing Condition #15 as follows:
 - 15) Record plats for this project may be recorded in phases. Prior to the end of each phase, final record plats must be recorded for all development included in the phase, or a request for extension must be filed. The Phasing Schedule is as follows:
 - Phase I (expires April 22, 2008): 312 dwelling units and 61,250 square feet of general retail.
 - Phase II (expires April 22, 2011): 323 dwelling units, 115,210 square feet of general retail and 355,000 square feet of commercial.
 - Phase III (expires April 22, 2014): 640 dwelling units, 25,577 square feet of general retail and 792,200 square feet of commercial.
 - Phase IV (expires December 2, 2015): All remaining development.
- 2) A new Condition #17 to read as follows:
 - 17) The Adequate Public Facilities (APF) Review for the Preliminary Plan will remain valid for twelve (12) years, or one hundred forty-four (144) months from the date of mailing of the Planning Board's Revised Opinion for Pre-Preliminary Plan 7-04001 (date mailed: December 2, 2003).
- 3) All other conditions of approval as contained in the Planning Board Resolution dated March 22, 2005 remain in full force and effect.

SITE DESCRIPTION and SURROUNDING AREA:

The subject property consists of approximately 32 acres and is located on the east side of Rockville Pike (MD 355) approximately 2,000 feet south of its intersection with Montrose Road (see Attachment A). The property is bounded on four sides by roads: Rockville Pike on the west, Old Georgetown Road on the north, Nebel Street on the east and Marinelli Road on the south. The site currently contains the White Flint Metro Rail Station, a public parking garage for Metro patrons, and a multi-family residential building with some retail that is complete, or nearing completion as part of the first phase of the subject development. The majority of the property is zoned Transit Station Mixed with a small area of I-1 Light Industrial.

BACKGROUND

The preliminary plan for North Bethesda Town Center was presented to the Planning Board on September 30, 2004 for approval of 9 lots with 1,350 Multi-Family Residential Units including 169 MPDUs, 1,148,000 square feet of Commercial Office, 202,037 square feet of

General Retail with a possible supermarket, and an 80,000 square foot Theater with matinees and a 3,500-seating capacity (Attachment B). The Planning Board approval was granted subject to conditions as set forth in the Opinion of the Board dated March 22, 2005 (Attachment C). The first site plan for the project (Site Plan #820050340), covering 312 multi-family dwellings, including 39 MPDUs, and 61,246 square feet of retail, was approved by the Board on December 19, 2005.

Prior to these approvals, the property was rezoned from the R-90 zone to the TS-M (Transit Station, Mixed) zone. That zoning case was designated as Case No. G-801, and was adopted by the Montgomery County Council in April, 2003 as documented in Resolution #15-151. A Pre-Preliminary Plan was also approved by the Board under Section 50-33A of the Subdivision Regulations in October, 2003 (Pre-Preliminary Plan No. 7-04001). With that action, the Planning Board made a decision on the adequacy of school facilities for the proposed subdivision under the Ceiling Element for the FY 2004 Annual Growth Policy (July 2003), and the adequacy of road and public transportation facilities of the proposed subdivision under the Alternative Review Procedures for Metro Station Policy Areas in the FY 2002 Annual Growth Policy (November 2001). The conditions of the Pre-Preliminary Plan approval were specified in a Planning Board Opinion dated December 2, 2003 (see Attachment D).

PROPOSED AMENDMENT

The subject preliminary plan amendment requests Planning Board approval of an extended twelve-year phasing schedule for recordation of plats for the development, and establishment of a twelve-year Adequate Public Facilities (APF) validity period. The previous Pre-Preliminary and Preliminary Plan approvals limit plan validity (as to the period in which record plats must be recorded) to 37 months from the date of the Preliminary Plan Opinion (April 22, 2008), and do not establish a specific validity period for the APF approval.

In a letter dated September 6, 2007, as amended by letter dated November 12, 2007 (Attachments E and F), Mr. Stephen Elmendorf from the law firm of Linowes and Blocher LLP (the "Applicant's Representative") has provided justification for the proposed amendments on behalf of LCOR White Flint, LLC (the "Applicant"). As to the extended preliminary plan validity period, Mr. Elmendorf states that although the Development Plan approved with the rezoning of the property anticipated development in phases, the Applicant did not have an accurate indication of how quickly various elements of this mixed-use project would proceed through the development approval process, and thus, did not submit a phasing plan as part of the Preliminary Plan approval. Instead, the Applicant accepted the traditional 3-year record plat validity period with the intent of submitting a comprehensive and accurate record plat phasing schedule before the 3 years expired. The Applicant has now developed its own comprehensive master schedule for the development and completion of construction for the entire project and is presenting a phasing schedule for plat recordation that is consistent with that master schedule.

The Applicant's Representative points out that the Applicant is diligently pursuing the phased site plan approval for this project although some delays have occurred. These have been due in part to the recent decline in the demand for office space, the Applicant's decision to pursue a non-residential use that will require special exception approval, and time spent by the

Applicant in exploration of opportunities to accommodate more development on this site through a development plan amendment associated with potential revisions to the White Flint Sector Plan. Now that the Applicant has opted not to pursue additional development, they intend to file site plan applications for site-wide infrastructure and additional residential, commercial and retail uses later this year. It is the Applicant's intent to have all record plats recorded within 9 years, however, the additional Phase IV allows for future possible market slow-downs or other unforeseen development approval delays.

The Applicant is also requesting that a twelve year validity period be established for the APF approval associated with this project. In support of twelve years, the Applicant's Representative points to the large-scale of this mixed-use development project and the need for the maximum twelve years available under the Subdivision Regulations to secure all of the building permits needed for all components of this multi-phased project.

STAFF ANALYSIS AND RECOMMENDATION

Staff supports the Applicant's request for a twelve-year APF validity period and an extended preliminary plan validity period that permits record plats for the project to be recorded in phases over twelve years. Under Chapter 50 of the County Code (the "Subdivision Regulations") the Planning Board may establish such validity periods for multi-phase projects provided the time allocated to a phase for plat recordation does not exceed 36 months from the initiation date associated with that particular phase, and the cumulative validity period of all phases does not exceed the APF validity period. In staff's opinion, the Applicant's proposed validity periods are justified for this large, complex, multi-use development project. Staff also finds that the Applicant's proposed phasing schedule is reasonable.

The APF test for this project was approved by the Planning Board with the Pre-Preliminary Plan for this project, and therefore in staff's opinion, the APF validity period should run from the date of that approval. The approval was based on the binding elements of the approved Zoning Application No. G-801 and under the *FY 2004 Annual Growth Policy's (AGP)* Alternative Review Procedures for Metro Station Policy Areas. Under these procedures, the applicant was not required to take any actions typically required of preliminary plan applicants to satisfy Policy Area Transportation Review and Local Area Transportation Review (LATR). Instead, the applicant had to satisfy the requirements established in the *FY 2004 AGP* including entering into a Traffic Mitigation Agreement (TMAG) with the Planning Board and the Montgomery County Department of Public Works and Transportation (DPWT) to reduce at least 50% of the number of vehicular trips attributable to the subdivision for a term of 55 years (i.e., corresponding to the applicant's lease with the land owner, WMATA). The comprehensive Trip Reduction Agreement was executed and recorded on January 29, 2007.

CONCLUSION

Based on the analysis above, staff recommends approval of the preliminary plan amendment to modify the preliminary plan validity period and permit record plats to be recorded in phases, and to establish a twelve-year validity period (until December 2, 2015) for the

Adequate Public Facilities (APF) review. All other conditions of approval as contained in the Planning Board Opinion dated March 22, 2005 remain in full force and effect.

Attachments:

Attachment A – Site Vicinity Map

Attachment B – Approved Preliminary Plan

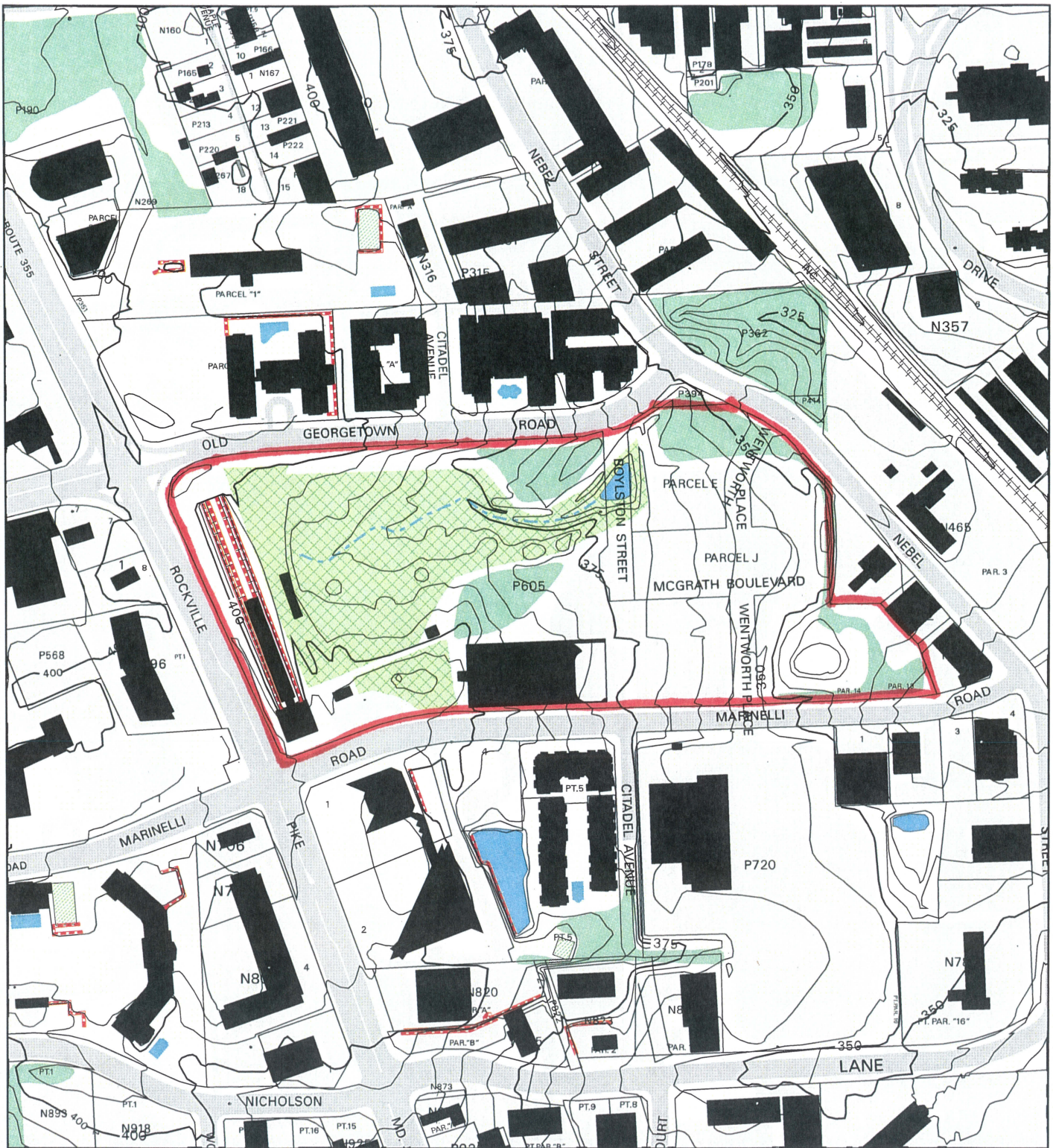
Attachment C – Preliminary Plan Opinion dated 3/22/05

Attachment D – Pre-Preliminary Plan Opinion dated 12/2/03

Attachment E – Applicant Letter dated 9/6/07

Attachment F – Supplemental Letter from Applicant dated 11/12/07

NORTH BETHESDA TOWN CENTER VICINITY MAP



Map compiled on November 19, 2007 at 2:46 PM | Site located on base sheet no - 215NW05

NOTICE

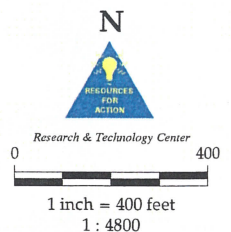
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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue - Silver Spring, Maryland 20910-3760

Key Map



GENERAL NOTES

[illegible]

LEGEND:

[illegible]

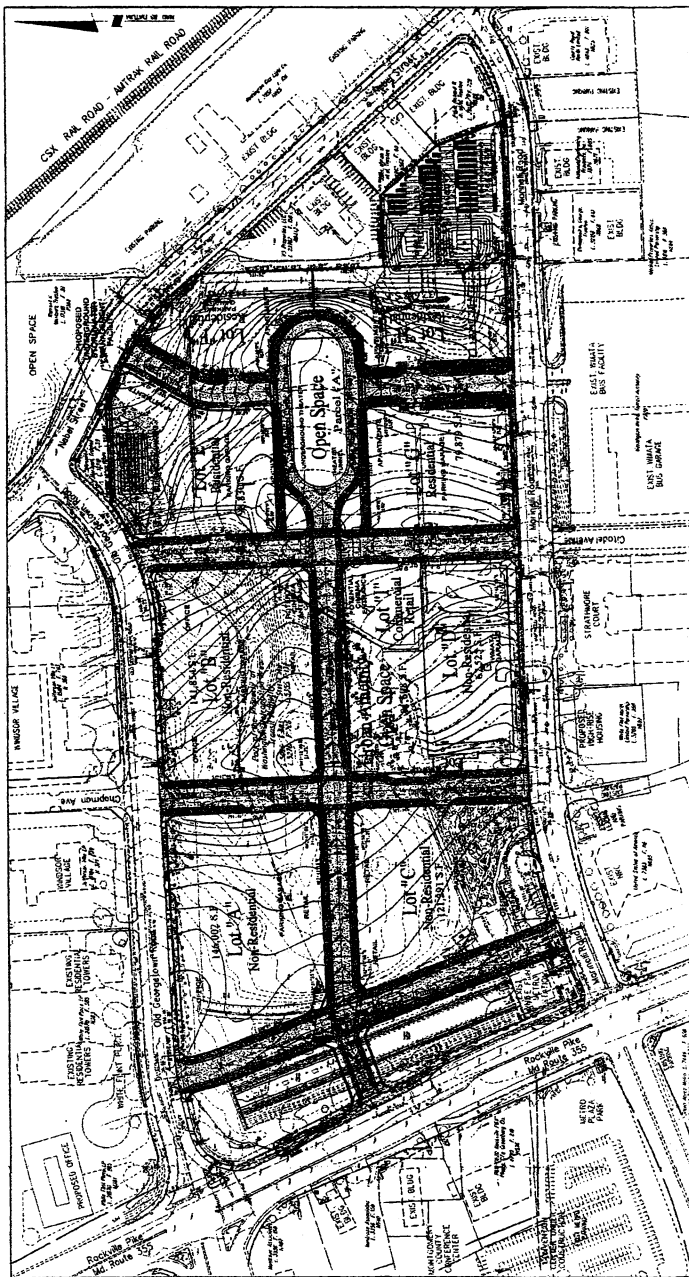
DATE OF BIRTH: 1940-01-01

USE	MINIMUM REQUIRED SPACES	SPACES PROVIDED
GARAGE, OFFICE	2600 ¹	3444 ³
IN-LT FAMILY RESIDENTIAL	1760 ⁴	1760 ⁴
APART	600 ⁵	600 ⁵
RESTAURANT	370 ⁶	376 ⁶
TOTAL	5990 ⁷	8440 ⁷
MAJOR PARKING	1300	1300

[illegible]

THE NEW YORK CITY BAR PROGRAM

USE	BUILDING PROGRAM						Project Total
	1st 2'	1st 3'	1st 4'	1st 5'	1st 6'	1st 7'	
1st Floor Area	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	6,000 sq. ft.
Non-Residential	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	1,000 sq. ft.	6,000 sq. ft.
Building Height	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.	10 ft.
Number of Units	20 units	20 units	20 units	20 units	20 units	20 units	120 units
Estimated Cost	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$600,000
Estimated Value	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$600,000
Estimated Income	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$60,000
Estimated Expenses	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,000
Estimated Profit	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$30,000
Estimated Return	5%	5%	5%	5%	5%	5%	5%
Estimated Risk	Low	Low	Low	Low	Low	Low	Low
Estimated Impact	Low	Low	Low	Low	Low	Low	Low
Estimated Benefit	Low	Low	Low	Low	Low	Low	Low
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
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Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
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Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
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Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0	10.0	10.0	10.0	10.0	10.0	10.0
Estimated Cost/Expense Ratio	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Estimated Cost/Profit Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Risk Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Impact Ratio	20.0	20.0	20.0	20.0	20.0	20.0	20.0
Estimated Cost/Benefit Ratio	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Estimated Cost/Income Ratio	10.0						



LOCATION MAP

SCALE: 1" = 100'

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1982] *Reynolds et al.* 207

SHEET INDEX:

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6. PRELIMINARY STREET GRADE ESTABLISHMENT PROFILES

ENGINEER'S CERTIFICATE

[illegible]

PRELIMINARY PLAN

Cell

THE UNIVERSITY OF CHICAGO PRESS

WORTH BETHESDA

TOWN CENTER

REVISION

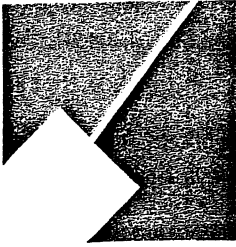
THE ELECTION DIS-

ILLIE (4th) ELECTION DISTRICT
HOMERY COUNTY, MARYLAND

10/10/10

Abstract – The purpose of this study was to determine the effect of a 12-week training program on the physical fitness of 10-year-old children. The study was conducted in a primary school in the city of Ankara, Turkey. The children were divided into two groups: a control group and an experimental group. The experimental group participated in a 12-week training program that included aerobic, strength, and flexibility exercises. The physical fitness of the children was measured at the beginning and end of the program using a series of tests. The results showed that the experimental group had significantly higher levels of physical fitness than the control group at the end of the program. The findings suggest that a 12-week training program can improve the physical fitness of 10-year-old children.

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: MAR 22 2005

Action: Approved Staff
RecommendationMotion of Commissioner Bryant,
seconded by Commissioner Perdue,
with a vote of 5-0;
Chairman Berlage and Commissioners.
Perdue, Bryant, Wellington, and
Robinson voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04049

NAME OF PLAN: North Bethesda Town Center (LCOR White Flint)

The date of this written opinion is MAR 22 2005 (which is the date that this opinion is mailed to all parties of record). 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).

INTRODUCTION

On January 13, 2004, LCOR White Flint, LLC submitted an application for the approval of a preliminary plan of subdivision of property in the TS-M and I-1 zones. The application proposed to create 9 lots on 32.42 acres of land located at on the east side of Rockville Pike (MD 355) between Marinelli Road and Old Georgetown Road (MD 187), in the North Bethesda/Garrett Park master plan area. The application was designated Preliminary Plan 1-04049. On September 30, 2004, Preliminary Plan 1-04049 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application;

all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

SITE DESCRIPTION

The subject property consists of approximately 32 acres and is located on the east side of Rockville Pike (MD 355) approximately 2,000 feet south of its intersection with Montrose Road. The property is bounded on four sides by roads: Rockville Pike on the west, Old Georgetown Road on the north, Nebel Street on the east and Marinelli Road on the south. The site is currently developed with the White Flint Metro Rail Station, a surface parking lot for Metro patrons, a golf driving range and miniature golf course, and stormwater management facilities. The majority of the property is zoned Transit Station Mixed with a small area of I-1 Light Industrial.

PRIOR PLAN APPROVALS

The TS-M zoned portion of the property was rezoned from the R-90 zone in April 2003 per County Council Resolution No. 15-151. The specifications and requirements of this rezoning have been incorporated into the approval of the Preliminary Plan per proposed condition #2.

A Pre-application Submission Application, including a Concept Plan, was submitted for Planning Board approval, pursuant to the provisions of Section 50-33A of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) in September, 2003 (Pre-Preliminary Plan No. 7-04001). The application requested a decision by the Planning Board on the adequacy of school facilities for the proposed subdivision under the Ceiling Element for the FY 2004 Annual Growth Policy (July 2003), and the adequacy of road and public transportation facilities of the proposed subdivision under the Alternative Review Procedures for Metro Station Policy Areas in the FY 2002 Annual Growth Policy – Policy Element (November 2001). The Pre-Preliminary Plan was approved by the Planning Board, with conditions on October 16, 2003. The approval conditions have been incorporated into the approval of the Preliminary Plan per proposed condition #13.

In July 2004 the Planning Board reviewed a Mandatory Referral for the Washington Metropolitan Area Transit Authority's (WMATA) Metro parking garage at White Flint, which is located on proposed Lot "D" of the subject Preliminary Plan. The Board approved the mandatory referral and transmitted comments to WMATA.

PROJECT DESCRIPTION

The preliminary plan consists of nine lots and 2 parcels. Each lot may contain up to a 20-story building with structured parking. The two parcels contain community open space and stormwater management facilities. The proposed development will contain mixed uses including: approximately 1,350 apartment units, twelve and one-half percent of these units, or 169 units will be Moderately Priced Dwelling Units; 1,148,000 square feet of Commercial Office; 202,037 square feet of General Retail; and up to an 80,000 square foot Theater. The plan preserves approximately one acre of trees, which are part of the original 4.7-acre forest and rock outcroppings of the "White Flint" in the Urban Amenity Open Space area. Site plan review pursuant to §59-D-3 is required for this project.

STAFF RECOMMENDATION

Staff recommended approval of this preliminary plan with conditions in its memorandum dated September 23, 2004 ("Staff Report"). Staff's review indicated that the preliminary plan complies with the requirements of Chapter 50, the Subdivision Regulations. Staff found that the preliminary plan will provide safe and adequate access for vehicles and pedestrians, and satisfies the APF requirements.

During Staff's review, a letter was received from the Garrett Park Estates – White Flint Park Citizens' Association ("Citizens' Association"), which expressed concern with the traffic impact from the Bethesda Town Center, in particular on Rockville Pike, and noted that the Preliminary Plan did not show the on-site daycare facility or the on-site indoor community activity space. Staff also received a letter from V3 Properties, LLC ("V3 Properties"), the owner of an adjacent property on Nebel Street. V3 Properties noted that it and its neighbors should be provided access to and through the proposed development, at a minimum pedestrian access.

PUBLIC HEARING

At the public hearing, Staff presented revised conditions of approval to the Board. Staff explained that one of these revisions included the requirement that the Planning Board grant a waiver of a section of the Subdivision Regulations requiring business district streets have an 80' right-of-way to permit rights-of way of 70 feet, which is the width required in the Road Code, Montgomery County Code Chapter 49. Staff also noted that Condition 13 restates the binding conditions of approval of the pre-preliminary plan and that the preliminary plan proposed condition reflected the correction of a mistake in the pre-preliminary plan conditions by referencing the correct fiscal year Annual Growth Policy. Other revised conditions concerned the roadways, including obtaining certain approvals from SHA and WMATA at site plan review.

Transportation Planning Staff advised the Planning Board that adequate public facilities had been addressed at the pre-preliminary plan stage and has been approved by the Board. As such, Staff testified, the primary transportation issue for the Board's consideration at the preliminary plan hearing involved the road network. Staff advised the Board that, through negotiations, the applicant, DPWT and M-NCPPC Staff had arrived at a consensus position that the streets serving the commercial area will all be public. Streets serving the residential area of the project, however, will be private. Staff noted that DPWT has agreed to maintain Bridge Street as a public street, and that traffic control at the intersection of Bridge and Station streets is being given careful consideration to ensure that there will be no backup of traffic on Rockville Pike. Staff noted the importance of that access point to the site because nearly all of the retail will be located along Main Street and that M-NCPPC, DPWT, and the applicant feel strongly that the proposed connection to Rockville Pike at Bridge Road be provided.

The applicant, through its counsel, testified that applicant agrees with Staff's recommendation and conditions of approval, including the revisions. Responding to the comments in the Citizens' Association letter, applicant's counsel advised the Board that issues related to the daycare center and recreational amenities are not properly addressed at the preliminary plan stage and will be addressed at the site plan stage. Applicant also responded to the letter submitted by V3 Properties, which requested pedestrian and/or vehicular access directly into the site at the middle of the block. Noting that the neighboring property is in an I-1 Zone, Applicant pointed out that pedestrian access exists along Nebel Street into the site. Applicant commented that it did not desire to have I-1 traffic coming through the residential component of the proposed development and, furthermore, that a significant change in grade existed between those neighboring properties and the site, which would make such a connection impractical. Moreover, the applicant argued, the proposed road/ sidewalk grid network provides adequate vehicular and pedestrian connections from virtually any direction.

A representative of the Citizens' Association read and submitted into the record a written statement. The representative pointed out what she believed was an error in excluding from the list of intersections that exceed the CLV congestion standard and requested that the information be updated. She stated that it is in the interest of the community to discourage use of Rockville Pike in favor of alternate routes such as Nebel Street. The representative advised the Board that the Citizens' Association took issue with two aspect of the Preliminary Plan: the construction of new vehicular access from Rockville Pike and the proposal to provide only private road access to Nebel Street.

In its rebuttal time, the applicant clarified that the classification of certain roads as being "private," simply relates to the party who will be charged with maintaining the road. He noted that the private roads would be built to public road standards and the public would have access to those roads. Concerning Bridge Street, the applicant noted that

Transportation Planning Staff had determined during the zoning case that the access to Rockville Pike would relieve some of the traffic congestion at the intersection with Old Georgetown Road. He also advised the Board that deceleration and acceleration lanes would be provided on Rockville Pike at the new access point.

There was considerable discussion by the Board on the amenities and open spaces to be provided and whether they would really serve the community in the manner intended. Board members told the applicant that they want assurance that the proposed amenities would be useful and appear welcoming to the public. Staff and applicant explained to the Board how, conceptually, the amenities would work. They advised the Board that the amenities and open space design will be addressed in some detail at the time of site plan review. The applicant assured the Board that it is aware of the Board's desires with respect to the amenities and open space. The Board also expressed concurrence that the intersection of Nebel and Nicholson requires improvement and asked Staff to look into the matter in order that the Board may forward a recommendation to the County to address any issues there. The Applicant noted that it was required under the alternative review procedure to perform a comprehensive intersection analysis and that such analysis had been conveyed to Staff.

FINDINGS

Having given full consideration to the recommendations of its Staff; the recommendations of the applicable public agencies¹; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

- a) The Preliminary Plan No. 1-04049 substantially conforms to the North Bethesda/Garrett Park Master Plan.
- b) Public facilities will be adequate to support and service the area of the proposed subdivision. As noted above, the adequate public facilities finding was made at the pre-preliminary plan stage.
- c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.
- d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.

¹ The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

- e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.
- f) The Record of this application contains only the following contested issues:
- Pedestrian and/or vehicular access from adjoining properties in the southeast corner of the property directly into the proposed development: The Board finds, based on evidence of record and testimony at the hearing that providing such direct access is not feasible because of problematic grade changes and the location of proposed stormwater management facilities. The Board notes that adequate access is provided in the northeast corner of the proposed site and that additional "direct" access points are not necessary. The Board further finds that the proposed road/sidewalk grid network provides adequate vehicular and pedestrian connections from virtually any direction, including the adjoining properties.
 - Access to the proposed development directly onto Rockville Pike via Bridge Street: Based on evidence of record and testimony at the hearing, the Planning Board finds that the access point at the proposed Bridge Street and Rockville Pike is critical because nearly all of the retail will be located along Main Street, which is on axis with Bridge Street; and, therefore, it is important for optimal circulation and safety that vehicles entering from and exiting to Rockville Pike have such a convenient access point. Additionally, the Board finds that the proposed access point will facilitate efficient and safe circulation of public transit vehicles on the site. The Board further finds that the proposed connection to Rockville Pike at Bridge Street will not negatively impact traffic on Rockville Pike, because, among other things, it will relieve some of the traffic congestion at the intersection of Rockville Pike and Old Georgetown Road to the north, and deceleration and acceleration lanes will be provided on Rockville Pike to the north and south of the access point. The Board is of the opinion that, in approving a development plan that included access to Rockville Pike via proposed Bridge Street—which access point was not delineated for in the master plan—and delegating final approval of the bridge to the Planning Board as a part of the Board's regulatory review of the proposed development, the District Council, the master plan approving authority, has endorsed access onto Rockville Pike via proposed Bridge Street; and, therefore, the Board's finding of

substantial conformance with the master plan can be made notwithstanding the absence of such an access point from the master plan.

- Private Road access to Nebel Street: The Board finds, based on evidence of record and testimony at the hearing, that providing access to Nebel Street via "private roads" will not discourage drivers from using those roads to access Nebel Street because those roads, when constructed, will be indistinguishable from public roads and will be open to the public.

The Board further finds that any objection (concerning a substantive issue) that was not raised prior to the closing of the Record is waived.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-04049 in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-04049, including a waiver of Section 50-26(a)(4) pursuant to Section 50-38, to permit business district streets with a right of way of 70 feet, and subject to the following conditions:

- 1) Approval under this Preliminary Plan is limited to 9 lots, 2 parcels with 1,350 Multi-Family Residential Units including 169 MPDUs, 1,148,000 square feet of Commercial Office, 202,037 square feet of General Retail with a possible supermarket, and an 80,000 square foot Theater with matinees and a 3,500-seating capacity.
- 2) Compliance with the specifications and requirements of the approved development plan for Zoning Application No. G-801, County Resolution No. 15-151.
- 3) No clearing, grading or recording of plats prior to site plan signature set.
- 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) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff.
- 6) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits.

- 7) Record plat to reflect a Category II easement over the tree save area which is part of the Urban Amenity Open Space.
- 8) Record plat to reflect all areas under Homeowners Association ownership and stormwater management areas.
- 9) Compliance with the conditions of approval of the MCDPS stormwater management approval dated May 26, 2004.
- 10) Final access and improvements, as required to be approved by MDSHA prior to issuance of building permit.
- 11) All road right-of-way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the North Bethesda/Garrett Park Master Plan, unless otherwise designated on the Preliminary Plan.
- 12) All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Bethesda/Garrett Park Master Plan, and to the design standards imposed by all applicable road codes, unless otherwise amended. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition.
- 13) Compliance with the following transportation-related conditions:

Per the Planning Board's approval of Pre-Preliminary Plan No. 7-04001:

- A. The Applicant to enter into an agreement with the Planning Board and the County Department of Public Works and Transportation to:
 1. meet trip reduction goals established by the Planning Board as a conditions of approving the LCOR Subdivision, which require the Applicant to reduce 50% of the number of weekly peak hour trips attributable to the LCOR Subdivision, either by reducing trips from the subdivision itself or from other occupants of the White Flint Metro Policy Area;
 2. participate in programs operated by, and take actions specified by the North Bethesda Transportation Management District ("TMD") established by County law fro the White Flint Metro Policy Area (or a group of policy areas including that policy area) in order to meet the TMD's mode share goals;
 3. pay an ongoing annual contribution or tax to fund the TMD's operation expenses, including minor capital items such as buses, as established by County law; and

4. pay the applicable transportation development impact tax without claiming any credits for transportation improvements.
 5. Conduct a Local Area Transportation Review ("LATR") traffic study and specify for inclusion in the County's Capital Improvements Program ("CIP") any transportation improvements needed to support the subdivision.
- B. Preliminary plan application shall conform to all other requirements set forth in Chapter 59, Zoning Ordinance, Chapter 50, Subdivision Regulations and other applicable codes.
- C. Planning Board approval of the Pre-Preliminary Plan including the alternative review procedures under Section TA1 of the FY02 Annual Growth Policy does not preclude further consideration by the Board of other trip reduction measures associated with preliminary plan or site plan review, as appropriate, e.g. location of transit stops, provision/location of Kiss-and-Ride and bus circulation areas; on-site and off-site pedestrian and vehicular circulation; on-site parking requirements; phase-in of day care facilities, and other trip reduction measures as appropriate.

Per Transportation Planning review of the Preliminary Plan:

- D. Designate the following internal streets as public commercial/industrial roads with modified cross-sections:
1. The entire length of the north-south streets between Marinelli Road and Old Georgetown Road:
 - a) Station Street
 - i) To be the main bus loading/unloading area, in lieu on Rockville Pike (MD 355) and the current on-site location.
 - ii) To possibly be one-way southward between Main Street/Bridge Street to Marinelli Road that would be determined at site plan.
 - b) LCOR's (not the master-planned business district street) Chapman Avenue
 - c) Citadel Avenue
 2. Bridge Street that is an east-west street between Rockville Pike and Station Street.
 3. Main Street that is an east-west street between Station Street and Citadel Avenue.

The remaining internal streets east of Citadel Avenue within the residential area of the proposed development would be designated as private streets – Main Street Circle and Park Avenue.

- E. Dedicate 70 feet of right-of-way for the five public business district streets with modified cross-sections. Locate PUEs outside the public right-of-way, unless DPWT agrees to relocation of PUEs at Site Plan.
- F. Coordinate with the Montgomery County Department of Public Works and Transportation (DPWT) regarding the unique cross-section design details of the five public streets and the other private streets (i.e., Main Street Circle and Park Avenue) to optimize the vehicular circulation while providing for pedestrians, bicycles, and environmental considerations.
- G. At the site plan review for safe and efficient traffic circulation to, on, and from Bridge Street between Rockville Pike (MD 355) and Station Street and as an alternative access point via the intersections with Marinelli Road and Old Georgetown Road, coordinate the design and resolve the following:
 - 1. Obtain Maryland State Highway Administration (SHA) approval of the proposed access point from Rockville Pike to Bridge Street, including right-turn-in and right-turn-out traffic control measures and associated deceleration/acceleration lanes;
 - 2. Obtain WMATA approval for deceleration/bus activity lane between Marinelli Road and proposed Bridge Street;
 - 3. Prohibit lefts-in and lefts-out at the intersections of Station Street with Marinelli Road and with Old Georgetown Road and only permit rights-in and rights-out; and
 - 4. Coordinate with DPWT regarding the installation of adequate traffic control at the intersection of Bridge Street/Main Street and Station Street to prevent excessive queuing along Bridge Street between Rockville Pike and Station Street.
- H. Coordinate with DPWT regarding their Capital Improvements Program (CIP) project for the extension of Citadel Avenue south of Marinelli Road and their Facility Planning Study for Chapman Avenue north of Old Georgetown Road.
- I. Prior to Site Plan review, coordinate with WMATA and DPWT to relocate the surface kiss & ride, handicapped parking, bus bays, taxi stands, and other parking facilities for the White Flint Metrorail Station on the subject site.
- J. At site plan review, provide the specific details regarding pedestrian and bicycle connections to all residential and non-residential development including the following amenities:

1. Provide 160 bicycle spaces based on 20 spaces per garage for 8 garages with a mixture of bike lockers and bike racks. Coordinate with Transportation Planning staff on appropriate locations and types of bike parking facilities throughout the site.
 2. Provide an 8-foot bikeway along Rockville Pike (MD 355).
- 14) Compliance with the conditions of the MCDPWT letter dated July 15, 2004 as amended September 21, 2004, and as may be further amended.
- 15) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of the Planning Board opinion. Prior to that date a final record plat must be recorded for all the property delineated on the approved preliminary plan, or a request for an extension must be filed.
- 16) Other necessary easements.

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APPROVED AS TO LEGAL SUFFICIENCY

TAB

M-NCPPC LEGAL DEPARTMENT

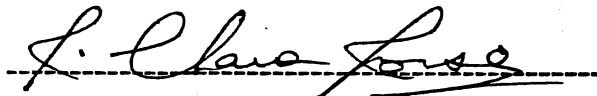
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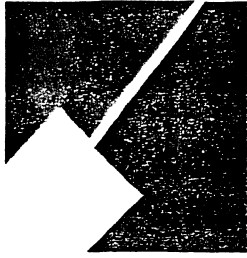
[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINION

At its regular meeting, held on **Thursday March 17, 2005**, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on the motion of **Commissioner Bryant, seconded by Commissioner Robinson, with Chairman Berlage, and Commissioners Perdue, Bryant and Robinson** voting in favor of the motion, **ADOPTED** the above Opinion which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for **Preliminary Plan 1-04049, North Bethesda Town Center**.

A handwritten signature in cursive script, appearing to read "M. Clara Moise", is written over a horizontal dashed line.

Certification As To Vote of Adoption
M. Clara Moise, Technical Writer



MONTGOMERY COUNTY PLANNING BOARD

REVISED OPINION

Pre-Preliminary Plan 7-04001

Name of Plan: NORTH BETHESDA TOWN CENTER

On 09/08/03, LCOR White Flint LLC (the "Applicant") submitted a complete Pre-application Submission Application, including a Concept Plan, for Planning Board approval, pursuant to the provisions of Section 50-33A of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) for a property in the TS-M/I-1 zones. The Concept Plan, which depicted one lot for 1,430,037 sq.ft. of commercial/retail space and 1,350 multi-family dwelling units (the "proposed LCOR Subdivision") on 32.4 acres of land (the "Applicant's Property"), requested a decision by the Planning Board on the following matters:

1. Pursuant to the provisions of Section 50-35(k) of the Subdivision Regulations, the adequacy of school facilities for the proposed LCOR Subdivision under the Ceiling Element for the FY 2004 Annual Growth Policy (July 2003); and
2. Pursuant to the provisions of Section 50-35(k) of the Subdivision Regulations, the adequacy of road and public transportation facilities of the proposed LCOR Subdivision under the Alternative Review Procedures for Metro Station Policy Areas in the FY 2002 Annual Growth Policy – Policy Element (November 2001).

The Applicant's Pre-Application Submission Application was designated as Pre-Preliminary Plan No. 7-04001.

On 10/16/03, Pre-Preliminary Plan No. 7-04001 was brought before the Planning Board for a public hearing. At the public hearing, the Planning Board heard testimony and received evidence submitted into the record on the Applicant's Pre-Application Submission Application.

Based upon the testimony and evidence presented by Staff and on the information on the Pre-Application Submission Application, including the Applicant's Concept Plan, the Planning Board approves the Applicant's Concept Plan, subject to the conditions listed below. The approval of the Concept Plan is based upon the following findings of fact and conclusions of law:

Adequacy of School Facilities

On July 8, 2003, the Montgomery County Council approved the Ceiling Element for the FY 2004 Annual Growth Policy. With its adoption of the Ceiling Element, which went into effect on July 15, 2003, the County Council found that all high school clusters pass the AGP's current School Test. Pursuant to the Applicant's request under the provisions of Section 50-33A(a)(1) of the Subdivision Regulation, the Planning Board finds public school facilities to be adequate for the proposed LCOR Subdivision, pursuant to the provisions of Section 50-35(k) of the Subdivision Regulations.

Adequacy of Roads and Public Transportation Facilities

On April 29, 2003, the Montgomery County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, approved the Applicant's rezoning request, Zoning Application No. G-801, to rezone a portion of the Applicant's property to the TS-M zone, pursuant to the Applicant's revised Development Plan. The certified development plan includes fifteen (15) Binding Elements. Binding Element No. 2 provides as follows:

2. The application for preliminary plan approval will utilize the Alternative Review Procedures for Metro Station Areas, as described in FY 2002 Annual Growth Policy (November 2001).

Pursuant to the provisions of Section 50-33A of the Subdivision Regulations, the Planning Board finds that, for purpose of roads and public transportation facilities under Section 50-35(k) of the Subdivision Regulations, roads and public transportation facilities are adequate to serve the proposed LCOR Subdivision provided that the Applicant satisfy the conditions listed below.

Planning Board Action

The Planning Board's approval of Pre-Preliminary Plan No. 7-04001 pursuant to the provisions of Section 50-33A of the Subdivision Regulations is subject to the provisions of Section 50-33A(b) of the Subdivision Regulations and the following additional conditions:

1. The Applicant enter into an agreement with the Planning Board and the County Department of Public Works and Transportation to:
 - a. meet trip reduction goals established by the Planning Board as a condition of approving the LCOR Subdivision, which require the Applicant to reduce 50% of the number of weekday peak hour trips attributable to the LCOR Subdivision, either by reducing trips from the subdivision itself or from other occupants of the White Flint Metro Policy Area;

- b. participate in programs operated by, and take actions specified by the North Bethesda Transportation Management District ("TMD") established by County law for the White Flint Metro Policy Area (or a group of policy areas including that policy area) in order to meet the TMD's mode share goals;
 - c. pay an ongoing annual contribution or tax to fund the TMD's operating expenses, including minor capital items such as buses, as established by County law; and
 - d. pay the applicable transportation development impact tax without claiming any credits for transportation improvements.
 - e. Conduct a Local Area Transportation Review ("LATR") traffic study and specify for inclusion in the County's Capital Improvements Program ("CIP") any transportation improvements needed to support the subdivision.
2. Preliminary plan application shall conform to all other requirements set forth in Chapter 59, Zoning Ordinance, Chapter 50, Subdivision Regulations and other applicable codes
3. Planning Board approval of the Pre-Preliminary Plan including the alternative review procedures under Section TA1 of the FY04 Annual Growth Policy does not preclude further consideration by the Board of other trip reduction measures associated with preliminary plan or site plan review, as appropriate, e.g. location of transit stops, provision/location of Kiss-and-Ride and bus circulation areas; on-site and off-site pedestrian and vehicular circulation; on-site parking requirements; phase- in of day care facilities, and other trip reduction measures as appropriate.

LINOWES
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ATTORNEYS AT LAW

Attachment E

September 6, 2007

Stephen P. Elmendorf
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By Hand

Chairman Royce Hanson
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: North Bethesda Town Center (LCOR-White Flint): Preliminary Plan 1-04049 and
Pre-Preliminary Plan 7-04001

Dear Chairman Hanson:

This law firm represents LCOR White Flint, LLC, the developer of the North Bethesda Town Center. As referenced above, this large-scale, mixed-use, transit-oriented development has an approved Pre-Preliminary Plan and Preliminary Plan. The North Bethesda Town Center encompasses 32.42 acres of land and includes the White Flint Metro Station. The property is located on the east side of Rockville Pike (MD 355) between Marinelli Road and Old Georgetown Road (MD 187). On behalf of LCOR, we are requesting two amendments to the Planning Board's Opinion, dated March 22, 2005, approving the Preliminary Plan. A copy of the Opinion is included with this amendment request as Exhibit "A".

Amendment No. 1 seeks Planning Board approval of a record plat phasing schedule for this development. Section 50-35(h)(2)(B) of the Subdivision Regulations, in part, authorizes the Planning Board to approve a record plat phasing schedule for a multi-phase project via a preliminary plan amendment. Amendment No. 1 consists of substitute language (presented below) for the existing language of Condition No. 15 of the Planning Board's Opinion (Exhibit "A"), approving Preliminary Plan 1-04049.

Amendment No. 2 requests that the Board establish a validity period for the adequate public facilities (APF) review of this Preliminary Plan. The proposed amendment, an additional Condition to the Opinion, is presented below. At the time of its approvals of Pre-Preliminary Plan 7-04001 and Preliminary Plan 1-04049, the Planning Board never considered or established an APF validity period for the Preliminary Plan.

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North Bethesda Town Center: Description and Development Approval History

The North Bethesda Town Center is a large-scale, mixed-used, transit-oriented development anchored by the White Flint Metro Station. This project received its TS-M zoning approval from the District Council in April 2003, consistent with the White Flint Sector Plan. At that time, the District Council approved LCOR's development plan/land use plan, which included a multi-phased development program for the build-out of this project. The approved development program is shown on the Pre-Application Concept Plan, included with this amendment request as Exhibit "B".

One of the binding elements approved by the District Council required LCOR to utilize the Growth Policy's Alternate Review Procedures for Metro Station Policy Areas to obtain its APF approval from the Planning Board. To secure that APF approval, LCOR filed a Pre-Application Submission application, requesting a binding Board approval pursuant to the provisions of Section 50-33A of the Subdivision Regulations. In its Revised Opinion, dated December 2, 2003, and included with this amendment request as Exhibit "C", the Planning Board approved LCOR's Pre-Application Submission as Pre-Preliminary Plan 7-04001. That approval was conditioned, in part, upon LCOR entering into trip reduction agreement with the Board and DPWT. The Revised Opinion, however, did not establish an APF validity period for the subsequent Preliminary Plan.

As required by the provisions of Section 50-33A of the Subdivision Regulations, LCOR then submitted a Preliminary Plan application to obtain Board approval of the remaining preliminary plan issues (the non-APF issues) not addressed in the Board's approval of Pre-Preliminary Plan 7-04001. In its Opinion (Exhibit "A"), the Board approved Preliminary Plan 1-04049 for the North Bethesda Town Center. The Opinion did not provide an APF validity period for this Preliminary Plan.

The Opinion does contain a 37-month record plat validity period for the Preliminary Plan (Condition No. 15), traditionally applied by the Board to single-phase and/or small-scale preliminary plan approvals. At the time of the issuance of the Opinion, LCOR did not object to Condition No. 15 as a placeholder condition. During its negotiations/discussions with the Board's transportation staff on the trip reduction agreement, LCOR committed to filing with the Board a record plat phasing schedule when LCOR had a more accurate indication of the timing and sequencing of both the residential and non-residential components of this development.

In an Opinion, dated December 19, 2005, the Planning Board approved the first site plan for the North Bethesda Town Center. Site Plan No. 8-05034 approved LCOR's development proposal for Lot E for 312 multi-family dwelling units, including 39 MPDUs, and 61,246 square feet of retail space.

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September 6, 2007
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Finally, concluding negotiations/discussions on LCOR's trip reduction program that began prior to the District Council's 2003 rezoning approval. LCOR, the Board and DPWT executed and recorded on January 29, 2007, a comprehensive Trip Reduction Agreement for the North Bethesda Town Center. This Agreement obligates LCOR to initiate and maintain a series of trip mitigation measures to reduce at least 50% of the number of trips attributable to this development. The most unique feature of this Agreement is its duration. As a show of its good faith and its commitment to the transit-oriented nature of this development, LCOR proposed, and the Board and DPWT accepted, that the duration of the Agreement would be 55 years. A copy of this Trip Reduction Agreement is included with this amendment request as Exhibit "D".

Amendment No. 1: Record Plat Phasing Schedule

Specifically, LCOR requests that the Board amend the Opinion for Preliminary Plan 1-04049 (Exhibit "A") by deleting Condition No. 15 and substituting in its place the following Condition No. 15:

15. This Preliminary Plan will remain valid for one hundred forty-five (145) months from the date of mailing of the Planning Board Opinion (date mailed: March 22, 2005). Record plats may be recorded in phases based upon the following schedule:
- Phase I (expires 37 months from the date of mailing of the Planning Board Opinion): 312 dwelling units and 61,250 square feet of general retail.
 - Phase II (expires 73 months from the date of mailing of the Planning Board Opinion): 323 dwelling units, 115,210 square feet of general retail and 355,000 square feet of commercial.
 - Phase III (expires 109 months from the date of mailing of the Planning Board Opinion): 640 dwelling units, 25,577 square feet of general retail and 792,200 square feet of commercial.
 - Phase IV (expires 145 months from the date of mailing of the Planning Board Opinion): All remaining development.

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Justification for Amendment No. 1

As shown on the approved development plan for this project (Exhibit "B"), this large-scale development is to be developed in phases. At the time of Preliminary Plan approval, LCOR did not have an accurate indication of how quickly the various elements of this mixed-use project would proceed through the development approval process. For that reason, LCOR did not submit at the time of Preliminary Plan approval what would have been little more than a rough estimate of the record plat phasing for this development. LCOR did not object to the Opinion (Exhibit "A") containing the 3-year record plat validity period traditionally utilized for single-phase and/or small-scale projects because LCOR intended to submit for Board approval during that 3-year validity period a comprehensive and accurate record plat phasing schedule. LCOR has now developed its own comprehensive master schedule for the development and completion of construction for this entire project. The record plat phasing schedule proposed by Amendment No. 1 is consistent with LCOR's master schedule.

LCOR is diligently pursuing the phased site plan approval for this project. As noted above, Parcel E has already received site plan approval. Later this year, LCOR will file a site-wide infrastructure site plan application, as well as site plan applications for Parcels A, C and F for residential, commercial and retail space. To date, the site plan schedule, however, has been delayed by several factors. First, the last few years have seen a dramatic decrease in the demand for new office space in the County. In particular, the federal government has curtailed its search for new office space during that time frame. Second, one of the non-residential uses now planned for Parcel A will require special exception approval, which must occur prior to site plan approval. That special exception application will be filed in early 2008.

Finally, LCOR delayed the site plan filing schedule to evaluate additional development options that Staff suggested to LCOR during the initial phases of Staff's work on revisions to the White Flint Sector Plan. Staff had asked LCOR to explore the feasibility of LCOR seeking a development plan amendment from the District Council to accommodate more development on this site. LCOR delayed its preparation of additional site plans while it discussed this option with Staff and evaluated various development options for this property under potential revisions to the Sector Plan. LCOR ultimately decided it did not want to pursue a development plan amendment because of the time delays involved in that process. Instead, LCOR opted to resume preparation and filing of its site plans for the project's approved development. LCOR remains, however, an active participant in the ongoing Sector Plan amendment process.

Chairman Royce Hanson
September 6, 2007
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It is LCOR's intent to have all record plats approved for the entire site for all of the approved development prior to the expiration of Phase III in the above-referenced phasing schedule. LCOR is seeking a 3-year Phase IV, however, to allow for future possible market slow-downs and other unforeseen development approval delays.

Amendment No. 2: Adequate Public Facilities Validity Period

With this second amendment, LCOR requests that the Planning Board amend the Opinion for Preliminary Plan 1-04049 (Exhibit "A") by adding a new condition, Condition No 17, to read as follows:

17. The Adequate Public Facilities (APF) Review for the Preliminary Plan will remain valid for one hundred forty-five (145) months from the date of the mailing of the Planning Board Opinion (date mailed: March 22, 2005).

Amendment No. 2: Justification

This amendment is needed to correct an inadvertent error in the Opinion for Preliminary Plan 1-04049 (Exhibit "A"). The Subdivision Regulations require that the Planning Board establish an APF validity period for any new subdivision. Possibly because of the bifurcated nature of the approval of this subdivision, where the Board made its APF approval via in its Revised Opinion for Pre-Preliminary Plan 7-04001 (Exhibit "C"), the Planning Board never established an APF validity period for this subdivision. The Staff reports for both the Pre-Preliminary Plan and the Preliminary Plan applications are silent on the issue. Similarly, there was no discussion of the APF validity period during either of the public hearings on these two applications.

Given the large-scale of this mixed-use development, LCOR is asking the Board to establish a 12-year APF validity period for this subdivision, with that time period beginning to run from March 22, 2005, the original date of the Board's Opinion approving Preliminary Plan 1-04049 (Exhibit "A"). This will place LCOR in the same position it would have been in if the Board had established this APF validity period when it approved the Preliminary Plan.

The approved trip mitigation measures that are part of LCOR's Trip Reduction Agreement are based on the full build-out of all elements of this mixed-use development. The success of these measures is based, in part, upon the trip reduction benefits that accrue from having large-scale residential and non-residential development in close proximity to a Metro Station. LCOR needs the twelve years provided by this proposed APF validity period to secure all of the building permits

Chairman Royce Hanson

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for both the residential and non-residential components of this multi-phased, mixed-use development.

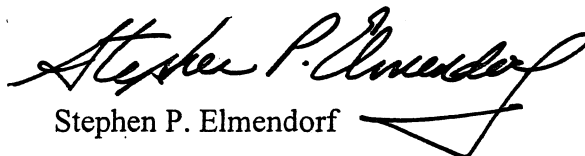
As requested by Staff, and in support of its request for these two amendments, LCOR submits with this cover letter the following exhibits:

- Exhibit "A" Planning Board Opinion, approving Preliminary Plan 1-04049 (5 copies)
- Exhibit "B" Pre-Application Concept Plan (1 copy)
- Exhibit "C" Planning Board Revised Opinion, approving Pre-Preliminary Plan 7-04001 (5 copies)
- Exhibit "D" LCOR's Trip Reduction Agreement (2 copies)
- Exhibit "E" Preliminary Plan Application – Amendment (1 copy)
- Exhibit "F" Fee Schedule and Worksheet (1 copy)
- Exhibit "G" Approved Preliminary Plan Drawing (5 copies)
- Exhibit "H" Approved LATR Study (2 copies)

In summary, we ask that the Planning Board amend its Opinion for Preliminary Plan 1-04049 (Exhibit "A") to include the two amendments referenced above. Thank you in advance for your anticipated consideration of this request.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen P. Elmendorf

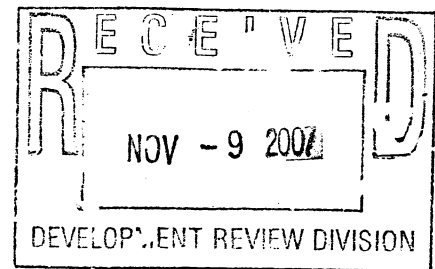
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~~Attachments~~

Attachments not included

cc (w/o attachments): Ms. Cathy Conlon, *Development Review*

**LINOWES
AND BLOCHER LLP**
ATTORNEYS AT LAW



Attachment F

November 12, 2007

Stephen P. Elmendorf
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By Hand

Chairman Royce Hanson
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Proposed Preliminary Plan Amendment for North Bethesda Town Center (LCOR – White Flint): Preliminary Plan 1-04049 and Pre-Preliminary Plan 7-04001

Dear Chairman Hanson:

In its review of the above-referenced preliminary plan amendment application that we filed on behalf of our client, LCOR White Flint, LLC, the developer of the North Bethesda Town Center, Planning Staff has requested that we modify our amendment request. Planning Staff contends that the adequate public facilities validity period, which is the subject of Amendment No. 2, must run from the date of mailing of the Planning Board's Revised Opinion approving Pre-Preliminary Plan 7-04001, rather than the date of mailing of the Opinion approving Preliminary Plan 1-04049.

Planning Staff has requested that we modify the wording of our proposed Amendment No. 2 to reflect this new date of mailing, December 2, 2003. We will not contest the Staff's contention regarding the proper date of mailing. Consistent with the Staff's request, we, therefore, request that Amendment No. 2: Adequate Public Facilities Validity Period read as follows:

17. The Adequate Public Facilities (APF) Review for the Preliminary Plan will remain valid for one hundred forty-five (145) months from the date of mailing of the Planning Board's Revised Opinion for Pre-Preliminary Plan 7-04001 (date mailed: December 2, 2003).

This proposed modification to Amendment No. 2 also affects the expiration of Phase IV that is part of our requested Amendment No. 1: Record Plat Phasing Schedule. This is because, by law, the record plat phasing schedule for a preliminary plan cannot extend beyond the expiration date for the adequate public facilities validity period for that plan. Consistent with the modification we are requesting for Amendment No. 2: Adequate Public Facilities Validity Period, we request

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that Phase IV as proposed in Amendment No. 1: Record Plat Phasing Schedule be modified to read as follows:

- Phase IV (expires 145 months from the date of mailing of the Planning Board's Revised Opinion for Pre-Preliminary Plan 7-04001): All remaining development.

These two requested modifications will make our proposed preliminary plan amendment application consistent with the Staff's determination of the proper date of mailing to calculate the adequate public facilities validity period and will be consistent with the requirement in the Subdivision Regulations that a record plat phasing schedule cannot extend beyond the applicable adequate public facilities validity period for a preliminary plan.

In summary, we ask that the Planning Board amend its Opinion for Preliminary Plan 1-04049 to include the two amendments we have requested, as modified above. Thank you in advance for your anticipated consideration of this request.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen P. Elmendorf

SPE:rmg

cc: Ms. Cathy Conlon, *Development Review*

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