



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

**MCPB**  
**3/11/10**  
**Item #8**

**MEMORANDUM**

**DATE:** March 1, 2010

**TO:** Montgomery County Planning Board

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

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

Ki Kim, Planner/Coordinator  
Transportation Planning Division

**REVIEW TYPE:** Preliminary Plan of Subdivision

**APPLYING FOR:** Reconsideration of a condition of the Planning Board's previous preliminary plan approval

**PROJECT NAME:** Century XXI

**CASE #:** 120070650

**REVIEW BASIS:** Chapter 50, Montgomery County Subdivision Regulations

**ZONE:** I-3

**LOCATION:** Located on Century Boulevard, 1,000 feet east of Aircraft Drive

**MASTER PLAN:** Germantown

**APPLICANT:** Matan Development

**ATTORNEY:** Linowes and Blocher

**FILING DATE:** February 9, 2010

**HEARING DATE:** March 11, 2010

**EXECUTIVE SUMMARY:** At its November 13, 2008 meeting, the Planning Board approved the Century XXI preliminary plan to create a single lot for 235,000 square feet of general office with a condition, among others, that the applicant modify an existing I-3 Traffic Mitigation Agreement to satisfy the requirements for development located on an I-3 zoned property. Subsequent to the Board's approval, it was determined that the agreement referenced by the condition never existed. Planning staff is recommending modification of the existing condition to require a new traffic mitigation agreement. The applicant is requesting that the requirement for a traffic mitigation agreement be removed.

**STAFF RECOMMENDATION:** Re-approval of Preliminary Plan 120070650 to create 1 lot on 11.53 acres of land located on Century Boulevard, 1,000 feet east of Aircraft Drive in the Germantown master plan area, subject to all of the previous findings contained in Planning Board Resolution No. 08-146, and the following conditions:

- 1) Modify condition 4 of the previous approval as follows:
  4. Prior to site plan certification, the Applicant must enter into a trip mitigation agreement with the Planning Board and Montgomery County Department of Transportation to reduce ten (10) percent of site generated trips as required in the Zoning Ordinance and the I-3 Trip Reduction Guidelines for sites located in the I-3 zone.
- 2) All other conditions of approval as contained in the Planning Board's Resolution No. 08-146, dated December 4, 2008, remain in full force and effect.

## **BACKGROUND**

The subject preliminary plan was approved by the Planning Board on November 13, 2008, subject to the conditions of the Board's resolution dated December 4, 2008 (Attachment A). The plan covers an I-3 zoned property located in the northwest quadrant of the intersection of Germantown Road (MD 118) and Interstate 270, with frontage on Century Boulevard. The site is currently undeveloped and contains an existing stormwater management pond. The proposed development will combine two existing recorded parcels, G and H, into a single recorded parcel, for a 7-story commercial office building containing 235,000 gross square feet. The building's primary frontage, which includes vehicular access, is on Century Boulevard. The project proposes 709 surface parking spaces on site.

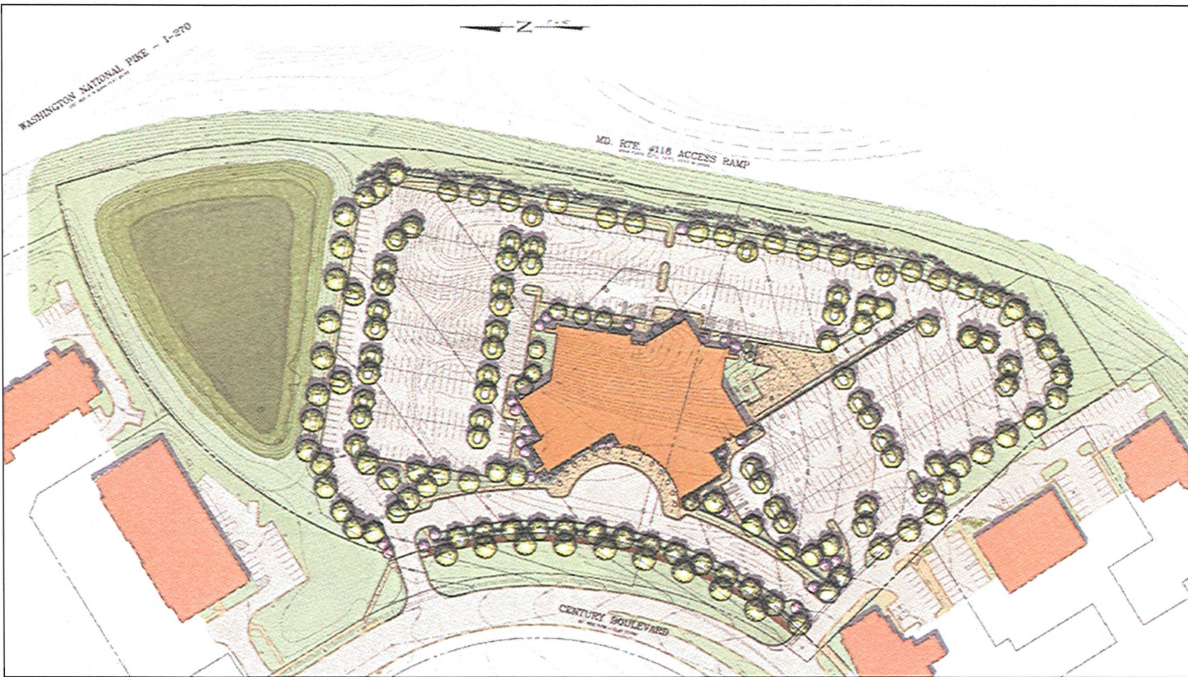
## **REQUEST FOR RECONSIDERATION**

The Planning Board's approval contained the following condition with regard to mitigating potential traffic impacts of the proposed development:

4. Prior to certified site plan, the applicant must modify the existing I-3 Traffic Mitigation Agreement with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to satisfy the requirements for development located on an I-3 zoned property.

After extensive search by the applicant and reviewing agencies, it was determined that no such agreement exists. The applicant is requesting that since such an agreement does not exist and for other reasons discussed below, the Planning Board should remove this condition from its opinion and release the applicant of this obligation. Staff maintains that the agreement is still required and the condition should be revised to reflect that the applicant must provide a new agreement rather than the revision of an existing one.





*Preliminary/Site Plan*

## **DISCUSSION**

The requirements for trip mitigation in the I-3 zone are included in Chapter 59 of the County Code. Section 59-C-5.436, Special Trip Reduction Guidelines, states:

“It is the intent of the special trip reduction guidelines to achieve as a goal a reduction in auto trips for I-3 projects of 10 percent below the peak hour trip generation rates adopted by the Planning Board for the administration of the Adequate Public Facilities Ordinance. To help achieve the trip reduction goal, design measures should be incorporated in the project to meet trip reduction objectives established in this section, as well as non-design measures for the purpose of reducing dependence on single-occupant automobiles. The Planning Board may establish a schedule for achieving the goal and time periods during which the trip reduction measures will be in effect.”

Specific design and non-design guidelines are applied on a case-by-case basis to achieve the trip reduction goal. Where necessary, the Planning Board may require the applicant to enter into an agreement to ensure the necessary terms of the trip reduction program. As part of the original preliminary plan review, such an agreement was to be provided for the proposed development by amending an agreement that both staff and the applicant erroneously thought had been previously executed for an earlier development plan that included this site’s acreage.

The applicant was also required by the original preliminary plan approval to dedicate 50 feet of right of way along its Century Boulevard frontage to provide a total right-of-way width of 130 feet to accommodate the Corridor Cities Transitway (CCT) traversing along the roadway. The applicant submitted a traffic study in January 24, 2007 and a subsequent supplemental study in July 1, 2008 to determine the impact of proposed development on the area transportation system

(LATR analysis) and the impact of the CCT, when implemented, on the re-routing of traffic resulting in some of the intersections operating differently. It is recommended that when the CCT is in place, some of the median breaks along Century Boulevard be closed for safety reasons. As a result, some of the traffic generated by the development will reach or depart the subject site differently.

The applicant maintains that since no traffic mitigation agreement exists, it is impossible for the applicant to amend it. Staff concurs with the applicant that the condition, as written, is inappropriate. However, the I-3 zoned properties must have a trip reduction plan according to the zoning ordinance and, if one does not exist, the applicant must prepare one for execution by the reviewing agencies. The applicant's arguments are described in a letter from the applicant's traffic consultant, Joseph Caloggero, dated September 24, 2009, and one from the applicant's attorneys, Robert Dalrymple and Justin Hayes, dated February 9, 2010 (Attachments B and C).

The requirement for trip reduction in the I-3 zone is based on zoning ordinance requirements. In March of 1989, a Zoning Text Amendment (ZTA) was created to allow additional density and land uses such as office buildings and R&D developments in the I-3 zone.. The discussion and rationale behind the requirement of a ten percent trip reduction for developments in the properties located on the I-3 zone was considered carefully. It was argued by the Planning Board and agreed by the County Council that:

1. As originally adopted in the 1950's, the I-3 zone was intended to be for low density, office park industrial use that would generate low levels of traffic and pollution compared to development in other industrially zoned areas. A ZTA was introduced and adopted in March of 1989 to encourage high tech companies to relocate their offices and R&D facilities within these newly adopted I-3 zoned areas. The newly allowed developments were expected to generate more traffic than was originally intended for the land use in this zone. Therefore, a trip reduction mechanism had to be in place to offset the transportation impact of new and higher density uses in I-3 zoned areas.
2. Most of the I-3 zoned areas of the county are located along or near the I-270 corridor and Shady Grove where transportation capacity is constrained. The Board argued that it would be poor public policy to increase the development in areas where the transportation capacity is constrained without ensuring that at least part of the traffic from new developments is mitigated.
3. Other provisions were also adopted to provide for "transit serviceability" and easy use of walking and biking to reduce the impact of higher density in the I-3 zone.

It was for these reasons that the zoning ordinance amendment passed with a condition that all development in this zone must attain a ten percent trip reduction. This condition can be achieved by the applicant entering into a Traffic Mitigation Agreement (TMAg) with the Planning Board and the Montgomery County Department of Transportation.

The reasons that the applicant cites for approving this application without a condition requiring a TMAg are summarized below along with staff's rebuttal.

1. *The goals of Section 59-C-5.436 of the Zoning Ordinance (Special Trip Reduction Guidelines for the I-3 zone) trip reduction can be accommodated through both design considerations and non-design considerations, none of which mandate a Traffic Mitigation Agreement but rather call for the Planning Board consideration and approval of the site plan with conditions that achieve the trip reduction goal. The applicant argues that the site is near the future Corridor Cities Transitway (CCT) and that the specific transit-oriented design of the site provides for transit serviceability and therefore, the trip reduction will occur due to design considerations when the CCT is built.*

Staff believes that the zoning ordinance and Trip Reduction Guidelines make it clear that any I-3 zoned property must provide for ten percent reduction of their trips. Staff finds nothing special about the design of this office building or use of it (single use as office) that will result in reduction of their trips by ten percent. The site is simply being located where a future transitway is planned, with no funding or certainty for its implementation to eliminate the need for a traffic mitigation agreement. All the design elements such as sidewalks, bikeways, bike facility and a pedestrian oriented pattern of development would have been required by urban design, road configuration and subdivision regulations regardless of the CCT. There is limited transit service available in this area (Ride-On Route Number 83 with 20-minute peak period headways) and the site plan includes 160 more parking spaces than required in the I-3 zone. Staff finds that none of the design aspects of the site enhance the proclivity of its patrons to use transit.

Staff also notes that if the CCT was funded for construction in the next six years we could have allowed the applicant to consider trip reduction in our analysis of the LATR. The applicant did assume the ten percent trip reduction, taking 46 peak hour trips off the road, in their LATR/PAMR study, which served as the basis for the Planning Board's APF finding. Staff accepted the study under the premise that the reduction would be enforced through a Traffic Mitigation Agreement.

2. *The applicant notes that the 2009 Germantown Sector Plan recommends TMX-2 zoning for this property, which would allow higher densities and does not invoke a trip-reduction requirement as does the I-3 zone.*

Staff finds that an application filed under the TMX-2 zone would be, by definition, a different project than that developed under the I-3 zone. The I-3 requirement for trip reduction would not apply to the TMX-2 zone, but all other development rights that the applicant has vested through the I-3 zone approval process would need to be reconsidered. The applicant has the option to pursue rezoning as opposed to proceeding with the current development. However, staff must review the application according to the ordinance for the operative zone under which the application is submitted.

3. *Applicant argues that the I-3 Zone Trip Reduction Guidelines are "guidelines to be made applicable to a project if required by the Planning Board. In this case, the Planning Board did not choose to apply the I-3 Trip Reduction Guidelines to the Property." And due to site being located in the Germantown West Policy Area that currently has no mitigation requirement (Policy Area Mobility Review--PAMR) then the trip reduction requirement does not apply.*

Staff finds that the I-3 zone Trip Reduction Guidelines are due to a requirement in the Zoning Ordinance Section 59-C-5.436 that states: “it is the intent of the special trip reduction guidelines to achieve as a goal a reduction in auto trips for I-3 projects of 10 percent below the peak hour trip generation rates adopted by the Planning Board for the administration of the Adequate Public Facilities Ordinance.” It goes on to say that design measures should be incorporated in achieving the trip reduction. As noted above, we conclude that the design features for the site do not meet the intent of the zoning ordinance.

Staff agrees that there is no PAMR mitigation requirement for this development but the trip reduction requirement is based on the site being located on an I-3 zoned property and has no relevancy to the PAMR requirement.

4. *The applicant has argued that since they will dedicate the ROW for CCT, they should be exempt from the trip reduction requirement based on provision I-D in the I-3 Trip Reduction Guidelines that states: “The Planning Board may agree -to accept the no-cost conveyance of a capital contribution (land or facility) by the applicant of an I-3 project which the public sector determines is needed to accommodate public transit intended to serve the proposed project in whole or part. Such a contribution may be credited against the required trip reduction goal, in whole or part, depending upon the importance of the public policy concerns as well as the nature and extent of the capital contribution.”*

The second part of Provision I-D states: “In the event that the applicant receives compensation, including the ability to transfer density, for an applicant’s capital contributions or the contributions are otherwise required by operation of the Adequate Public Facilities Ordinance (APFO), a master plan, or zoning regulations, then no credits toward the goal shall accrue from such contribution.” The ROW dedication for CCT for this application is contained in the Planning Board’s Resolution of their preliminary plan approval (MCPB No. 08-146, dated December 4, 2008) and, therefore, no credit toward the goal should be granted.

Precedent exists for the staff position. The Planning Board approved preliminary plan and site plan amendments for a proposed expansion of the nearby Century Technology Campus (Preliminary Plan 12002095A and Site Plan 82003007A) on December 17, 2009 with conditions which require the applicant to both dedicate CCT ROW along Century Boulevard in Germantown and to provide a Traffic Mitigation Agreement to satisfy the requirements for development located on an I-3 zoned property.

5. *The applicant suggests that because the Planning Board did not reference the Traffic Mitigation Agreement in its Site Plan review that the agreement is not needed.*

The Planning Board in fact determined that a Traffic Mitigation Agreement must be signed and executed prior to certification of site plan as stated in the Preliminary Plan resolution No. 120070650. The Planning Board approved the site plan and preliminary plan concurrently. There was no need for repeating the same condition in the Site Plan Opinion.



For these reasons, staff recommends that the Planning Board modify condition #4 of the Planning Board's previous approval for Preliminary Plan 120070650 to clarify the need for a Trip Reduction Plan enforceable by a Traffic Mitigation Agreement between the Applicant, M-NCPPC and MCDOT.

#### Attachments

- A – Planning Board Resolution No. 08-148
- B – Letter from Applicant's Traffic Consultant dated 9/24/09
- C – Applicant's Request for Reconsideration dated 2/9/10



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

DEC - 4 2008

**MCPB No. 08-146**  
**Preliminary Plan No. 120070650**  
**Century XXI**  
**Date of Hearing: November 13, 2008**

**MONTGOMERY COUNTY PLANNING BOARD**

**RESOLUTION<sup>1</sup>**

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

WHEREAS, on March 2, 2007, Matan Development, LLP ("Applicant"), filed an application for approval of a preliminary plan of subdivision of property that would create 1 lot on 11.53 acres of land located on Century Boulevard 1000 feet east of Aircraft Drive, ("Property" or "Subject Property"), in the Germantown master plan area ("Master Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120070650, ("Preliminary Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 31, 2008, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on November 13, 2008, the Planning Board held a public hearing on the Application (the "Hearing"); and

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

<sup>1</sup> 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.

Approved as to  
Legal Sufficiency:

*Christina Sonent* 11/14/08

8787 Georgia Avenue, MNCPPC Special Department 10 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org



WHEREAS, on November 13, 2008, the Planning Board approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Cryor; with a vote of 5-0, Commissioners Alfandre, Cryor, Hanson, Presley and Robinson voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approved Preliminary Plan No. 120070650 to create 1 lot on 11.53 acres of land located on Century Boulevard 1000 feet of Aircraft Drive ("Property" or "Subject Property"), in the Germantown master plan area ("Master Plan"), subject to the following conditions:

1. Approval under this Preliminary Plan is limited to 1 lot for a maximum of 235,000 square feet of general office use.
2. The Applicant must comply with the conditions of approval for the preliminary forest conservation plan. The Applicant must 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.
3. The Applicant must dedicate 50 feet along and adjacent to the Property frontage on Century Boulevard - thereby providing a total of 130 feet of right-of-way (80 feet of existing roadway and 50 feet of additional dedication).
4. Prior to certified site plan, the Applicant must modify the existing I-3 Traffic Mitigation Agreement with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to satisfy the requirements for development located on an I-3 zoned property.
5. The Applicant must comply with the conditions of approval of the MCDOT letter dated October 17, 2008 (*Appendix D*).
6. The Applicant must comply with the conditions of MCDPS stormwater management concept approval letter dated February 8, 2007 (*Appendix D*).
7. The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to recordation of plat(s), as applicable.
8. The Applicant must satisfy provisions for access and improvements as required by the Maryland State Highway Administration (SHA) prior to recordation of plat(s), as applicable.
9. No clearing, grading or recording of plats prior to certified site plan approval.
10. Final approval of the number and location of buildings, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan.
11. The record plat must reflect denial of access along the I-270 Property frontage.
12. 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 Resolution.
13. All necessary easements must be shown on the Record Plat.
14. For the length of the APF validity period for this Application, the Applicant is responsible for a pro-rata share with other background developments of any

improvements identified by the Supplemental Traffic Impact Study (STIS) if any funding for the Corridor Cities Transitway is allocated.

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 upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

*1. The Preliminary Plan substantially conforms to the Master Plan.*

The project is located within the Employment Corridor of Germantown on a signature site along I-270 as defined in the 1989 Germantown Master Plan. Although there is a pending revision to the Master Plan, review of this Preliminary Plan falls under the approved and adopted 1989 Germantown Master Plan.

The proposed use and location of the building conforms to the 1989 Germantown Master Plan. The Master Plan calls for office and technology uses along I-270 and provides specific objectives and guidance for an urban pattern of development in a pedestrian-oriented, transit-serviceable form. The Preliminary Plan achieves this by providing ingress/egress and massing oriented towards the street, Century Boulevard. The building will be set back 125 feet from the existing curb and will be 70 feet back from the ultimate curb line of Century Boulevard when it is reconstructed for the Corridor Cities Transitway. The Preliminary Plan will enhance the current pedestrian and built environment along Century Boulevard by extending the sidewalk on the north side of Century Boulevard from the existing commercial development to the south. The building will provide a visual termination of Century Boulevard as it extends north from the town center. The Planning Board finds the Preliminary Plan conforms to the approved and adopted 1989 Germantown Master Plan.

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

Site Access and Vehicular/Pedestrian Circulation

The site is located on the east side of Century Boulevard adjacent to the I-270 southbound off-ramp to MD 118. Two vehicular access points from Century Boulevard are proposed. The Planning Board finds the proposed aprons to the site and the vehicular circulation system shown on the Preliminary Plan will provide adequate vehicular access to the site.

The frontages of adjacent properties along Century Boulevard currently contain five-foot-wide sidewalks. The Applicant will provide an eight foot-wide dual

sidewalk/bikeway within the right-of-way connecting to the existing sidewalks. The Planning Board finds the pedestrian facilities and circulation along the Century Boulevard property frontage will be safe and adequate to serve the site.

Local Area Transportation Review

Six locations were identified as critical intersections to be analyzed for effects resulting from the proposed development and were examined to determine whether they operate within the applicable congestion standard of 1,425 Critical Lane Volume (CLV) for the Germantown West Policy Area. New trips generated by the site were added to the existing traffic and the background traffic (existing traffic plus traffic to be generated by the approved but unbuilt developments in the area) to determine the total future traffic condition. The results of the CLV calculation showed that acceptable levels of traffic are projected to be maintained under the background and total development conditions.

Policy Area Mobility Review (PAMR)

The site is located in the Germantown West Policy Area where there is no trip mitigation requirement in accordance with the Adopted 2007-2009 Growth Policy. Therefore, this Application is not subject to the PAMR test.

Other Public Facilities and Services

The Planning Board finds that other public facilities and services are available and will be adequate to serve the proposed office building. The site will be served by public water and sewer. Gas, electric, and telecommunications services are also available to serve the property. Police stations, firehouses and health services are currently operating within the standards set by the Growth Policy Resolution currently in effect. The Application has been reviewed and approved by the Montgomery County Fire and Rescue Service (MCFRS) which has determined that the property has adequate access for emergency vehicles.

- 3. The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The Application meets all applicable sections. The Planning Board finds the proposed lot size, width, shape and orientation 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.*

The proposed forest conservation plan includes 0.56-acres of forest removal and no forest retention, generating a 2.46-acre planting requirement. The Applicant

proposes to meet the planting requirements through a combination of landscape planting and offsite mitigation bank credits. The Planning Board finds the Application satisfies applicable requirements of the Forest Conservation Law.

5. *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.*

The MCDPS Stormwater Management Section approved the stormwater management concept for the site on February 8, 2007. The stormwater management concept consists of on-site channel protection measures via an existing pond, on-site water quality control via structural underground filtration systems and on-site recharge via infiltration chambers.

6. *Dedication of 130 feet from the opposite right-of-way line is acceptable and a waiver of the standard right-of-way for a median transit-way is granted under Section 49-32 of the Montgomery County Road Code.*

The consensus among reviewers from various county and state agencies is that the approval should be conditioned upon a dedication of 50 feet along and within the parcel boundary on Century Boulevard for the transit way, thereby providing a total of 130 feet (80 feet of existing and 50 feet of additional dedication).

Consistent with Section 49-32 of the Montgomery County Road Code, the Planning Board can waive the 150 feet standard right-of-way for a median transit way. This section, entitled *Design standards for types of roads*, stipulates:

- (a) *The design standards adopted under this Article govern the construction or reconstruction of any County road except Rustic Roads and Exceptional Rustic Roads. If the Planning Board, in approving a subdivision or site plan, determines that a waiver from any applicable design standard is necessary to promote context-sensitive design of a specific road, the Executive or the Executive's designee must adopt the Board's recommendation unless the Executive or the designee concludes that approving the waiver would significantly impair public safety.*

...

- (d) *The minimum right-of-way for a road may be specified in the applicable master plan or sector plan for the area where the road is located.*

The Planning Board finds this waiver to be appropriate for this Preliminary Plan because the resulting 130 foot wide right of way is consistent with site plan

approvals in the immediate area and the Master Plan vision for a more pedestrian friendly Germantown. Moreover, 130 feet of right-of-way will accommodate the Maryland Transit Administration plans for the Corridor Cities Transitway.

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 plat 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 DEC 4 2008 (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 Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

**CERTIFICATION**

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Alfandre, seconded by Commissioner Robinson, with Commissioners Hanson, Robinson, Cryor, Alfandre, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, November 20, 2008, in Silver Spring, Maryland.

  
\_\_\_\_\_  
Royce Hanson, Chairman  
Montgomery County Planning Board





September 24, 2009

Mr. Shahriar Etemadi  
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RE: Century XXI  
Montgomery County, Maryland  
Our Job #: 2007-0106

Dear Mr. Etemadi:

In 2008, Matan Development received a preliminary plan approval (No. 120070650) for its Germantown property, which is located between Century Boulevard and the I-270 Exit Ramp. The Planning Board approved the resolution for Matan's preliminary plan on December 4, 2008 (resolution attached). On page 2 of the resolution, the fourth condition states, "Prior to certified site plan, the Applicant must modify the existing I-3 Traffic Mitigation Agreement (TMA) with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to satisfy the requirements for development located on an I-3 zoned property." After much review by your office and the Development Team, an existing I-3 Traffic Mitigation Agreement does not exist for this property.

As per the standards of the I-3 zone, the site plan approved by the Planning Board reflects a design that was modified by the applicant (at the request of the Staff) to promote trip reduction when mass transit is made more readily available to this area in the future (in addition to being transit friendly under today's conditions). While there are no firm trip reductions standards set forth in the Zoning Ordinance, we have reviewed the I-3 Trip Reduction Guidelines and have determined the following:

- It is our understanding that the Planning Board may agree to accept the no-cost conveyance of a capital contribution (land or facility) by the applicant of an I-3 project which the public sector determines is needed to accommodate public transit intended to serve the proposed project in whole or part. Such a contribution may be credited against the required trip reduction goal, in whole or part. The CCT is a future project that is proposed to be constructed along Century Boulevard. Matan Development dedicated 50 feet of right-of-way along its frontage/Century Boulevard, which is necessary for the future construction of the CCT.

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of a car
- On July 1, 2008, the Traffic Group, Inc. submitted a Supplemental Traffic Impact Analysis (TIA) to take into consideration the construction of the CCT. The TIA was approved by your office. In this TIA, this development is proposed to generate 461 AM and 417 PM Trips. Based on the I-3 Trip Reduction Guidelines, a 10% reduction in trips is necessary. In the TIA, a 40% AM and 25% PM reduction for the CCT was assumed and approved by your staff which would meet the I-3 Guidelines.

Therefore, based on the dedication of land to construct the CCT and the significant 40% AM and 25% PM reduction in trips based on the CCT, and based upon the approved site design measures promoting transit usage and trip reduction, we feel that we have met the requirements under the Zoning Ordinance for trip reduction as well as the I-3 Trip Reduction Guidelines and can prepare the I-3 TMA agreement based on these items with your approval. Thank you and I look forward to hearing from you.

Sincerely,



Joseph J. Caloggero, P.E., PTOE  
Senior Project Manager

JJC:jew  
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**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

February 9, 2010

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**FEDERAL EXPRESS**

Mr. Rollin Stanley  
Planning Director  
c/o Ms. Catherine Conlon  
Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760

**RECEIVED**

FEB 16 2010

The Maryland-National Capital Park  
and Planning Commission  
MRO Legal Department

Re: Request for Reconsideration - Century XXI (the "Property")  
Preliminary Plan No. 120070650 (the "Preliminary Plan")

Dear Mr. Stanley:

Matan Development, LLP ("Matan") is the owner of the above-referenced Property, which is located at the northwest quadrant of the intersection of Germantown Road (MD 118) and Interstate 270, with frontage on Century Boulevard. With this letter and for reasons discussed below, Matan requests that the fourth condition listed on page 2 of the Planning Board's December 4, 2008, Preliminary Plan Resolution (the "Resolution") (attached hereto as Exhibit "A") be removed as a condition of approval.<sup>1</sup>

<sup>1</sup> On December 10, 2009, Matan originally filed an application with the Planning Board to amend the Resolution pursuant to Section 8.E of the Manual of Development Review Procedures for Montgomery County. On or about February 3, 2010, Planning Staff informed Matan that its amendment application should be refiled as a request for reconsideration pursuant to Section 4.12 of the Montgomery County Planning Board's Rules of Procedure. While Matan believes that its original amendment application is the appropriate process to change a condition of approval of the Preliminary Plan, the change being to delete the erroneous condition within the Resolution, Matan is following the Planning Department's instructions to file a request for reconsideration instead. Given the decision by Staff to treat this matter as a reconsideration, it is necessary that the Planning Board waive the requirement under the Board's Rules of Procedure that a reconsideration be requested within ten (10) days of the Board action for which reconsideration is sought.

February 9, 2010

Page 2

Condition 4 of the Resolution states:

Prior to certified site plan, the applicant must modify the existing I-3 Traffic Mitigation Agreement with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to satisfy the requirements for development located on an I-3 zoned property.

Based on an extensive search for the referenced "existing I-3 Traffic Mitigation Agreement" by both Matan and Planning Staff, it has been determined that no such agreement exists. Planning Staff has expressly stated that it can find no agreement corresponding to condition 4 in the Resolution. Accordingly, it is clear that condition 4 was erroneously included as part of the Resolution and it is impossible for Matan to amend a non-existent traffic mitigation agreement. Additionally, for the reasons stated below, it is Matan's position that a new traffic mitigation agreement is not required nor warranted.

Through Section 59-C-5.436 of the Zoning Ordinance ("Special Trip Reduction Guidelines"), the I-3 Zone establishes trip reduction goals that can be accommodated through both design considerations and non-design considerations, none of which creates mandates but rather call for Planning Board consideration and approval at time of site plan review.

In this case, as outlined further herein, the Planning Board approved the Site Plan with design considerations that allow transit orientation for both current transit serviceability and to accommodate the future Corridor Cities Transitway ("CCT"). Additionally, there are specific elements of the Site Plan that will also further encourage trip reduction. Beyond this, however, the Planning Board did not require nor approve additional design or non-design trip reduction measures requiring a subsequent trip reduction agreement. Condition 4 in the Resolution was mistakenly reflected initially in a Transportation Division memorandum relating to the Preliminary Plan and was carried-over to the Resolution also in error. Beyond this erroneous condition, there is absolutely no indication in the Site Plan or Preliminary Plan Resolutions, Staff reports or public records that the Planning Board intended any subsequent trip reduction measures to be provided through a trip reduction agreement or otherwise, and instead, it approved a Site Plan that will accomplish trip reduction through thoughtful design. Significantly, Paragraph 11 of the resolution approving the Site Plan for the Property, which addresses Certified Site Plan conditions, makes no reference to a pre-existing I-3 Traffic Mitigation Agreement. If the Site Plan resolution did not include this condition, clearly the Planning Board did not intend it to be included in the Preliminary Plan Resolution.

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Matan provided extensive design changes, based on requests from Planning Staff, to make the project more pedestrian friendly and conducive to transit, primarily in contemplation of the future CCT. These changes included:

1. enhancement of the current pedestrian and built environment along Century Boulevard by extending the sidewalk on the north side of Century Boulevard from the existing commercial development to the south;
2. construction of an 8 foot bikeway along the frontage of Century Boulevard;
3. construction of bicycle facilities; and
4. provision of an urban pattern of development in a pedestrian-oriented, transit-serviceable form by providing ingress and egress and massing oriented towards Century Boulevard, which is the route proposed for the CCT.

Section 59-C-5.436 of the Zoning Ordinance also allows for non-design trip reduction measures, which can also be approved by the Planning Board during the course of site plan review (and are required to be approved by the Planning Board through site plan review, if intended to be applicable). One such measure approved in the Site Plan includes the phasing of development in accordance with public transit availability. In this regard, the improvements on the Property were located in a manner to allow additional density on the site when the CCT is put into place (density that will be allowed as a result of the Comprehensive Master Plan and rezoning currently considered for the Germantown Town Center). Once mass transit arrives on Century Boulevard, the Property will be suited to accommodate additional density that will be transit oriented and "pedestrian". Accordingly, the additional density that will be phased in with the CCT qualifies as a satisfactory non-design consideration under the I-3 Zone.

In its review and unanimous approval, the Planning Board did not impose any additional requirements on the applicant. As such, the design and non-design measures previously presented to and approved by the Planning Board are to be deemed to have satisfied all requirements of the I-3 Zone relative to trip reduction. The I-3 zoning provisions do not require an agreement and do not mandate further burdens on the applicant, and instead provide the Planning Board with the discretion to require additional measures if deemed necessary on a case-by-case basis scenario that is necessary and appropriate for a project. In this instance, the Planning Board determined that the site design met the burdens imposed by the zone. Therefore, the applicant is requesting only that the Resolution accurately reflect the Planning Board's original determination.



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Furthermore, the I-3 Trip Reduction Guidelines are "guidelines," to be made applicable to a project if required by the Planning Board. In this case, the Planning Board did not choose to apply the I-3 Trip Reduction Guidelines to the Property. In addition, the I-3 Trip Reduction Guidelines reference standards of the Annual Growth Policy ("AGP") to assist in determining mitigation requirements for a given project. In this instance, the AGP currently in effect has no mitigation requirements for the Germantown West Policy Area and this standard must be considered the controlling regulatory measure for establishing mitigation requirements in review of a subdivision. In fact, the staff report for this project specifically references this concept and states that because the Property is within the Germantown West Policy Area, "there is no trip mitigation requirement in accordance with the Adopted 2007-2009 Growth Policy."

It is worth noting that the Germantown Sector Plan was being considered at the time of the Planning Board's review and the approval of the project was made with the draft Sector Plan in mind, including the implementation of a new zoning tool, the TMX-2 Zone, which zone is currently in the process of being designated for the Property in accordance with the future sectional map amendment. Under the new zoning, greater densities are permitted and the zone does not have the same regulatory guidelines relating to trip reduction programs as does the I-3 Zone. Matan cooperated in the spirit of the new sector plan in designing the Property, which implemented a project that would allow for future development to occur pursuant to the new zone and in contemplation of the CCT.

In summary, the fourth condition listed on page 2 of the Planning Board's Resolution was noted in error. The Property was designed and presented to accommodate the future CCT and a second LATR study was prepared to show the future conditions with implementation of the CCT. The Planning Board did not impose additional mitigation burdens on Matan and did not intend to require a TMA. The AGP in effect requires no mitigation and the intent of the Zoning Ordinance has been satisfied through the design and non-design measures employed with staff guidance for this Property and approved by the Planning Board.

It is our hope that this letter is sufficient to address the erroneous condition number 4 that was included in the Preliminary Plan Resolution. At a time when job growth in the Germantown area should be embraced, this ministerial mistake is hindering the ability to move forward. On behalf of Matan, we ask for a speedy resolution so this project can move forward in time to take advantage of a recovering economy.

Finally, Matan's original amendment application (see footnote 1 above) was scheduled for the Planning Board's February 25, 2010 meeting. Matan requests that the Planning Board consider this reconsideration request on the same date, deciding both to reconsider the

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Resolution and to deliberate the merits of the requested change on that date. The ten (10) day notification for a hearing that is required when the Planning Board agrees to a reconsideration under Section 4.12.3 of the Planning Board's Rules of Procedure is not necessary in this case because there are no other "parties" in the Preliminary Plan proceedings, as that term is defined by the Rules of Procedure. As such, it is appropriate and efficient to consider the procedural request for reconsideration and the merits of that reconsideration on the same date.

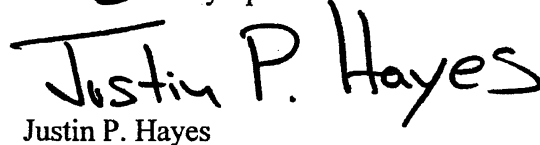
If you need additional information relative to the merits of this requested change for condition four (4) of the Preliminary Plan, please contact either of the undersigned.

Sincerely

**LINOWES AND BLOCHER LLP**



C. Robert Dalrymple



Justin P. Hayes

Enclosure

Cc: Mr. Karl Morris  
Mr. Joe Caloggero  
Ms. Carol Rubin

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