



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

Staff Report: Limited Site Plan Amendment 82009017A, Safeway Store #2848

ITEM #: _____

MCPB HEARING DATE: May 20, 2010

REPORT DATE: May 10, 2010

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Robert Kronenberg, Supervisor *RK*
Development Review Division

FROM: Elza Hisel-McCoy, Assoc. AIA, LEED-AP *EH*
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Development Review Division
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APPLICATION

DESCRIPTION: Alternative location of a screen wall from the Applicant's property to an adjacent condominium property; on 1.98 gross acres of C-2 and Arlington Road District Overlay-Zoned land in the Bethesda CBD Master Plan

APPLICANT: Safeway, Inc.

FILING DATE: March 23, 2010

RECOMMENDATION: Approval with conditions

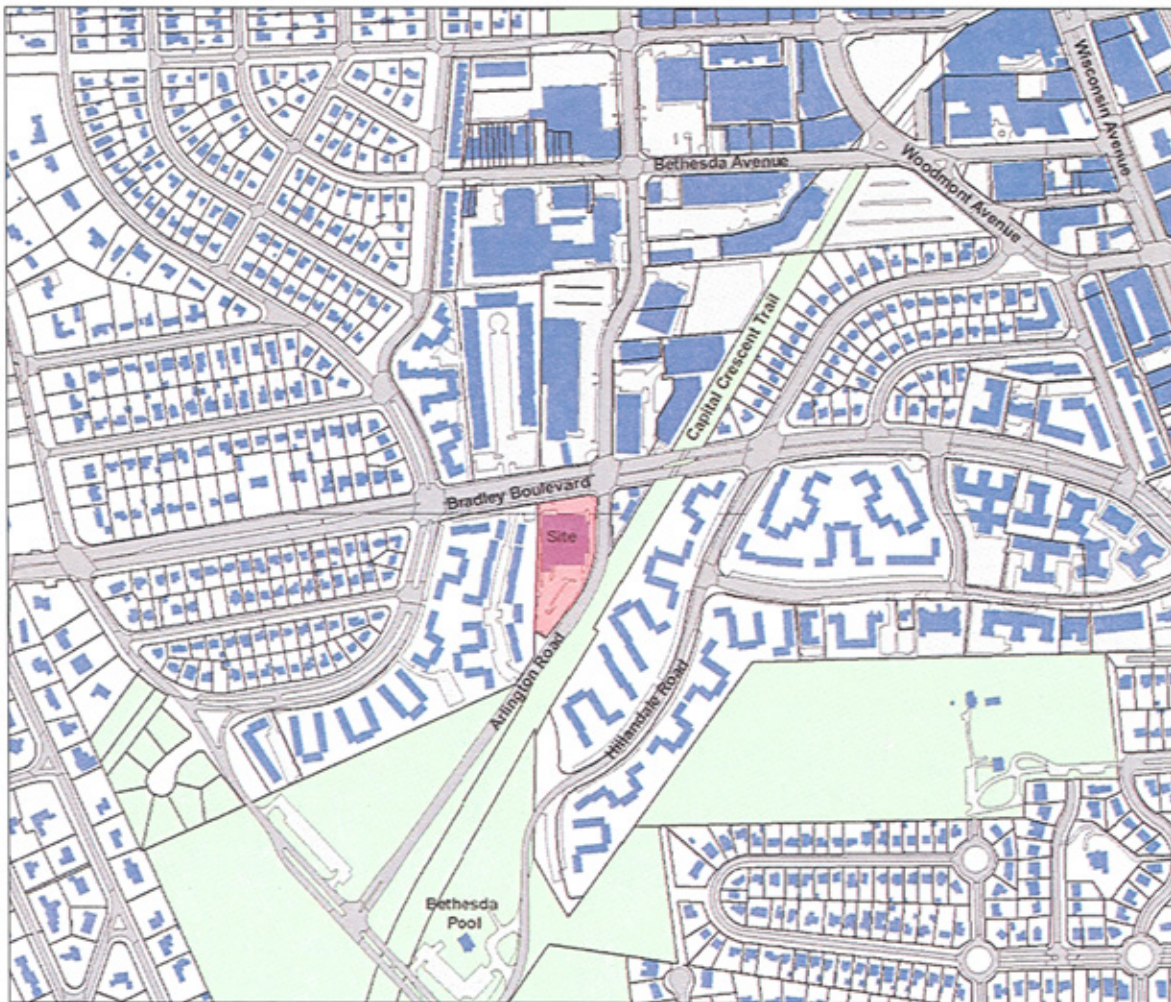
EXECUTIVE

SUMMARY: Existing site conditions unknown at the time of the original approval complicate the Applicant's ability to meet both the spirit and the letter of a condition requiring the construction of a screen wall between the supermarket and the adjacent residential community. The Applicant has been working with the condominium board of that community and has achieved agreement on a new location for the wall, on condominium's common area property instead of the Applicant's site. A group of homeowners in the residential community oppose the location of the wall on condominium property and want the wall to remain on the Applicant's property.

SITE DESCRIPTION

Vicinity

The subject site is located on the southern edge of Bethesda's Central Business District (CBD), in the southwest quadrant of the intersection of Bradley Boulevard and Arlington Road. The site is flanked on the east and west by two- and three-story residential buildings, including a mix of one-family, rowhouse, and garden apartment units. Immediately to the west is the Kenwood Forest community. Across Arlington Road at the intersection with Bradley Boulevard is a gas station and a concrete or masonry retaining wall that extends from the gas station to just past the Safeway property. This retaining wall rises from about two feet at either end to about 12-15 feet at its zenith. Moving further into the CBD across Bradley Boulevard, astride Arlington Road there is an existing strip shopping center, with surface parking in front of single-story retail buildings, and more urban office and retail development of up to four stories. The Capital Crescent Trail runs along Arlington Road opposite the site, but does not have direct access. The nearest trail access is provided around the corner on Bradley Boulevard, next to the gas station.



Vicinity Map

Site Analysis

The subject site is fully developed and currently occupied by a single-story Safeway supermarket with surface parking. Loading is currently accessed from either Arlington Road or Bradley Boulevard. The site slopes gradually from Bradley Boulevard down to Arlington Road and is currently buffered from the adjoining neighborhood by a 6-foot-tall wood fence and vegetation.



Aerial Photo

There are no known rare, threatened, or endangered species on site; there are no forests, 100-year floodplains, stream buffers, wetlands, or steep slopes on site. There are no known historic properties or features on site.

PROJECT DESCRIPTION

Previous Approvals

A plat was recorded for this property in December 1954 and the property has not since been subdivided. The existing store was constructed in the 1950s, before Site Plan approval was required. On July 23, 2009, the Planning Board approved Site Plan 820090170 for a 43,097 sf. supermarket, replacing the existing 25,568-sf. supermarket.



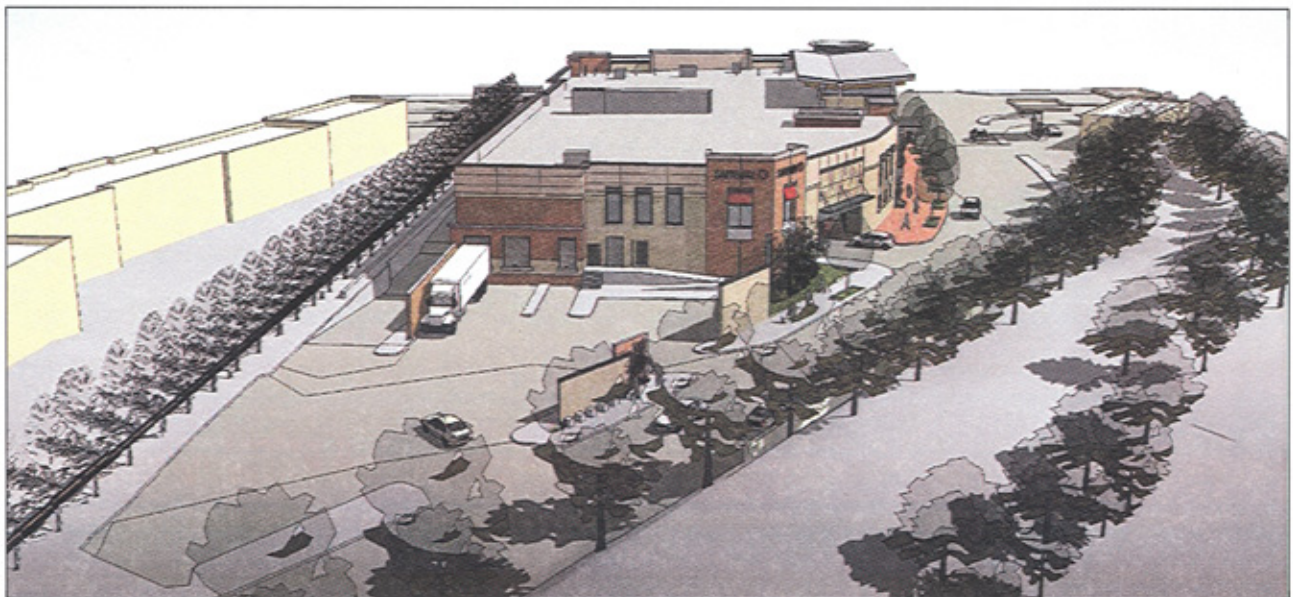
Illustrative Site Plan

Proposal

On the eve of the July 23, 2009, Planning Board hearing for the original Site Plan, the Applicant and community representatives agreed in principle to construct a masonry screen wall between the new supermarket and the adjacent condominium community, Kenwood Forest. In cooperation with the Applicant and representatives of the Kenwood Forest Condominium, on the morning of the hearing staff drafted a condition to reflect the Applicant's proffer and introduced it into the record. The Board approved the proposal as modified by the new amendment creating condition 13 (*italics added*):

13. Noise Reduction Wall and Landscaping

Safeway must construct a masonry/concrete wall *on its property* along the western and southern property lines, with a maximum height of 6.5 feet. This wall's construction is subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA), and KFA's removal of its existing stockade fence. In addition, Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper (increased from 10 feet and 2.5" caliper), as well as donate to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping in the green area adjoining Safeway's western and southern property lines. The final details and design of the masonry/concrete wall and associated landscaping must be compatible with the proposed Safeway building façades and must be provided on the Certified Site Plan. The \$5,000 must be transferred to KFA, and the construction of the wall and installation of associated landscaping, must be completed prior to issuance of any use and occupancy permit for the supermarket.



Aerial View of Loading Area, with western property line on the left

As the Applicant developed the details of the screen wall for the Certified Site Plan, their engineer determined that locating the wall entirely on Safeway property, as initially envisioned, created several issues:

- Safeway's west property line runs along the top of an existing concrete retaining wall adjacent to the parking area behind the existing grocery store. Placing the concrete wall on Safeway's property in this area would necessarily place it about 5 feet below the elevation of the KFA property at the top of this retaining wall. With a height limit of 6'-6" to avoid building setbacks required in the zoning code, only the top one to two feet of the concrete screen wall would be visible from the KFA property looking east.
- This existing retaining wall holds back the earth on the KFA side of the wall, where removal of the retaining wall could affect the structural health of the nearby townhomes.
- Coordination of the construction of the screen wall and the existing trees and utility lines will likely prevent the wall from being able to be erected before construction begins on the new store.

Accordingly, the Applicant is proposing to relocate the screen wall from Safeway's property to the adjacent Kenwood Forest Condominium property, and to revise condition 13 to read:

13. Noise Reduction Wall and Landscaping

~~Safeway must construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet from the existing ground level, for the purpose of providing screening for the Kenwood Forest Condominium community to the west. If any portion of the wall is constructed on the Kenwood Forest Condominium community's common area property, then the~~ This wall's construction is subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA), and KFA's ~~the~~ removal of its KFA's existing stockade fence, all as may be necessary or appropriate. In addition, Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper (increased from 10 feet and 2.5" caliper), as well as donate to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping in the green area adjoining Safeway's western ~~and southern~~ property ~~lines~~ line. The final details and design of the masonry/concrete wall and associated landscaping must be compatible with the proposed Safeway building façades and must be provided on the Certified Site Plan. The \$5,000 must be transferred to KFA, and the construction of the wall ~~and installation of associated landscaping,~~ must be completed prior to issuance of any use and occupancy permit for the supermarket. Planting of supplemental off-site landscaping on KFA property shall be undertaken by KFA, to be completed at a time determined by its Board, or the Board's duly appointed representative.

PROJECT ANALYSIS

The minor nature of the proposed modifications does not alter the sector plan, transportation, environmental, or development standards analyses accompanying the original Site Plan approval.

COMMUNITY OUTREACH

The Applicant has met all proper signage, noticing, and submission meeting requirements. Notice of the subject amendment was sent to all parties of record, including the Kenwood Forest Condominium Association and the owners of the townhouses on both sides of Kenwood Forest Lane, on March 24, 2010. In addition, the Applicant and Staff have attended numerous community meetings to discuss the proposed amendment and related issues.

Staff has received correspondence on this matter from the Kenwood Forest Condominium Association (KFA), in support of the proposed amendment, and the Kenwood Forest Homeowners Group (KFHG), in opposition. In addition, just before this report went online, staff received two additional e-mails (attached) in opposition to the amendment.

KFA has provided their board's resolution of support for the amendment(See Appendix C). The resolution describes an on-going conversation between KFA and the Applicant to address details, timing, and other issues.

The KFHG, which describes itself as "an unincorporated, subgroup of 40 or more homeowners who are members of the Kenwood Forest Homeowners Association," raises several objections:

- Encroachment on all or part of Kenwood property will result in greater disruption to the quality of life in Kenwood Forest community;
- At no time does the engineer's report state that the wall cannot be constructed safely on Safeway property;
- Approximately 80% of the homeowners adjacent to Safeway's property line oppose Safeway encroachment on Kenwood Forest property for the purpose of building the Wall, ... and oppose easement rights for that purpose;
- The location of the wall as currently proposed would severely impact the mature trees along the property boundary.

KFHG further recommends an alternative approach:

- Revise Condition #13 to read:

Safeway must construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet cascading heights consistent with Safeway's lower ground level adjacent to certain sections of KFA's higher ground levels, to assure the wall's original purpose and functions are maintained for noise reduction and to serve as a distinct separate barrier wall between Safeway and Kenwood Forest properties, with varying height panels to remain consistent with the 6.5' height level of KFA's stockade fence. This wall's construction and height is are

subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA), and KFA's Removal of KFA's existing stockade fence shall guarantee KF homeowners that Safeway's masonry/concrete wall on its property will serve as a distinct and separate barrier paneled wall between Safeway property line and KFA residential properties consistent with the 6.5' height of KFA's wooden stockade fence that Kenwood Forest homeowners and Safeway have enjoyed for more than 35 years. In addition, Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper (increased from 10 feet and 2.5 caliper), as well as donate to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping in the green area adjoining Safeway's western and southern property lines. Safeway's removal of KFA's existing stockade fence, final details, and design and construction of the masonry/concrete wall, is expected to be built during the final construction phase of the Safeway approved site plan. Safeway will be granted a temporary construction easement or easements within the boundaries of the Wall area for the purpose of removal of KFA's stockade fence and construction access and constructing the masonry/concrete wall on its property along the western and southern property lines and its associated landscaping must be compatible with the proposed Safeway building facades and must be provided on the Certified Site Plan. The \$5,000 must be transferred to KFA, and the construction of the wall and installation of Safeway's associated landscaping, must be completed prior to issuance of any use and occupancy permit for the supermarket.

- The Applicant should construction a temporary protective safety wall with wood and sheeting on the sides and overhead along the full length of Safeway's western and southern property line to protect Kenwood property, homes, workers and residents.

Staff interprets KFHG's primary recommendation to be that the masonry wall should be constructed on Safeway property to a height consistent with KFA's existing wooden fence along the property line. Because of the current topographic configuration of the site, this would necessitate a wall that would measure greater than 6.5' in height. The zoning code exempts walls up to 6.5' high from meeting yard/building setback requirements (59-B-2.1). For sites in the C-2 zone that are located adjacent to a residential zone – in this case, R-30 – structures such as walls must match the required setback in that residential zone, in this case 30'. The Applicant may apply to the Board of Appeals for a variance from this requirement but since there is no guarantee such an application would be approved after the time and expense of the process, the Applicant has indicated they are not so inclined. Further, the area of greatest grade change between Kenwood Forest and the Safeway property is currently occupied by a retaining wall holding up KFA's residential buildings behind. Removal of this wall to replace it with a taller wall could negatively impact the structural stability of the adjacent homes. As a result, the Applicant has indicated they are not interested in pursuing that option.

RECOMMENDATION AND CONDITIONS

The agreement to erect a screen wall between the supermarket and the adjacent residential community, as approved with Site Plan 820090170, was entered into in good faith by the Applicant and the community, and was so recommended by staff and approved by the Planning Board. This agreement was not part of staff's original recommendation of conditional approval, but was proffered by the Applicant as an additional mitigation measure for this new development. As the Applicant's engineer soon discovered, existing site conditions do not allow the Applicant to meet both the letter and spirit of condition 13.

After the problem was identified, the Applicant held and attended meetings with representatives of both KFA and KFHG, with Development Review staff attending several of these, to discuss alternative solutions. Staff does not dispute that location of the screen wall on KFA property will increase, to a greater or lesser degree, the impact of the proposed development on the Kenwood Forest community, particularly those units that back directly on to the site boundary. The question instead has been one of how to realize the generally undisputed purpose of the wall: to screen the Kenwood Forest community from the expanded supermarket development. The Applicant's engineer has determined that the wall cannot be constructed entirely on Safeway property and still meet the intended purpose, for the reasons cited above. The Applicant has an approved Certified Site Plan that locates the screen wall entirely on Safeway property, and is able to apply for a building permit to build it as show on that plan. The wall can be constructed safely on Safeway property, but it will not function entirely as intended.

Staff has been in regular communication with the Applicant team and representatives from both KFA and KFHG, in an effort find a common ground between the parties. The issues underlying the opposition extend into the inner-workings of the Kenwood Forest community and their KFA representatives, and staff is unable to address those concerns. Staff has collaborated with the various interested parties, who have devoted many hours to the discussion of these issues, but as yet without resolution.

Staff considers the Applicant to have undertaken a good-faith effort to resolve this matter in the interest of being a good neighbor. Staff recognizes that not all parties have received satisfaction. Staff also recognizes that the administrative body of the Kenwood Forest Condominium has voted to support the amendment and that the details of the location of the wall remain to be worked out, subject to the proposed conditions of approval and to be illustrated in a Certified Site Plan. Staff remains open to any proposal that would satisfy all of the parties, even that of eliminating the wall altogether and leaving the sufficiently attractive and familiar wooden fence currently standing along the boundary between the two sites. Nevertheless, staff finds that, as conditioned and with the necessary permissions from KFA, the proposed modifications to the location of the screen wall will achieve both the letter and spirit of the initial proffer codified in Condition 13.

The proposed modifications to the site plan do not alter the overall design character of the development in relation to the original approval and the site remains compatible with existing and proposed development adjacent to the site. These modifications do not impact the

efficiency, adequacy, or safety of the site with respect to vehicular and pedestrian circulation, open space, landscaping, or lighting.

Staff recommends approval of Site Plan 82009017A, Safeway #2848, for the amendments delineated above. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on March 23, 2010, are required except as modified by the following conditions:

1. Site Plan Conformance

The proposed development must comply with the conditions of approval for site plan 820090170 as listed in the Planning Board Resolution dated August 13, 2009, as amended.

2. Noise Reduction Wall and Landscaping

Site Plan 820090170 condition 13 is revised to read:

- a. Safeway must construct a masonry/concrete wall, with a maximum height of 6.5 feet, to provide screening for the Kenwood Forest Condominium community.
- b. If any portion of the wall is constructed on the Kenwood Forest Condominium community's common area property, the Applicant must obtain from the Kenwood Forest Condominium Association (KFA) all necessary permissions for the construction and maintenance of the wall, as well as for removal of any or all portions of KFA's existing stockade fence.
- c. The final details and design of the masonry/concrete wall must be compatible with the proposed Safeway building façades and must be provided on the Certified Site Plan.
- d. In addition to the wall location illustrated in the Certified Site Plan for the original Site Plan 820090170, in the event that the Applicant is able to obtain the necessary permissions described above, the Certified Site Plan must also illustrate the alternative location of the wall on KFA property, to include an "area of influence" of no greater than two feet, wherein the final built location of the wall may shift without requiring further amendment of the Site Plan.
- e. If the Applicant is unable to obtain all necessary permissions to locate the wall on KFA property, the Applicant must construct the wall on its own property, as illustrated on the original Certified Site Plan 820090170.
- f. Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper (increased from 10 feet and 2.5" caliper).
- g. Not later than the issuance of any use and occupancy permit for the site, the Applicant must:
 - i. complete construction of the wall; and
 - ii. transfer to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping on KFA property, the design, installation, and maintenance of which shall be determined and undertaken by the KFA Board, or its duly appointed representative.

- h. Installation of the landscaping associated with the wall on the Applicant's property must be completed no later than the next growing season after any use and occupancy permit.

APPENDICES

- A. Prior Resolution
- B. Certified Site Plan Excerpt Illustrating Wall Location
- C. Community Correspondence
- D. Project Mailing List



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

MCPB No. 09-87
Site Plan No. 820090170
Project Name: Safeway Store #2848
Date of Hearing: July 23, 2009

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on April 13, 2009, Safeway, Inc., ("Applicant") filed an application for approval of a site plan to replace of an existing 25,568 square-foot supermarket with a new 43,097 square-foot supermarket ("Site Plan" or "Plan") on 1.98 acres of land in the C-2 and Arlington Road District Overlay zones, located in the southwest quadrant of the intersection of Bradley Boulevard and Arlington Road ("Property" or "Subject Property"); and

WHEREAS, Applicant's site plan application was designated Site Plan No. 820090170, Safeway Store #2848 (the "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated July 13, 2009, setting forth its analysis of, 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 staffs of other governmental agencies, on July 23, 2009, 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

WHEREAS, on July 23, 2009, the Planning Board approved the Application subject to conditions on the motion of Commissioner Alfandre; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Presley voting in favor.

Approved as to
Legal Sufficiency:

8787 Georgia Avenue, Silver Spring, Maryland 20910

Chairman's Office: 301.495.4605 Fax: 301.495.1320

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NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board APPROVES Site Plan No. 820090170 to replace of an existing 25,568 square-foot supermarket with a new 43,097 square-foot supermarket on 1.98 gross acres in the C-2 and Arlington Road District Overlay zones, subject to the following conditions:

Environment

1. Forest Conservation & Tree Save

The proposed development must comply with the conditions of the approved forest conservation plan. The Applicant must satisfy all conditions prior to the recording of a plat(s) or to the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.

2. Stormwater Management

The proposed development is subject to Stormwater Management Concept approval conditions dated May 6, 2009, unless amended and approved by the Montgomery County Department of Permitting Services.

3. LEED Certification

The Applicant must achieve a LEED (Leadership in Energy and Environmental Design) Certified Rating Certification at a minimum. The Applicant must make good faith efforts to achieve a LEED Silver rating. Before the issuance of any use and occupancy certificate, the Applicant must inform M-NCPPC staff of the LEED Certification Level for which they are applying. If this level is less than a Silver rating, before the issuance of the final use and occupancy certificate the Applicant must provide to staff a written report, for public record purposes only, from the Applicant's LEED consultant analyzing the feasibility of achieving a LEED-Silver rating, to include an affidavit from a LEED-Accredited Professional identifying the minimum additional improvements required to achieve the LEED Silver rating, including their associated extra cost.

Parks, Open Space, & Recreation

4. Maintenance of Public Amenities

- a. The Applicant is responsible for maintaining all publicly accessible amenities, except as modified below.
- b. The Applicant must coordinate with the Bethesda Urban Partnership and the Bethesda Arts and Entertainment District for the programming of the storefront Public Art Display Panels on the Bradley Boulevard façade.

Transportation & Circulation

5. Transportation

- a. The Applicant must limit the site plan to a supermarket of up to 43,097 square feet.
- b. The Applicant must replace the bike racks proposed in the ground-level garage with at least 3 bike lockers for employees located in a safe, well-lit area.
- c. The Applicant must enter into a Traffic Mitigation Agreement with the Montgomery County Department of Transportation (MCDOT) and the Planning Board to participate in the Bethesda Transportation Management Organization. The Traffic Mitigation Agreement must be fully executed prior to certification of the site plan.

6. Pedestrian Circulation

- a. The Applicant must provide the full Bethesda Streetscape Standard improvements, including brick pavers, street lighting, and street trees, along the site frontage on Arlington Road.
- b. The Applicant must provide the full Bethesda Streetscape Standard improvements, including brick pavers and street trees, along the site frontage on Bradley Boulevard, as well as, subject to SHA approval, street lighting and undergrounding of utility lines.
- c. The Applicant must provide benches and incidental street furniture along the sidewalk of both Bradley Boulevard and Arlington Road, as illustrated on architecture sheets A1.01 and A1.02.

Site Plan

7. Public Amenity

- a. As illustrated on the Certified Site Plan, the Applicant must provide an on-site Bike Station along the Arlington Road building frontage and storefront Public Art Display Panels along the Bradley Boulevard façade. Final location and details will be determined at Certified Site Plan.
- b. The Applicant must participate actively with Bethesda Urban Partnership in a public/private effort to beautify the Capital Crescent Trail retaining wall opposite the site on the east side of Arlington Road.
 - i. No later than the issuance of the final use and occupancy permit, the Applicant must make a contribution of seed capital to the Bethesda Urban Partnership (BUP), in an amount not less than \$5,000, towards BUP's initial administration of the solicitation of public art proposals and the selection of an artist and design.
 - ii. The Applicant will coordinate with BUP regarding continued active participation in the realization and maintenance of this public art

work, providing appropriate additional financial or in-kind contributions.

- iii. The Applicant will not be responsible for the solicitation of a design, the selection of an artist, or obtaining the necessary approvals through the Bethesda Arts and Entertainment District, Parks Department, Arts Trust, and/or other regulating agencies.

8. Architecture

- a. The constructed architectural elevations must be substantially similar to those included in the architectural drawing sheets received on June 19, 2009, as determined by Development Review, Montgomery County Planning Department, at the time of Building Permit review.
- b. By Certified Site Plan, the Applicant must provide, for staff review and approval, the final design layout and details for the:
 - i. Storefront Public Art Display Panels on Bradley Boulevard
 - ii. Bike Station located off Arlington Boulevard
 - iii. The covered seating area off Arlington Boulevard.
- c. The building entrance on the southern end of the Arlington Road façade must, as illustrated in the architecture drawings reference above,;
 - i. project from the building and
 - ii. be articulated in translucent material.

9. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for commercial development.
- b. All onsite downlighting fixtures must be full cut-off fixtures.
- c. Deflectors shall be installed on all fixtures causing potential glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.

10. Community Liaison Council

The Applicant must establish a Community Liaison Council (CLC), to include Safeway representatives, representatives of the residential communities adjacent to this site, and a representative from the People's Counsel, to meet at regular intervals to discuss the progress of the development and any issues arising therefrom.

11. Development Program

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

- a. All streetscape improvements, including site furnishings, to Bradley Boulevard and Arlington Road, as illustrated on the Certified Site Plan, must be completed before issuance of the project's use and occupancy permit.
- b. On-site public amenities, including the Bike Station and the Public Art Display Panels must be constructed and installed prior to use and occupancy permit.
- c. On-site lighting must be installed before issuance of the project's use and occupancy permit.
- d. All on-site landscaping must be completed within six months of the issuance of the project's use and occupancy permit, except the trees included in the landscape buffer along the western site boundary, which must be installed before the project's use and occupancy permit.
- e. The Applicant must specify phasing of pre-construction meetings, dedications, sediment/erosion control, or other features must be specified by Certified Site Plan.

12. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the landscape plan stating that "M-NCPPC staff must approve all substitutions".
- c. Modify data table to reflect development standards enumerated in the staff report.
- d. Ensure consistency off all details and layout between site plan and landscape plan.
- e. Provide confirmation of agreement with the Bethesda Urban Partnership for programming of the storefront Public Art Display Panels.
- f. Provide LEED-NC checklist.
- g. Coordinate with SHA regarding the feasibility of undergrounding the utility lines along the site frontage on Bradley Boulevard.

13. Noise Reduction Wall and Landscaping

Safeway must construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet. This wall's construction is subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA), and KFA's removal of its existing stockade fence. In addition, Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper

(increased from 10 feet and 2.5" caliper), as well as donate to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping in the green area adjoining Safeway's western and southern property lines. The final details and design of the masonry/concrete wall and associated landscaping must be compatible with the proposed Safeway building façades and must be provided on the Certified Site Plan. The \$5,000 must be transferred to KFA, and the construction of the wall and installation of associated landscaping, must be completed prior to issuance of any use and occupancy permit for the supermarket.

BE IT FURTHER RESOLVED that all site development elements as shown on Safeway Store #2848 drawings stamped by the M-NCPPC on June 19, 2009, shall be required, except as modified by the above conditions of approval; and

BE IT FURTHER RESOLVED that, having given full consideration to the recommendations and findings of its Staff, which the Planning Board hereby adopts and incorporates by reference of the Staff Report, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Site Plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development if required, unless the Planning Board expressly modifies any element of the project plan.*

Neither a development plan, diagrammatic plan, schematic development plan, nor a project plan were required for the subject site.

2. *The Site Plan meets all of the requirements of the C-2 and Arlington Road District Overlay zones and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The proposed use is allowed in the C-2 Zone as modified by the Arlington Road District Overlay Zone and the site plan fulfills the purposes of the zone by expanding the variety of retail services available to the local area while maintaining compatibility with surrounding development within the maximum building height and density allowed by Zoning and recommended by the Sector Plan.

As the project data table on page 13 indicates, the site plan meets all of the development standards of both of the applicable zones. With respect to building

height, setbacks, and density the proposed development is under all the maximum standards allowed. With respect to green space the proposed development provides greater than the minimum required.

Requirements of the C-2 and Arlington Road District Overlay zones

The Staff Report contains a data table that lists the Zoning Ordinance required development standards and the developments standards proposed for approval. The Board finds, based on the aforementioned data table, and other evidence and testimony of record, that the Application meets all of the applicable requirements of the C-2 and Arlington Road District Overlay zones. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Data Table

Development Standards Approved by
the Board and Binding on the
Applicant

Gross Tract Area (square feet)	86,193
Previous Dedication (square feet)	11,363
Net Lot Area (square feet)	74,830
Max. Building Height (feet)	42
Min. Building Setbacks (feet)	
Bradley Boulevard	12
Arlington Road	8
Rear (per adj. R-30 Zone)	170
Side (per adj. R-30 Zone)	34
Min. Green Area (% of lot)	12
Floor Area Ratio (FAR)	0.5
Building Area (square feet)	43,097
Max. Parking Spaces	160

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

a. Buildings and Structures

The buildings and structures of the proposed development are located so as to clearly define the street edges and public space along Bradley Boulevard and Arlington Road, providing attractive and activated streetscapes as envisioned by the Sector Plan. The location provides easy access to the building from adjoining sidewalks and parking. The architectural design successfully breaks up the massing of what is in essence a large unfenestrated, internally-focused building type by alternating a coordinated palette of materials to create a series of integrated pavilions along the street. This provides both visual interest and relief, both suggesting a variety of functions and celebrating the building's role as civic gateway to the CBD as envisioned in the Sector Plan. Staff finds the locations of the buildings and structures to be adequate and efficient.

b. Open Spaces

The primary open space for this urban infill supermarket is the sidewalk bounding the site on the north and east. This open space has been designed not only in the three dimensions of sidewalk treatments and attractive architecture previously discussed, but also in the fourth dimension that facilitates and rewards movement along the site by pedestrians, cyclists, and automobiles: storefront Public Art Display Panels on Bradley Boulevard will feature a revolving showcase of local artists' work; a bike station, featuring extra cycle parking, drinking fountains, and air pumps, along Arlington Road will provide a meeting place for Capital Crescent Trail users; and a financial contribution towards the beautification of the existing retaining wall on the opposite side of Arlington Road to help welcome visitors to the Bethesda CBD. These improvements to the open spaces on and around the site are very desirable, and more than adequate, safe, and efficient.

c. Landscaping, Lighting, and Recreation Facilities

The project's landscaping consists primarily of street trees along the site boundaries on both Bradley Boulevard and Arlington Road, in accordance with the Bethesda Streetscape Standard, including the brick pavers, street lighting, and the undergrounding of utility lines. Additionally, along the

site's western boundary with an existing residential development, the proposal will augment the existing significant tree screening and wooden fence with a solid border of evergreen trees. On-site lighting will create enough visibility to provide safety but not so much as to cause glare on the adjacent roads or properties. There are no recreation facilities required for this site plan, but benches and bicycle facilities are provided. The landscaping and site details adequately and efficiently address the needs of the proposed use and the recommendations of the Master Plan, while providing a safe and comfortable environment.

d. Vehicular and Pedestrian Circulation

The adjacent sidewalks, expanded to a minimum width of 15 feet, provide pedestrian access and adequately and efficiently integrate this site into the surrounding area. Bicycle access to the site, particularly from the adjacent Capital Crescent Trail, is encouraged through the location of a sheltered "bike station", with bike racks, drinking fountains, and air pumps. The vehicular circulation design efficiently directs traffic into the site with minimal impacts to pedestrian circulation, while specifically discouraging cut-through traffic at the nearby intersection. This balance of design with the site, the recommendations of the Sector Plan, and the needs of the use is an efficient and adequate means to provide a safe atmosphere for pedestrians, cyclists, and vehicles.

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

The proposed two-story supermarket is compatible with the adjacent and confronting commercial as well as residential uses. The existing commercial development around the intersection of Bradley Boulevard and Arlington Road consists of a single-story service station, a three-story commercial building with ground-floor retail, a four-story office building, and a one-story front-loaded strip shopping center. The residential uses, located behind this initial ring of commercial development, range from two- to three-story buildings, including one-family detached, one-family attached, and multi-family dwelling units. The intersection at the center of this Arlington Road District is a commercial intersection and the proposed expansion of the existing supermarket use is both appropriate and desirable.

For the most proximate residential units, to the west, the proposed building height, in concert with the proposed setback from that property, will have a negligible impact on the residential property's continued access to light and air. Noise generated by customers accessing the site by car will be mitigated not only

by the existing board-on-board fence on that residential development's property, but also by enclosure and partial burial of the structured parking and a new retaining wall on the supermarket property to help to deflect and contain the noise. Visual impacts of the new building on the adjoining development, which some may deem adverse, will continue to be mitigated by a line of tall trees on the residential development's property and will be bolstered by another layer of quick-growing evergreen trees on the subject property.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

As conditioned, the Site Plan will meet all applicable requirements for Forest Conservation.

The stormwater management concept consists of on-site water quality control. On-site recharge is not required because this is a redevelopment project.

BE IT FURTHER RESOLVED, that this resolution constitutes the written opinion of the Planning Board in this matter and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

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

BE IT FURTHER RESOLVED, that the date of this resolution is AUG 13 2009 (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).

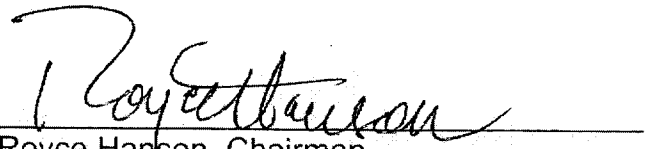
* * * * *

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

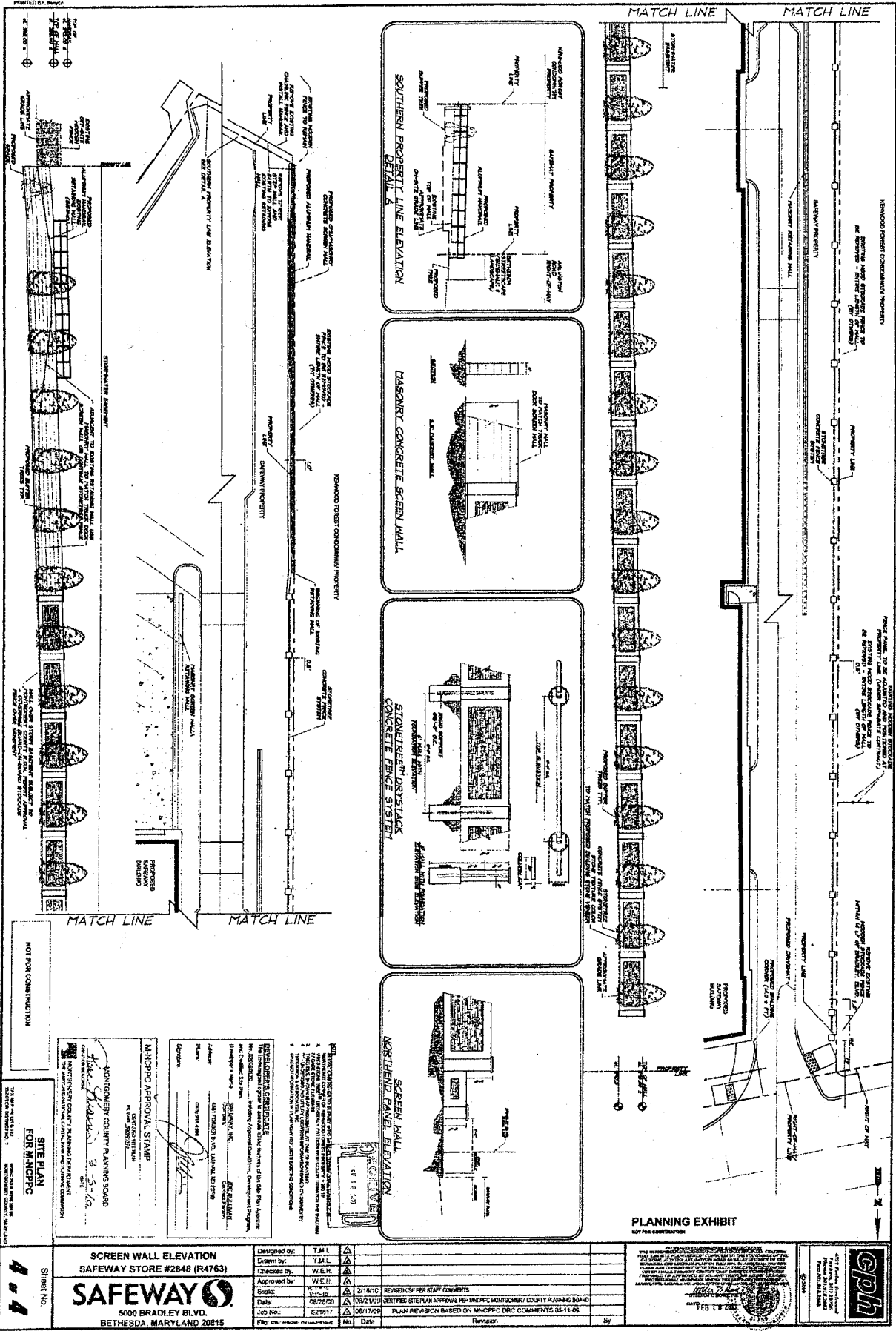
MCPB No. 09-87
Site Plan No. 820090170
Safeway Store #2848
Page 11

Commissioner Cryor, with Commissioners Hanson, Alfandre, and Cryor voting in favor of the motion, and with Commissioner Wells-Harley abstaining and Commissioner Presley absent, at its regular meeting held on Thursday, July 30, 2009, in Silver Spring, Maryland.

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

Royce Hanson, Chairman
Montgomery County Planning Board

Appendix B: Certified Site Plan Excerpt Illustrating Wall Location



MONTEGOMERY COUNTY PLANNING BOARD
 10000 GOLF COURSE ROAD, SUITE 200
 BETHESDA, MARYLAND 20814
 301-287-2200
 www.montgomeryplanningboard.com

SAFETY APPROVAL STAMP

DESIGNER'S CERTIFICATE
 I, the undersigned, being a duly licensed Professional Engineer in the State of Maryland, do hereby certify that I am the Designer of the above described project and that the same complies with all applicable laws, regulations, codes, and ordinances of the State of Maryland and the County of Montgomery. I am a member of the National Society of Professional Engineers (NSPE) and the National Society of Professional Engineers (NSPE) of the State of Maryland.

Signature: *[Signature]*
 Name: **W. M. L.**
 License No.: **11021**
 State: **MARYLAND**
 Date: **02/11/08**

SAFETY APPROVAL STAMP

MONTEGOMERY COUNTY PLANNING BOARD
 10000 GOLF COURSE ROAD, SUITE 200
 BETHESDA, MARYLAND 20814
 301-287-2200
 www.montgomeryplanningboard.com

SAFETY APPROVAL STAMP

SAFETY APPROVAL STAMP

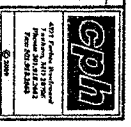
Designed by:	T.M.L.	△	
Checked by:	T.M.L.	△	
Approved by:	W.E.H.	△	
Scale:	1/4" = 1'-0"	△	2/11/08
Date:	02/26/08	△	02/26/08
Job No.:	021817	△	06/17/08
File No.:	021817	△	06/17/08

REVISED CIP PER SEAF COMMENTS
 CERTIFIED SITE PLAN APPROVAL PER MONTEGOMERY COUNTY PLANNING BOARD
 PLAN REVISION BASED ON MNCPPC DRG COMMENTS 05-11-08

PLANNING EXHIBIT
 NOT FOR CONSTRUCTION

APPROVED FOR CONSTRUCTION

FEB 13 2008



Appendix C: Community Correspondence

Kenwood Forest Condominium Association
c/o Abaris Realty
12009 Nebel Street
Rockville, MD 20852

April 30, 2010

Mr. Robert Kronenberg
Development Review Division
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Limited Site Plan Amendment No. 12009017A
Safeway Store #2848 (Arlington Rd./Bradley Blvd., Bethesda)

Dear Mr. Kronenberg:

Kenwood Forest Condominium, Inc. is a town house condominium that adjoins the property where Safeway Store #2848 is located. The condominium acts through a seven member Board of Directors, elected by the owners of the units in the condominium.

Currently, we have a stockade style fence on the Kenwood Forest Condominium elements that provides a very basic barrier between the Safeway store parking area, our common elements, and most importantly, several of the homes in Kenwood Forest.

The Board of Directors and owners in the condominium have reviewed the plans for the re-development of the Safeway store and property, and the Limited Site Plan Amendment No. 12009017A submitted on February 26, 2010. The Board believes that the re-development offers an opportunity to create a modernized and much-improved buffer between the properties.

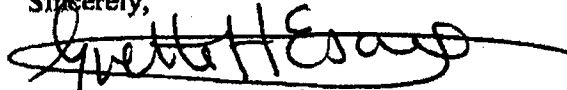
Our understanding of the effect of the amendment, as it relates to Kenwood Forest, is that the Planning Board would be altering the site plan approval to provide that all or portions of the required buffer wall could be located on Kenwood Forest's common area.

The Kenwood Forest Board of Directors and Safeway are continuing discussions about the wall. While the discussions have not concluded, the Kenwood Forest Board of Directors supports the site plan amendment because we believe it expands the options available for the wall: a buffer wall that is all or partially located on Kenwood Forest common elements rather than solely on Safeway's property, may allow for the best design and benefits for our community.

Mr. Robert Kronenberg
April 29, 2010
page 2

The Board of Directors intends to explore this matter fully with Safeway, and has adopted the enclosed resolution authorizing the Board to negotiate with Safeway on this matter and to express the Board's support for the site plan amendment.

Sincerely,



Yvette Escudero, President
Kenwood Forest Condominium, Inc.

Enclosure

cc: Ms. Renee Montgomery
Mr. Robby Brewer, Esquire

R E S O L U T I O N

BOARD OF DIRECTORS

KENWOOD FOREST CONDOMINIUM, INC.

(BUFFER BETWEEN SAFEWAY AND KENWOOD FOREST)

WHEREAS, Safeway Inc., plans to demolish the Safeway store at the intersection of Bradley Boulevard and Arlington Road and to build a new store at the same location; and

WHEREAS, the demolition and construction for the re-development of the store are anticipated to last for 12-18 months and possibly longer; and

WHEREAS, there currently exists in the Kenwood Forest common elements, along the property line between the Safeway store and the Kenwood Forest common elements, a residential grade wooden stockade fence owned and maintained by Kenwood Forest; and

WHEREAS, the redevelopment of the Safeway store presents an opportunity to create a buffer area between the Safeway and Kenwood Forest properties that will provide more safety and security for Kenwood Forest residents and their property, and provide more effective noise reduction and visual screening for the residents of Kenwood Forest, than the existing fence, during and after the redevelopment of the Safeway store; and

WHEREAS, Safeway, Inc. has approached the Board of Directors of Kenwood Forest with its concepts for re-developing the buffer area and has offered to pay the costs of new structures and landscaping in the buffer area; and

WHEREAS, the Kenwood Forest Board of Directors has provided the opportunity for owners of units in Kenwood Forest to review the concepts for re-developing the buffer area and to provide comments to the Board of Directors;

WHEREAS, the Kenwood Forest Board of Directors are authorized by the Condominium's governing documents and Maryland law, to manage the affairs of the Condominium including administration of the common elements and entering into contractual relationships for goods and services related to the management of the affairs of the Condominium; and

WHEREAS, the Kenwood Forest Board of Directors has determined that certain improvements in the buffer area as described below are in the best interests of the Kenwood Forest Condominium and will contribute to improving the security, quality of life, and property values in Kenwood Forest.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Kenwood Forest Condominium, Inc. ("Kenwood Forest") authorizes Kenwood Forest to enter into a

cooperative arrangement with Safeway, Inc. to achieve an upgraded buffer area between the Safeway store at the intersection of Bradley Boulevard and Arlington Boulevard and the adjoining Kenwood Forest common elements, upon the following conditions and terms:

1. Kenwood Forest will replace the existing fence along the property line between the Safeway and Kenwood Forest properties with a fence/wall structure known by the trade name, "Stonetree Wall". The Stonetree Wall shall be installed as shown on the attached Exhibit 1, "Option 1 Kenwood Wall on Kenwood Property," with the following modification: the Stonetree Wall shall not be installed on the portion of Kenwood Forest property above the existing retaining wall, pending Kenwood Forest's review of other fence style options.

2. Concurrent with or immediately after installation of the Stonetree Wall, the Board of Directors authorizes landscaping complimentary to the wall to be installed, which may include removal of existing landscaping and landscaping of the common areas in addition to what is currently there.

3. Kenwood Forest shall not replace the existing wall or alter the landscaping until it has obtained from Safeway Inc. a commitment to pay all costs of demolition of the existing wall and installation of the Stonetree Wall and landscaping, including all related costs, such as surveying, and including a commitment not to begin demolition of the Safeway site until the existing fence has been replaced in accordance with the other terms herein.

4. Without limitation, the commitment identified in paragraph 3 must include provisions requiring Safeway and subsequent owners of the Safeway property to repair and maintain the wall and landscaping and bear the costs of those repairs and maintenance; provisions indemnifying Kenwood Forest from injuries and claims relating to the wall; and a provision addressing conditions of termination of the commitment; and a provision for resolving disputes arising between Kenwood Forest and Safeway about the wall and landscaping.

5. The Board of Directors is authorized to enter into a contract and other agreements with Safeway, Inc. to accomplish demolition of the existing wall, alteration of existing landscaping, and installation and future maintenance of the Stonetree Wall and new landscaping.

6. The Board of Directors authorizes the President or Vice President of the Board, sitting at the time of their actions, to execute all documents and take such other actions as may be required to achieve the goals of this resolution on behalf of the Board of Directors.

7. The Board of Directors authorizes Yvette Escudero to execute and submit a letter from the Board to the Maryland National Park and Planning Commission, no later than the close of business on April 30, 2010, expressing the Kenwood Forest Condominium's support of the site plan amendment submitted by Safeway to MNCPPC dated February 26, 2010.

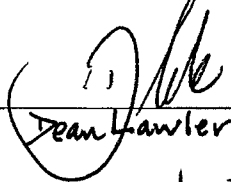
8. The commitment identified in paragraph 3 must include provisions requiring Safeway to indemnify Kenwood Forest for any damage, including damage to the condominium common elements and units, caused by demolition, excavation, and construction activities in the re-development of the Safeway store.

CERTIFICATION

I hereby certify that the foregoing Resolution regarding the buffer between Safeway and Kenwood Forest was duly adopted by the Board of Directors of the Kenwood Forest Condominium, Inc. at a duly convened meeting of the same on the 28th day of April, 2010.

ATTEST:

By:

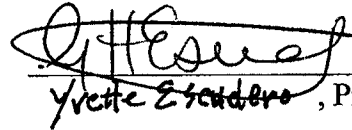


Jean Lawler, Secretary

Date: 4/28, 2010

BOARD OF DIRECTORS

By:



Yvette Escudero, President

Date: 4/28, 2010

Hisel-McCoy, Elza

From: Shelly Weinstein [sweinstein@netoedsat.org]
Sent: Monday, April 26, 2010 10:19 AM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert; sweinstein@netoedsat.org
Subject: KFHG Statement, MCPB Public Hearing, May 20, 2010

Importance: High



KFHG-KFB

Testimony 4-19.doc



KFHG-MCPB

Revised Condition #1.

April 23, 2010

Mr. Elza Hisel-McCoy
Senior Planner
Development Review Division
Maryland-National Capitol Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Letter of Explanation
Limited Site Plan Amendment #82009017A
Safeway Store #2848, Bethesda, Md. 20815

Dear Mr. Hisel,

On behalf of the "Kenwood Forest Homeowners Group" (KFHG), an unincorporated, subgroup of 40 or more homeowners who are members of the Kenwood Forest Homeowners Association (KFA), I respectfully request an opportunity to submit this letter of explanation with attached draft testimony, (references, documentation and homeowner lists to be attached on May 20, 2010), in **opposition** to the Safeway Store #2848, located at 5000 Bradley Boulevard in Bethesda, MD, request for a Limited Site Plan Amendment #82009017A, to modify Condition number 13 (Condition #13), contained in the Montgomery County Planning Board's Resolution approved Site Plan #82009017A, for Safeway's property, dated July 23, 2009 (The Resolution).

Condition #13 entitled, "**Noise Reduction Wall and Landscaping**", obligates Safeway, Inc., to construct a masonry/concrete wall (the wall) on its property along the western and southern property lines, with a maximum height of 6.5 feet. ...". Safeway's western and southern property line which extends fully to the northern sidewalk along Bradley Blvd., and its southern property line along Arlington Road sidewalk. Currently, Safeway, Inc. property line is immediately adjacent to the Kenwood Forest Association (KFA) property line, to the exception that at specific sections the Safeway property is approximately 6' to 8' below the Kenwood property line. At these specific lower sections of Safeway's property there is a concrete retaining wall approximately 4' to 6' high to safely hold back Kenwood Forest's land and properties. Safeway, Inc. requests relief from Condition #13 in order "that it might have flexibility to negotiate with Kenwood Forest for a location [other than its own property] to construct a Wall that will provide screening, noise reduction, and tree preservation benefits...". It further states, "Safeway and Kenwood Forest specifically negotiated for Safeway's construction of the Wall because of Kenwood Forest's concerns regarding "potential visual and audible disturbances from the construction and operations of the replacement Safeway grocery store".

Safeway's statements belies Kenwood Forest homeowner's negotiations and testimony prior to and during MCPB July 23, 2010 public hearing. It's statements to "provide screening", "protect the trees" and/or "benefit KF homeowners", are misrepresentations of Kenwood Forest homeowner's concerns with auto and truck noise and congestion from Safeway's "new roadway". The new roadway is immediately adjacent to their homes on Kenwood Forest Lane, bordering with Safeway's western and southern property lines. As we pointed out in July, 2009, "noise from the traffic flow and congestion from a new access and egress roadway to Safeway's new parking facilities immediately adjacent to the properties and backyards, air and light pollution, and KF homeowners right to maintain a semblance of privacy for family and friends in their homes and when making use of their outdoors and backyards", the loss of which is of deep

concern and something we have benefitted from for more than 35 years with the existence of a wooden stockade fence on Kenwood Forest's property. There is full and detailed rationale in my submitted testimony, July 17, 2009 addressed to Chairman Hanson, MCPB, for the July 23, 2009 hearing. These reasons and rationale are fully explored in my memorandum addressed to you and Mr. Robert Kronenberg, June 11, 2009 as summary to our previous meetings on this matter.

MCPB's approved Safeway Site Plan Resolution, Condition #13, is entitled "**Noise Reduction Wall and Landscaping**". It reflects MC staff and Safeway's response to KF homeowners' memoranda, meetings and negotiations expressing concerns for auto and traffic noise and congestion from a new roadway, air, noise and light pollution, the scope and size of Safeway's new building and footprint relative to a small residential community, with 20 homes immediately adjacent to the new road and Safeway's western and southern property line (6701 - 6751), with a total of about 116 two story homes in the close vicinity of about one and half square blocks, bordered by Arlington Rd.,Bradley Blvd., and Fairfax Road. Concerns were also raised about environmental pollution with carbon emissions, safety for children and pedestrians on private property, and common areas unprotected with a solid and strong concrete type wall, as well as the need for protection from damages to our properties, and our desire to maintain a barrier wall on Safeway's property to serve as a "physical buffer", with "dense landscaping or walls..of appropriate scale". (MCPB Bethesda CBD report, page 37, section 3.2,B. Urban Design).

The bottom line of Safeway's desire "to move the Wall slightly to the west of Safeway's property", a euphemism for encroachment on Kenwood Forest property, rests on three problems. The real reason is "cost", (attached Weinstein statement). Unforeseen costs may arise from Safeway's technical problem with constructing the Wall on its property. It relates to a "height requirement of 6.5' in Condition #13, not insufficient property. **If the Wall is constructed with a limited height of 6.5' throughout the full length of Safeway's western and southern property line, it cannot function to serve its original purpose.** "Safeway's property line runs along the top of an existing concrete retaining wall adjacent to the parking area behind the existing grocery store. Placing the concrete wall on Safeway's property in this area, would necessarily place it 5' below the elevation of the KFA property at the top of this retaining wall". (Engineer Bill Howe, Findings 12/2/09). Safeway had several choices it could make in response to a hastily written Condition #13, which and failed to take into account its lower ground level. It could ask MC for a "height variance" to accommodate for the lower topography on its property, in order to maintain the original purpose and function of the "Wall". It also meant looking into the safety and strength of its existing retaining wall. If the choice was to reinforce the retaining wall for use as a base or next to the new wall, that would entail greater cost. Thirdly, Safeway explored a way to encroach on Kenwood Forest's property and avoid the cost of assessing the safety and strength of the footing for the retaining wall. However, because the concrete retaining wall is located where Safeway's land is lower than Kenwood Forest property line, it also means encroaching further into Kenwood Forest property, anywhere from 2 1/2' to about 8' or 9' ft, "to avoid possible damage to its old retaining wall from the posts that hold up the new "wall". This eliminated the cost and time it would take to look into the other options to keep the Wall on Safeway property.

Kenwood Forest homeowners strongly oppose and object to Safeway's arbitrary decision to save time and money with encroachment on Kenwood Forest property. Encroachment on all or part of Kenwood property will result in greater disruption to the quality of life in Kenwood Forest community; it is likely to cause an increase in Kenwood Forest homeowner costs in higher property taxes, liability and indemnification insurance costs, maintenance costs and increased legal fees, and unforeseen economic and financial impacts for all Kenwood Forest Homeowners. The impact on home sales and rentals, still remains unknown but it has the potential of lowering the value of Kenwood Forest homes with a grocery store's concrete wall directly on Kenwood property. In some places it leaves not even 6' between the new wall and homeowner decks. **It will not "save Kenwood's mature aged trees", they will have to be removed.** Safeway contends it will absorb all liability and maintenance costs, into perpetuity. This is unrealistic and purposely deceptive. The Kenwood Forest Board (KFB) is ill advised and inexperienced not to understand that contracts are made to be broken and often revised sooner than planned. As proof, Safeway is already asking to revise its agreement with KF homeowners, as well as KFB, that testified in support of Condition #13, July 23, 2009, just 10 months ago.

Much as Safeway has probably and rightly assumed, it would be untenable and perhaps unseemly for a strong and viable national corporation, with stores located throughout the Northern Hemisphere, with immeasurable financial strengths and support to ask the MCPB to revise Condition #13 because of its "costs". Instead it used the rationale of "one homeowner / KFB member" who believes that a 6.5' concrete wall can "screen construction and audible noise". Therefore, Safeway chose to use the "cause celeb" of asking Safeway to construct the Wall, first, as its rationale to encroach on Kenwood Forest property. The same previously referenced Safeway engineer's report explained it this way. **At no time does this engineer's report state that the Wall cannot be constructed safely on Safeway property.** It goes on to state, "aligning the wall just inside safeway's west property line, would require removal of existing trees on [its] property line. While this will eventually be done for the overall project, following the fence alignment [Kenwood property] to avoid these trees allows Safeway to install the wall *prior* to commencing construction of the overall

project." One homeowner has gone to great lengths to have the Wall constructed "prior" to commencing construction to the overall project. All strategies have failed. The issue of "construction noise" and "building the wall, first", were not issues addressed prior to and/ or in drafting Condition #13. "Construction noise" and the timing to build the Wall, are issues that were addressed following the July 23 MCPB Resolution. **Approximately 80% of the homeowners adjacent to Safeway's property line oppose Safeway encroachment on Kenwood Forest property for the purpose of building the Wall, first and oppose easement rights for that purpose.**

However, I suggest in response to all homeowners' "concerns regarding potential visual and audible disturbances from the construction and operations of the replacement Safeway grocery store", an option to avoid the dirt and dust. MC should consider requiring Safeway to install protective safety temporary wooden and sheeting walls on its side, with overhead protection along the full length of Safeway's property line from Bradley Blvd., to Arlington Road to protect the adjoining Kenwood properties, residents and workers from noise, dirt and dust.

In summation, Safeway, Inc., is requesting to amend Condition #13 to encroach on all or part of Kenwood property. More than 40 KFL Kenwood Forest Homeowners oppose amending Condition #13, on the basis that its reasons are not substantiated. Such as, "to save the trees", "moving slightly to the west" will remove the trees, not save them. In order to "avoid visual and audible construction noise" moving the wall "slightly to the west" results in encroachment on Kenwood property. Kenwood Forest homeowners suggest that a long term dramatic effort is overkill to resolve short term problems of "construction noise, dirt and dust". **We suggest temporary construction of a protective safety wall with wood and sheeting on the sides and overhead along the full length of Safeway's western and southern property line to protect Kenwood property, homes, workers and residents.**

Further, we propose revising Condition #13 for Safeway to construct a masonry/concrete wall at a height of 6.5' , to limitedly address the technical engineering issues around the **height of 6.5'** , the following; Permit construction of "cascading concrete panels" at minimal varying heights where it is necessary along the full length of Safeway's western and southern property line, that will provide a *visual* height of 6.5' height, as seen from the Kenwood Forest property side of the Wall. And, further to allow the necessary time for Safeway engineers to obtain permits, survey and determine the panel wall's height and address MC's concerns for safety and strength of Safeway's existing retaining wall and construction of the new Wall, **the construction and removal of Kenwood Forest's existing stockade fence and construction of the Wall, will commence in the final phase of Safeway's construction plans. Attached please find a "revised Condition #13".**

This long delay preventing Safeway from acting on its Site Plan has been unfortunate and costly to all parties involved, MCP staff, Safeway personnel and officials, and Kenwood Forest Homeowners. However, Kenwood Forest homeowners are still faced with many unanswered questions because of Safeway's arbitrary decision in the absence of direct communications with homeowners to answer questions, such as: Safeway requests the right to encroach on Kenwood property to "benefit" homeowners. What are the benefits? If it provide benefits and advantages to homeowners, why aren't the homeowners willing to give up easement rights? Will upgrading Kenwood's wooden stockade wall with a strong, paneled concrete wall result in rises to homeowner's and the KFB's property tax assessment? What evidence can Safeway provide that having Safeway's wall on private residential property will help to keep our properties "upscale" at its existing high value, rather than what many outer suburban ring cities are beginning to experience with "urban blight"? If, Safeway is permitted to encroach on Kenwood's property how will it fit with MCPB goal for large corporations to lay down a gentle, scaled to size footprint, to be environmentally and architecturally compatible with its small neighboring Bethesda residential community?

Given the evidence and strong opposition to Safeway's Amendment by Kenwood Forest Homeowners, I respectfully request that you consider including this letter, the attached statement and its related documents in your recommendations. Should the proposed alternative to revise the height requirement, found to be unacceptable for technical or other reasons, consideration of other alternatives to allow for benefits with a masonry/concrete wall on Safeway property, that affords a height compatible to Kenwood Forest's original 6.5' wooden fence, to provide auto and truck noise reduction, as a separate and distinct barrier wall to provide Kenwood Forest homeowners with privacy and maintain its quality of life in the community. In view of Kenwood Forest homeowners opposition to Safeway's suggestion to encroach on Kenwood Forest property, and the proposed options are not approved, perhaps a delay in MCPB's decision should be considered.

Thank you for your time and consideration,

Shelly Weinstein
6726 Kenwood Forest Lane
Chevy Chase, Maryland 20815

Item # 13, Noise Reduction Wall and Landscaping, pages 5 & 6 – Revisions as follows:

"Safeway must construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet cascading heights consistent with Safeway's lower ground level adjacent to certain sections of KFA's higher ground levels, to assure the wall's original purpose and functions are maintained for noise reduction and to serve as a distinct separate barrier wall between Safeway and Kenwood Forest properties, with varying height panels to remain consistent with the 6.5' height level of KFA's stockade fence. This wall's construction and height is subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA). and KFA's Removal of KFA's existing stockade fence shall guarantee KF homeowners that Safeway's masonry/concrete wall on its property will serve as a distinct and separate barrier paneled wall between Safeway property line and KFA residential properties consistent with the 6.5' height of KFA's wooden stockade fence that Kenwood Forest homeowners and Safeway have enjoyed for more than 35 years. In addition, Safeway will increase the planting size of the proposed Leyland Cypress trees planted in the western landscape buffer to 12 feet at a diameter of 3" caliper (increased from 10 feet and 2.5 caliper) , as well as donate to KFA a sum of \$5,000 for KFA's use to provide supplemental landscaping in the green area adjoining Safeway's western and southern property lines. Safeway's removal of KFA's existing stockade fence, final details, and design and construction of the masonry/concrete wall, is expected to be built during the final construction phase of the Safeway approved site plan. Safeway will be granted a temporary construction easement or easements within the boundaries of the Wall area for the purpose of removal of KFA's stockade fence and construction access and constructing the masonry/concrete wall on its property along the western and southern property lines and its associated landscaping must be compatible with the proposed Safeway building facades and must be provided on the Certified Site Plan. The \$5,000 must be transferred to KFA, and the construction of the wall and installation of Safeway's associated landscaping, must be completed prior to issuance of any use and occupancy permit for the supermarket."

(Shelly Weinstein statement before the KFB meeting, April 19th, 2010)

Good evening: I'm Shelly Weinstein, speaking to you on behalf of the Kenwood Forest Homeowners Group (KFHG). It is an unincorporated, subgroup of homeowners who are all members of the Kenwood Forest Homeowners Association (KFA). The KFHG currently consists of about 40 KF homeowners--your neighbors--primarily on Kenwood Forest Lane (KFL), but also from Fairfax Road and Bradley Blvd. Mr. John Adamovich, Ms. Isobel Murray, Ms. Irina Mamantov and myself, serve as Co-Leaders and spokespersons.

At last year's March 4th, 2009 Annual Meeting, the Council of Unit Owners approved a Resolution for the Board to establish a Special Committee to look into the Safeway matter and call a Special Meeting of all homeowners on or before last Memorial Day. Although a Special Committee was never organized, Mr. Tom Arend, a Kenwood Forest Board member (KFB) continues to represent the KFB, in this matter.

Since April, 2009, upon investigation, the original group of about 12 homeowners sought information on the status of Safeway's construction plans. As a result we were invited by Montgomery County Planning staff (MCP) to meet with them, to present our concerns and suggestions.

Since that time, we have continued to meet and negotiate with Safeway representatives, Mr. Brewer of Lerch, Early & Brewer, and key MCPB staff director. One of many goals, was to have Safeway construct a masonry/concrete wall on its property to reduce auto and truck noise and congestion entering into and out of Safeway's new roadway, to serve as " an environmental barrier for noise reduction, protect privacy and safety, and control carbon emissions", and comply with MCPB Bethesda goal to provide Kenwood property owners "with a separate and distinct barrier between commercial and residential properties". (See KFHG/Kronenberg/Hisel Memo – 6/11/09, MCPB Bethesda CBD report, SW testimony, 7/19/09 for submission to MCPB, 7/23 public hearing for Safeway Site Approval).

The first milestone was at MCPB's July 23, 2009 public hearing, during which KFHG and the KFB representative testified in support of the Safeway Site Plan, on condition that Safeway construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet". Construction of the wall is subject to Safeway receiving adequate access easements from KFA and removal of an existing stockade fence. ..." There are several other requirements. (MCPB Condition #13, July 23, 2009, Safeway Site Plan, 820090170 Resolution).

Safeway's Amendment and the KFHG's opposition and proposal is focused solely on "Condition #13, for MCPB's public hearing, May 20th, 2010.

As a result of the March 1, 2010 Safeway filing for an Amendment to Condition #13, the KFHG moved forward with a request to MCPB, Chairman Royce Hanson for reconsideration of the wall's "height requirement" at 6.5 feet.

I'm pleased to tell you that Chairman Hanson responded by advising us that in as much as KFHG's concerns and Safeway's Amendment both dealt with the same matter, although with a *different purpose*, KFHG "will have an opportunity to testify on our issues, as well as being in opposition to Safeway's proposal", at MCPB public hearing, May 20, 2010.

Briefly, please let me respond to Safeway's rationale as addressed in a letter to Mr. Kronenberg from Mr. Robert Brewer on behalf of Safeway.

Issue 1 : "Safeway Encroachment on Kenwood Property":

- a) Safeway asks MCPB to allow it to move the wall "slightly to the west of Safeway's property line". How much is "slightly"? The Amendment doesn't even offer a conjecture of what "slightly" means. Here is what we do know, MC considers anything over, slightly under "one inch" (2cm), as needing easement approval, otherwise it is encroachment whether approved or taken.
- b) In order to justify this "slight" move, Safeway's greatest concern focuses on the tall, mature trees (7-8) located along Kenwood's property line (6701-6711). Safeway suggests that if allowed to move "slightly west" [KF property], they can save the trees. Apparently, no one has taken the time walk along Kenwood's property line, behind 6701 to 6711. By placing their wall anywhere from 2 ft., to 8 ft., on Kenwood property, those beautiful tall, mature trees will be destroyed, not saved! Or, perhaps Safeway is suggesting placing the wall about 12ft or more on your backyard properties? That will leave the beautiful tall, mature trees on Safeway's side of the wall?

Issue 2: Build the Wall, First!

- a) There are several reasons that Safeway gives for wanting to build the wall, before starting building construction. **But the bottom line is, "Cost"!** Other excuses:
- b) **Safeway's engineers report, 12/02/ 09 states; "The wall is not proposed to be located on Safeway property, but instead generally follow the alignment of the existing KFA wood stockade fence on KFA property."** (Howe Report, 12/2/09) Three out of its four findings point to the need "to install the wall prior to commencing construction of the overall project." Who and where was that policy decision made? It is not a part Condition #13? The "timing" for constructing the wall and/or "construction noise" do not appear in any of KFHG's or Safeway's drafts, memoranda or written or verbal negotiating points as a rationale for the term "noise reduction", or as an explanation for Condition #13's title, "Noise Reduction Wall and Landscaping". Construction noise never was taken into consideration nor does it appear as an element in MC's goals to provide "noise reduction" in Urban Development.

To digress, I see that building the wall "first", is a priority for the KFB Representative to the Safeway matter. Mr. Arend's proposal suggests that the masonry wall ..."*be built 'prior' to any Safeway store demolition or construction on Safeway property*". Further, Safeway uses the same rationale in its Amendment when it states, "...*Safeway and Kenwood Forest specifically negotiated for Safeway's construction of the Wall because of Kenwood Forest's concerns regarding potential visual and audible disturbances from construction. ..*" That is not true. Construction noise is a new

element, not included in Condition #13. It did not come up in any KFHG/Safeway/MC negotiations, at any time. It is the concern of one homeowner. Does this justify Safeway's effort to renege on its agreement to build the wall on its property? We think not. (KFHG was excluded from KFB/Safeway negotiations, at Mr. Arend's insistence. After 3 ½ months of negotiations, the KFB/Safeway Executives, jointly signed an Easement Agreement, w/o homeowner signatures, to allow Safeway to encroach on Kenwood property. The Easement Agreement was declared invalid the third week of February, 2010.)

Issue 3 - The "Height" issue:

- a) Let's return to Safeway engineer's report: One of its findings related to concerns about constructing the wall on their property. Technically, they will have to thoroughly inspect the "footings" of the very old concrete retaining wall on Safeway's side. This is at the section where Kenwood's property is about 4' to 6' higher than Safeway's property. The engineer expresses concern for the "structural capacity of their existing retaining wall", and goes on "because it holds back the earth on the KFA side of the wall..". Instead of suggesting perhaps its retaining wall will need to be rebuilt or reinforced, they propose "setting [the wall] back 4- 8 feet on the Kenwood Forest side of the property line, in order to avoid having the column foundations of the new wall not affect the structural capacity of the existing retaining wall".
- b) MC's Office of Building Permits and Zoning advised us that there is a good likelihood that Safeway's old concrete retaining wall will need to be checked and the footings more thoroughly inspected as a result of all the construction and blasting on Safeway's property, anyway. Never the less, Safeway chose to avoid the expense by delaying a request for height waiver and chose a quicker route to encroach on Kenwood property.

In a phone call I received, early February 2010, from the Safeway representative concerned that KFHG had turned down their three options for the location and height of the wall. At the end, when finally asked, "If we don't find your reasons valid, isn't this really all about the 'cost', which caused Safeway to try to encroach on our property?" Her answer; "Certainly it is, what do you think?"

Issue 4: "Terms": Its Impact on Use:

- a) Safeway describes the wall as a "screening wall". The masonry/concrete wall in Safeway's approved Site Plan is not a screening wall. A "screening wall" is often used to describe a thinner and/or a temporary wood structure using veneer or synthetic materials, often with varying types of open-air designs. Its use is for blocking visibility of something necessary, but environmentally or aesthetically undesirable.
- b) The masonry/concrete wall that Safeway agreed to in its site plan is a "barrier wall" which is solid, strong, wide and permanent. The "noise reduction" is from auto and truck noise and congestion entering and existing Safeway's new roadway for access to new on-site ground level and underground parking facilities directly behind and adjacent to Kenwood property. This new roadway will have a 4 times greater capacity than Safeway currently uses for auto and truck traffic. A "noise reduction " wall serves as an environmental barrier to protect privacy, pedestrian safety and control carbon

emissions. These “physical buffers”, are often used “along the residential edges for the land uses that serve as transitions between single family neighborhoods and Central Business District development” and, urges new development [to] respect established patterns of development”. The County defines “physical buffers” as “dense landscaping, fencing, walls, or buildings of appropriate scale”. (Bethesda CBD report, page37, sections 3.2.6 and B. Urban Design)

At no time, during negotiations and/or proposals did KFHG leaders, Safeway engineers or other Safeway officials or MC staff, refer to the “masonry/concrete Wall”, as a “screening wall”. The one screen wall that was proposed and approved was a “screen wall” on the side of Safeway’s loading dock, to block out Kenwood residents’ visibility close by and/or near the corner of Arlington Road truck loading dock.

Thus, it does appear that there was no intention by the MCPB to allow Safeway to encroach on Kenwood Forest property, when it states in its Condition#13, that Safeway “must use compatible elements to construct the masonry/concrete wall with the proposed Safeway building facades”. MC had no intention for the “Wall” to appear to be a part of Kenwood Forest’s residential brick facades. Had they suggested or will even consider that Safeway can construct its wall “slightly” on Kenwood Property”, it will fly in the face of MCPB’s own rules for “land use to serve as a transitional buffer between commercial and residential properties”, or “new development [to] respect established patterns of development”. Kenwood Forest and Safeway have enjoyed an established “physical buffer” with a distinct and separate wooden stockade fence, for well over 35 years. And, in final insult to injury, Safeway’s request for a “slight move to the west” will remove “dense landscaping” with 35 to 40 year old mature trees, the very type of “physical buffer” cited in the Bethesda CBD report, Urban Design.

Issue 5 - “Noise Reduction” –

- a) A term used for planning documents to reduce traffic and environmental noise generated from increased and congested auto traffic, delivery and heavy trucks, horns blowing, screeching wheels on asphalt flooring in an open-indoor garage immediately adjacent to the backyards of properties from 6751 to 6701KFL. “Noise reduction” is also a term used to describe 24/7 commercial business lights glaring in residential living rooms, bedrooms and disturbing cookouts on private property, faulty horns that go off at all hours of the night, crashes and pedestrian accidents, etc.
- b) All KFHG/ Safeway discussions and proposals addressed the need for noise reduction with its proposal for a barrier masonry/concrete wall to be constructed on Safeway property, as a result of the homeowners concerns and testimony to the “new road” in Safeway’s site plan for access and egress to the new store that will substantially increase Safeway’s current auto and truck traffic. The new road is directly behind KFL homes adjacent to Kenwood property line and alongside Kenwood Forest parking areas.
- c) The need to reduce “construction noise and dirt was never injected or proposed as a rationale for Condition #13. Limiting construction noise and dirt to minimize inconvenience to residents’ and other business will be specifically addressed in the Safeway Developer’s Construction and Operations Plans. Additionally, to avoid dirt and dust MC requires Safeway to install a protective safety temporary sheeting and wooden

side and overhead walls to protect pedestrians and property. Perhaps KFB might request that Safeway's temporary type protective, safety wall be extended along the full length of Safeway's property line from Bradley Blvd., to Arlington Road to protect the adjoining Kenwood properties and residents from construction noise, dust and dirt.

Removal of KF's Stockade Wooden Fence:

At the suggestion of MCP staff, we agreed that for environmental purposes it would be wise to remove KF's existing wooden fence in order to construct the masonry/concrete wall on Safeway property, immediately adjacent to the Kenwood's existing wooden fence. The KFB representative testified at the MCPB July 23, 2009 public hearing that the KFB had approved removal of its existing wood fence. Condition #13 does not stipulate "when" the wooden fence should be removed. Further, upon examination we cannot find anywhere in the KFB minutes from January, 2009 thru and including January, 2010, that the KFB voted to approve Safeway's removal of its stockade wooden fence, nor did KF homeowner's receive the necessary easement notifications, as stipulated in MCPB Condition #13 and in Safeway's requested Amendment to Condition #13. At a February, 2010 meeting, the KFB has acknowledged that it is unable to obtain easement rights. The KFB therefore is proposing to enter into a temporary easement contract with Safeway to construct the solid masonry/concrete wall on Kenwood property, sans easement, into perpetuity.

KFHG Proposes Modifications to MCPB Safeway Site Resolution, Condition #13 –

(Attached with these comments, is a copy of the full revised Condition #13. In summary, the changes read as follows:

Specific Changes to Condition#13 –

"Safeway must construct a masonry/concrete wall on its property along the full length of its western and southern property lines, with a) cascading heights consistent with Safeway's lower ground level adjacent to specified sections of KFA's higher ground levels to assure that the wall's original purpose and functions are maintained for noise reduction and serve as a distinct separate barrier wall between Safeway and Kenwood Forest properties. And, b) Removal of KFA's stockade fence shall guarantee KF homeowners that Safeway's masonry/concrete wall on its property will continue to serve as a distinct and separate barrier wall consistent with the same 6.5' height of KFA's wooden stockade fence that Kenwood Forest homeowners and Safeway have enjoyed for more than 35 years And, c) Safeway's removal of KFA's existing stockade fence, final details, design and construction of the masonry/concrete wall, is expected to take place during the final construction phase of the Safeway approved site plan.

Thank you,
Respectfully submitted
Shelly Weinstein

Hisel-McCoy, Elza

From: Shelly Weinstein [sweinstein@netoedsat.org]
Sent: Wednesday, May 05, 2010 3:05 PM
To: MCP-Chair
Cc: Kronenberg, Robert; Hisel-McCoy, Elza
Subject: Request for Delay/May20th Safeway Hearing!
Attachments: SW letter to KFB-May 2010.doc

Importance: High

Dr. Royce Hanson
Chair
Montgomery County Planning Board
Silver Spring, Maryland

Re: Safeway Store #2848, 5000 Bradley Blvd., Bethesda.
Limited Site Plan Amendment #82009017A
Request for Delay of MCPB Hearing, Safeway Site Plan Amendment
Scheduled May 20, 2010

May 5, 2010

Dear Mr. Chairman,

Please allow me to request a delay of the May 20, 2010 MCPB public hearing on the Safeway Site Plan Amendment, #82009017A to consider Safeway's request to amend the Condition #13, within MCPB Resolution approved Site Plan # 820090170. This Condition obligates Safeway, Inc., by stating:

"Safeway must construct a masonry/concrete wall on its property along the western and southern property lines, with a maximum height of 6.5 feet".

This wall, was to serve as a Noise Reduction and Landscaping Wall", for the purpose of the "noise from the traffic flow and congestion from a new access and egress roadway to Safeway's new parking facilities immediately adjacent to Kenwood Forest homes and backyards, reduce air and light pollution, privacy and to maintain the distinct and separate buffer to clearly delineate between Safeway property and Kenwood Forest property.

The Resolution also states, "This wall's construction is subject to Safeway receiving adequate access easements, for construction, maintenance, and landscaping, from the Kenwood Forest Association (KFA), and KFA's removal of its existing stockade fence." It is because of KFA's failure or inability to secure "easement rights", from more than 40 KFL homeowners, with about 20 of these owners' backyards immediately adjacent to Safeway's property line. The KFB and Safeway are aware that KFB is required to obtain more than 66 2/3 approval from all KF homeowners easement rights for a year or more, contract. In as much as the majority of KF Homeowners are "opposed" to allowing Safeway construct the wall on Kenwood Forest property, Safeway is making every effort to see what arrangement it can make to encroach on Kenwood property. On the other hand, a group of about 40 KFL homeowners offered an alternative "option" for consideration, Safeway refused to take in under consideration.

At no time since March, 2009 - January 2010 have the homeowners received direct letters of explanation, correspondence, request for comments, surveys or other information from either KFA or directly from Safeway, Inc.

Therefore, Safeway's request for an Amendment to Condition #13, seeks relief from building the wall on its property for the following reasons; that a "move slightly to the west" of its property will "benefit" Kenwood Forest homeowners, "save the trees", and allow Safeway to build the wall "prior" to construction of Safeway's building. The first two reasons are not substantiated by the previous testimony of homeowners and KFB and the "benefits" have not yet been explained. Further, Condition#13 does not require Safeway to build the wall "prior" to other construction, nor was this rationale offered in support of Condition #13 in prior negotiations or on July 23, 2009. (See Chairman Hanson correspondence to Shelly Weinstein, March 16, 2010).

In addition, in response to my letter to you of March 10, 2010 along with my testimony as submitted to Robert Kronenberg and Elza Hisel Mc-Coy, I express opposition to Safeway's Amendment on behalf of other KFL homeowners, and offer one acceptable option to the KFL homeowners, to allow Safeway to construct the wall on its property, with alternatives to meet a required height of 6.5' , to preserve the safety of pedestrians and children at play, noise reduction and privacy, and maintain the distinct separation as a buffer between Safeway and Kenwood Forest property that each party has enjoyed for more than 50 years. Safeway has steadfastly refused to consider this option or several others which have recently been suggested.

Attached please find an Open Letter to the Kenwood Forest Board, expressing confusion and lack of information as expressed by many KF homeowners with the advent of a Safeway/KFB private arrangement to construct the wall on Kenwood Forest property, w/o their approval and w/o easement rts. Most homeowners are either unaware of or opposed to Safeway's seeking "permission" from KFA, for approval of its amendment, in lieu of their knowledge that KFA cannot obtain "easement rts". Therefore, we are requesting KFB to rescind their Resolution with approval of Safeway's Amendment, until such time as the KFA has answers to and a better understanding of the financial and economic implications, as well as the technical issues to allow Safeway to encroach on Kenwood Forest Property.

Under these circumstances, on behalf of KFL homeowners who feel they need more financial and economic implications in order to make informed decisions, we respectfully request a "delay" of the May 20, 2010 MCPB public hearing on the Safeway Store #2848, Limited Site Plan Amendment #82009017A.

Thank you for your consideration and time.

Sincerely
Shelly Weinstein

OPEN LETTER TO KENWOOD FOREST BOARD

Unfortunately the KFB April 19 meeting, failed to target the issues on the Safeway matter, as it will be addressed by Montgomery County Planning Board (MCPB), at the May 20th public hearing and what it expects to learn from all interested parties, i.e., Why do you support or oppose Safeway's plan to encroach on Kenwood property? Thus HO's left your meeting confused and without answers to the critical financial and economic implications which are likely to effect their pocketbooks and limit their ability to give you informed advice.

Many KF/HOs are unaware of Safeway's Site Plan, approved by MCPB, Safeway, KF/HOs & KFB, July 23, 2009, with one "Condition". This being, that Safeway shall construct a masonry/concrete wall on its property with a height of 6.5'. In less than a year, Safeway wants to revise its contract with MC! It chooses to gut the major provision in the Condition by moving its wall "slightly to the west" on Kenwood Forest property. In other words, Safeway is saying "not in my backyard", put it on your land, since we have to build it, as in the approved site plan.

Safeway's cites two reasons for its Amendment. It wants to construct the wall "prior" to building its new 2 ½ story building, and they want to save KF's trees with encroachment 3' to 8' - 11'. However, "when" to build the Wall, is not in the original agreement and encroaching doesn't save our trees, it destroys them.

Your meeting failed to distribute the original MCPB Condition; it cut off any discussion by HO's opposing Safeway's Amendment; and it allowed Safeway to make an hour's presentation on "what", not "why" it wants to break the contract. Likewise, KFB's attorney was unable to respond to a question, stating, "I have not read the Amendment"! If the KFB and its attorney have not read the "whys & wherefores" of the Safeway revision to its MC contract, why should KF/HOs expect Safeway to honor its contract? And, where can KF/HO's get information about the financial and economic implications on their investments and monthly budgets?

How can KFB carry out its fiduciary responsibility to HO's, who have entrusted them with spending large monthly fees, when the Board failed to even allow a "show of hands" to get a sense of what its HO's want to do?

Following the 4/19 meeting, absent knowledge of financial implications and w/o HO's comments, at the KFB's next meeting you approved a Resolution to replace the existing wooden fence with a concrete wall, "all" on Kenwood property and replace all landscaping, with the hopes that Safeway will assume all related costs of demolition, construction, liability and maintenance, into perpetuity. The KFB also agreed to assert the Council of Unit Owners "support" for Safeway's site plan amendment as requested by Safeway's attorney, at MCPB 5/20 hearing.

Who does KFB represent, Safeway or the Council of Homeowner's? A few major unanswered questions that KF/HOs are seeking answers to, whether to support or oppose Safeway's request to construct the masonry/concrete wall "slightly to the west" of its property line:

What are the financial implications for KFA & HO's with upgraded property improvements on HO's and individual KFB's property tax assessments? KFB pays Abaris' liability insurance (rarely paid by a Condo Assoc.), will Abaris' liability insurance costs rise with maintenance for a concrete wall? We are assured that Safeway will pay for liability, indemnification, maintenance, legal fees, etc. Contracts are made to be broken and Safeway is already asking MC, KFB and KF/HOs to change its 7/23 contract? Safeway's annual revenue is \$44 billion, why is it trying to pass-off unexpected costs, by asking to build the Wall on a small & stable HO community, already boxed in with urban development? If Safeway is facing unplanned costs, how can KFB assure KF/HO's we too, won't experience unplanned costs with the wall on KF property? The KFB Resolution drafted by Safeway attorneys is ambiguous about "who" is building the new wall? Will KFA seek a costly "building permit" for itself/Abaris to construct the wall? Has KFB hired an independent engineering firm to assess the strength of

Safeway's old retaining wall on impact from all Safeway's construction activities? Do you and HO's know potential financial and relocation costs from damages to our homes? Over time, who ultimately owns the wall under eminent domain? Which organization incurs MC fines, for possible violation of building codes and maintenance? What will damages from Safeway's construction and operations plan cost KF/HOs, since Safeway has already backed-out of its agreement to conduct pre & post construction home surveys, as well as pre-construction surveys for all Kenwood property, before blasting? Has Safeway considered constructing a temporary side & overhead Protective/Safety wall on its property line adjacent to Kenwood's wooden fence to minimize construction noise and dirt, much the same as required for public sidewalks and traffic? Would this serve as a less costly option to a solution to give away expensive KF land for a short-term problem? What legal fees has KFB incurred to correct time and costs of 4 months negotiations and signage of an illegal easement agreement? And, what are the projected legal fees to negotiate a KFB/Safeway private contract for 2010 and each year, thereafter? Has the KFB demanded that Safeway construct the wall with compatible materials to Kenwood Forest architecture, if on KF property, as required by the original approved Kenwood site plan?

Is Safeway's financial support for construction, maintenance and insurance for the perpetual upkeep of the "wall", from Safeway, Inc., budget or from its non-profit side? If, from its profit side, is a contract subject to current Safeway officers, and can it bind beyond tenure? If Safeway designates the financial support from its non-profit budget, is the KFB aware of the need for the two parties to agree that they are not providing/accepting these funds in exchange for anything of commercial value to either party? Has the KFB considered the land/footage value to its homeowners? And, have you considered asking Safeway for compensation for the use of KF property, either yearly or en toto, for as long as the wall exists?

These are but a few of the financial and economic HO questions and concerns. Therefore, in as much as I have collaborated with about 40 KF/HOs for over a year, and share in these many concerns and issues as it relates to our lifetime investments, value of our properties for sale or rental, and the need to plan our monthly expenditures, in order to assure all KF/HOs, mortgagees and our governing board will make informed and responsible decisions impacting on the safety of the community, maintaining the value of our homes and the quality of life in the Bethesda/Chevy Chase community, **I request that KFB rescind approval of its Resolution of April 28th, 2010, until such time as the Council of Homeowners can meet to learn and be informed on these and other financial and economic implications from Safeway's construction and operations site plan, as amended to encroach on Kenwood Forest property by constructing the masonry/ concrete wall, "slightly to the west" of its property line.**

Additionally, please be informed that I similarly request that MCPB delay any final decision on Safeway's site plan amendment as filed on 2/26/10, until July, 2010, and/or until such time as all interested parties, to include Safeway, MCP staff, KFB representatives and KF/HOs, can convene to arrive at an approved resolution for Safeway's construction of a noise reduction and landscaping masonry/concrete wall as a permanent and distinct separate barrier between Safeway, Inc. and Kenwood Forest Condominium Association properties.

If KFB or any homeowner wishes a copy of my prepared statement on behalf of KFL homeowners, as prepared for MCPB, May 20th hearing and deterred from reviewing and/or discussion at the KFB's April 19, 2010 meeting, please feel free to Email me at sweinstein@netoedsat.org, to obtain a copy.

Shelly Weinstein
6726 Kenwood Forest Lane
Chevy Chase, Maryland 20815

Hisel-McCoy, Elza

From: Shelly Weinstein [sweinstein@netoedsat.org]
Sent: Wednesday, May 05, 2010 7:06 PM
To: Hisel-McCoy, Elza
Cc: Kronenberg, Robert
Subject: Re: "Permission"vs. "Easement"

Follow Up Flag: Follow up
Flag Status: Completed

Dear Elza,

First let me thank you and Robert for taking the time for the "walk-thru" this morning. I hope you have received the copy of my note to Chairman Hanson. It has also been copied to all the KFHG members, and the Open Letter to Kenwood Forest Board was hand delivered to the 116 homes.

As you can see, I didn't want to get my note requesting "delay" to be confusing by asking for a return in the wording of the "Amendment", as originally filed with an "easement" clause, back from your new suggestion to use "permission" (MC lawyers free service to Safeway). Just as you know and have made a point to tell me, in your field there are certain terms that depict a specific function. Much as "noise reduction" refers to addressing auto and truck noise and emissions, "screening" is more about "visibility". And, you use a "screen" wall at the end of a loading dock so the Arlington Road homeowners don't "see" trucks unloading, etc.. On the other hand, the "noise" reduction wall, as my group requested, was to reduce auto & truck noise from the new roadway, increasing traffic by about 3-4 times greater than the driveway's current capacity, carbon emissions, light, etc.. So, even MC has "terms" and "clauses" that have specific functions.

Well, under the MD. Condo Code, "easements" require one set of standards for homeowners approval, and "permission" requires something less onerous, perhaps just announcing a "meeting", invite the homeowners, just let them "know" what a governing board is "contemplating", refuse to take a vote and the KFB votes at a later meeting. I can't imagine, the MCP lawyers are unaware of different applications as to obtaining "permission" or obtaining "easement" rights. Naturally, Safeway, KFB and MCPB lawyers will always tell staff or a boss, "you have the authority to do this, but you do so at your own risk". That's Brewer's and Hitchens favorite. Somehow, I thought my tax money is to support government functions, for the people and by the people. Why do I still believe that you and Robert really know that your job is to balance the community interests with big corporate development, especially where the corporation can afford to keep "Brewer" at the country club, fancy offices and living high?

Obtaining Easement rights, are anything but getting "permission", especially if the County approves Safeway's interest in moving "slightly to the west". Unless, a change is specifically requested by Safeway to change "easement" to "permission", than I will make another addendum to my testimony. Therefore, I do request that the language in Safeway's amendment be kept as is, as I have received it, with "easement" included.

One last note for you and Robert. From the outset when Robert got a call from John Adamovich, Robert asked that we keep our delegation "small". Thus as representatives for the KFHG, we started with three, than grew to four because Irina Mamantov volunteered to be one of the coordinators. We have grown from 12 homeowners to more than 35. Additionally, as you and Robert know, unless you are talking about "dog licenses", where bus loads do turn out, in your process, it's usual to find "leaders" and "followers". I get the impression that your Chairman takes MC rules, very seriously, and so do I. When I am speaking to you and Robert, I often will tell you "what I want or think", as compared to "here's what or where the homeowners on our list, want". I am deeply offended that you and Robert not only say and imply "we know where you are, Shelly". Have you read my testimony or statement for the Board. It singularly addresses Safeway's reasoning and language in the amendment. And, as a result of my analysis, I find that the "rationale for Safeway to move slightly to the west", is not "substantive", and in some cases flat out wrong and therefore "we" oppose the amendment.

If there is anyone who has "mislead" and "misrepresented" himself to the County, it has been the KFB representative. I discretely tried to call this to Renee Montgomery's attention, but Brewer realized he had someone he could make a "deal" with. (I still wish I knew where that \$15 thousand offer originated?) Safeway's engineers, lawyers and PR people, your and my time and Brewer's time were wasted for almost 6 months, believing that the KFB rep., could produce easements and the Homeowners. I have consistently told you, that our problem with the KFB is separate from our issues with

Safeway. In fact, when you led us to believe that we had to remove the wooden fence, the first thing I told you, Brewer and John A., we have to have the KFB representative involved. We as homeowners, have no authority to remove it, without KFB approval. Adamovich spent a whole morning, trying to reach him. The KFB rep, took our papers, claimed he had the KFB's approval and called Kronenberg, Brewer and Klauber to let them know, "SW and her group are rogue homeowners, and bullied Klauber & Brewer by telling them, as Brewer said, "you are not allowed to deal with her". Did you know that April B. once spent a half hour almost in tears with me on the phone, explaining that she didn't think we were rogue and "why" she thought it was appropriate to include us in the paper circulation? When asked why she would think that anyone thought she had done wrong, she said, "Oh, I'm being vilified and shouted at from everyone". (You ought to ask a few old timers here in KF about their scary, shouting matches from Arend?)

The County and Safeway must deal with the KFB. But to keep your head in the sand, in the belief that this KFB is "communicating with its homeowners", and not twisting the process with the acquiescence of a sharp, high powered lawyer, would mean you and Robert are naive and inexperienced. I don't believe that. But I do believe, under these circumstances that it is somewhat duplicitous, if you knowingly recommend to the Chairman, that your recommendations reflect the interests of the county, KF homeowners and Safeway, without suggesting that there probably should be a delay of the hearing, since so much of the community has been left out or not heard. Why do you think you or anyone from MC wasn't invited to the April 19th meeting?

If it helps, everything I have sent you in the past, today and/or in the future, I'm glad to have notarized and will place my print and verbal statement, to the MCPB under oath. I'm perfectly satisfied if you want me to swear on a bible, that I have consistently and at all times, represented and spoke on behalf of more than about 35 homeowners on KFL. I hope you take time to read my "statement" for the May 20th hearing and accept as fact, that Safeway's reasons for asking for the Amendment to Condition #13 are not substantive, and in some cases very misleading, and therefore do not support Safeway's request to "move slightly to the west".

I already sent about 30 names and addresses to Ms. Reed and have 5 more that want to receive the hearing notice. Do you want the lists copied to you?

Again thank you for your time this morning. I have a hunch, that many of the KFL homeowners might think that Robert's idea to put a "wrought iron handrail" on the top of Safeway's stonetree wall on its property, might be an acceptable solution to the "height" issue in the area of the Safeway's retaining wall. Then those homeowners who as of now, are rightly worried about "safety" and want the wooden fence to remain, might find it a desirable solution.

In the meantime, I do hope the hearing is postponed.
Shelly

Shelly Weinstein
President & CEO
NETO/EDSAT-A Global Education Initiative
Tel: 301-654-1447
Email: sweinstein@netoedsat.org
www.netoedsat.org

Tacconelli, Gail

From: Irina Mamantov [mamantovi@yahoo.com]
Sent: Friday, May 07, 2010 1:24 AM
To: MCP-Chair
Cc: Kronenberg, Robert
Subject: Chevy Chase Safeway amendment opposition

RECEIVED
0365
MAY 07 2010

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

Dear Dr. Royce Hanson,

We oppose the Safeway amendment to build the wall on Kenwood Forest Association property. Our reasons:

1. This is a Safeway business venture and it should be kept on its property. It should not reduce our living space.
2. Currently, Safeway supposedly proposes to pay all expenses related to maintenance and insurance of the wall in a contract which has to be renewed every year. If at some point, Safeway will not renew the contract, KFA will be responsible for all the costs associated with owning the wall, such as higher taxes and possible liabilities. We are a small association of 120 homeowners which could experience financial hardship as a result of this.
3. In the amendment, Safeway states that they have to move the wall slightly west, i.e., onto our property, to save the trees. This is exactly the opposite of what is going to happen. All the mature trees and bushes currently growing on our property along the existing fenceline, slightly west of the originally proposed wall, are going to be destroyed if Safeway builds the wall on KFA property.
4. As a result of "moving a wall slightly west" we lose several feet of our backyards, which are small to start with. For example, in back of our house there is about 17 feet between the current fence and our deck. On the basis of the amendment, about one fourth of our backyard space will be lost.

We respectfully ask you not to approve Safeway's amendment. Safeway should build the wall according to the original plan on their property.

It would also be beneficial to postpone the hearing on this matter so the KF Association could resolve its disagreement with the KF Board.

Sincerely,

Andrew and Irina Mamantov

6755 Kenwood Forest Lane
Chevy Chase, MD 20815
301-986-9569

Coleman, Joyce

RECEIVED
0360
MAY 06 2010

From: LAURA MILSTEIN [LMILSTEIN@washingtonginstitute.org]
Sent: Wednesday, May 05, 2010 5:05 PM
To: MCP-Chair; Kronenberg, Robert
Subject: IMPORTANT NOTIFICATION REGARDING SAFEWAY PROPOSAL AND
KENWOODHOMEOWNER'S LAND

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

Dear Sirs,

I am a home owner in Kenwood Forest, Laura Milstein, and I reside at 6701 Kenwood Forest Lane. I want to be sure to voice my opposition to Safeway building anything--all or part of anything-- on Kenwood Forest property. I want to voice my opposition to Safeway's proposal to do so. I have concerns regarding our loss of land due to this, loss of mature trees due to this, and the issues regarding ongoing costs and responsibility of maintenance. Most of all, I do not understand why the wall is even being considered on Kenwood property when it belongs on Safeway's.

Kindly confirm your receipt of this notice.

Most Sincerely,
Laura Milstein
cell:202-841-1134

Appendix D: Project Mailing List

Safeway, Inc.
1371 Oakland Blvd, #200
Walnut Creek, CA 94596-840

Ema S. Shishtawy
6746 Hillandale Road
11802 Enid Drive
Potomac, MD 20854

Eileen C. Mayer
6726 Hillandale Road
Chevy Chase, MD 20815

L & T Group, Inc.
3009 Averley Rd.
Ijamsville, MD 21754-9048

Glen A. Hellman
6744 Hillandale Road
Chevy Chase, MD 20815

Myra L. Karstadt
6722 Hillandale Road
Chevy Chase, MD 20815

Bradley Arlington LLC
c/o Scheer Partners
11 N. Washington Street, Suite 300
Rockville, MD 20850-4263

Ebrahim Behniaytehrani, et. al
6742 Hillandale Road
Chevy Chase, MD 20815

Carole Neideffer
c/o Carole E. Gallagher
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Chevy Chase, MD 20815

Henry J. Robb, et. al. Trust
Bradley Boulevard Shopping Ctr
6930 Arlington Road
Bethesda, MD 20814

Andrew K. Racca &
Catherine B. Racca
6740 Hillandale Road
Chevy Chase, MD 20815

Claudia L. Shainman
6718 Hillandale Road
Chevy Chase, MD 20815

The Maryland-National
Capital Park & Planning
Commission
8787 Georgia Avenue
Silver Spring, MD 20910

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6738 Hillandale Road
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Katherine K. Lacy, Tr.
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1751 Pinnacle Drive, Suite 700
McLean, VA 22102-4003

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Carole C. Harris, et. al.
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The Fields of Bethesda
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Deborah L. Edwards
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Jill S. Ehrenreich, Tr.
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Washington, DC 20015

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Daytona Beach, FL 32118-7204

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Chevy Chase, MD 20815

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C. A. Monaghan
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Judith C. Armbrister
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Ann Fink
Fortv Seven Twentv CC Drive Condo
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Robert Procelli
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Citz. Cord. Committee on Friendship Hgt
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