


March 2, 2011

REQUEST FOR RECONSIDERATION**MEMORANDUM**

TO: Montgomery County Planning Board

FROM: Christina Sorrento, Associate General Counsel
301.495.4646 

RE: Reconsideration Request for Site Plan Application No. 820100140 ("The Shops at Seneca Meadows) and Preliminary Plan Amendment Application No. 11998004A ("Seneca Meadows Corporate Center")

With this memorandum we forward for the Board's review a request for reconsideration, filed by Gregory Pringle, of The Shops at Seneca Meadows Site Plan approval and the Seneca Meadows Corporate Center Preliminary Plan amendment approval.

I. BACKGROUND

At its November 4, 2010 meeting, the Board approved The Shops at Seneca Meadows Site Plan and the Seneca Meadows Corporate Center Preliminary Plan amendment by a 3-0 vote, on motion of Commissioner Dreyfuss, seconded by Commissioner Wells-Harley, with Commissioner Presley abstaining and Commissioner Alfandre being absent. The resolutions memorializing the Board's Site Plan and Preliminary Plan amendment approval were mailed on January 12, 2011 and January 13, 2011, respectively.

The Board approved the Seneca Meadows Preliminary Plan amendment and Site Plan to create two lots and two recorded parcels for construction of a commercial development called "The Shops at Seneca Meadows." The Shops at Seneca Meadows Site Plan includes 206,570 square feet of commercial/retail space, including an approximately 150,000 square-foot Wegmans grocery store with 1,244 accompanying parking spaces.

Mr. Pringle filed a request for reconsideration of the Preliminary Plan amendment and Site Plan resolutions on January 18, 2011. Mr. Pringle cites several grounds for his reconsideration request, which we will discuss below.

II. APPLICABLE RULES

A reconsideration request must “specify any alleged errors of fact or law and state fully all grounds for reconsideration because of mistake, inadvertence, surprise, fraud, or other good cause.” The Board is responsible for determining if the grounds stated in support of the reconsideration request are sufficient to merit reconsideration.

Only a Board member who voted in the majority of the decision that is the subject of the request for reconsideration can move to reconsider the decision. In this case, Commissioners Carrier, Dreyfuss, and Wells-Harley are eligible to move for reconsideration. If there is no motion for reconsideration, the request for reconsideration is denied. Any motion to reconsider must be supported by a majority of the Board members present who either participated in the previous decision or read the record on which it was based.

III. RECONSIDERATION REQUESTS

In his request for reconsideration, Mr. Pringle argues that The Shops at Seneca Meadows development violates the general goals and specific requirements of the Sector Plan, which amends the approved and adopted 1989 Germantown Master Plan.

First, Mr. Pringle argues that the Site Plan for The Shops at Seneca Meadows development, particularly the Wegmans Grocery Store, directly contradicts the central goals of the Sector Plan. Mr. Pringle characterizes the development as a ‘destination’ shopping center which conflicts with the Sector Plan’s general intent to modify the Germantown employment corridor ‘from a suburban pattern of low-rise buildings and large areas of surface parking into compact, walkable places with lively streets, activating uses, businesses and houses’.

Second, Mr. Pringle argues that the current stormwater management design would impede future construction of a bridge, recommended by the Sector Plan, over MD 27/Ridge Road that accommodates the Corridor Cities Transitway (CCT), pedestrians, and bicyclists. Further, the stormwater management facilities for the project are being built on the parcel that is designated for future right of way dedication for the CCT. Therefore, Mr. Pringle argues that if the transit line were to be built, the County would be responsible for the complicated task of designing and constructing elevated infrastructure to allow the transit line to cross over the proposed stormwater management facilities.

Third, Mr. Pringle argues that The Shops at Seneca Meadows Site Plan violates the Sector Plan on the following grounds:

- (1) The development violates the Sector Plan’s density and street –level retail requirements that call for mixed-use development with an average density of 1.0 FAR by providing 71% commercial/retail use (206,570 square feet) at an FAR of 0.26.

- (2) A majority of the buildings proposed by the Site Plan are internally focused and do not front the streets, which conflicts with the Sector Plan's prescription for active storefronts with multiple entrances and smaller retail uses.
- (3) The tallest building proposed would be 42 feet, far below the 143 height maximum established by the Sector Plan.

Fourth, Mr. Pringle argues that the sidewalks and plazas provided by the Site Plan do not fulfill the Sector Plan's recommendation for an urban open space on the property.

Fifth, Mr. Pringle argues that the Site Plan violates the Sector Plan because the number of parking spaces approved for the development exceeds the maximum allowed under the TMX-2 zone requirements. Mr. Pringle supports this argument by pointing to the Sector Plan's recommendation that '[p]arking should not exceed the minimum required in the Zoning Ordinance.'

Sixth, Mr. Pringle argues that the approved stormwater management design does not conform to the Sector Plan's goal of minimizing environmental impacts with comprehensive stormwater management approaches. Mr. Pringle cites the developer's refusal to install a green roof at the request of the Montgomery County Department of Public Service to demonstrate incompatibility between the development and the Sector Plan's vision for smart growth and environmentally conscious development.

IV. APPLICANT'S CORRESPONDENCE

The Applicant provided a response to the reconsideration request on February 1, 2011. The response asks that the Board deny the request for reconsideration because Mr. Pringle did not provide new information from what was originally before the Board at the hearing. The Applicant contends that the request for reconsideration does not support a finding of mistake, inadvertence, surprise, fraud, or other good cause.

V. RECOMMENDATION

We do not believe there is any legal or factual deficiency in the Planning Board's action approving either the Site Plan for The Shops at Seneca Meadows or the Preliminary Plan amendment for the Seneca Meadows Corporate Center that requires reconsideration. Both plans were thoroughly considered by the Board at its November 4, 2010 hearing. Furthermore, the arguments raised by Mr. Pringle in his request for reconsideration were raised and debated at the Board's hearing.

However, if the Board determines that the reconsideration request demonstrates that there was a mistake, inadvertence, surprise, or fraud in its earlier decision, or that Mr. Pringle has shown other good cause for reconsideration, the Board may grant the request.

VI. ATTACHMENTS

Attachment 1 – January 18, 2011 Petition for Reconsideration

Attachment 2 – Preliminary Plan No. 11998004A Resolution

Attachment 3 – Site Plan No. 820100140 Resolution

Attachment 4- February 1, 2011 letter from Jody S. Kline

**IN THE PLANNING BOARD FOR
MONTGOMERY COUNTY, MARYLAND**

Petition of: *
*
GREGORY PRINGLE *
11608 Doxdam Terrace *
Germantown, MD 20876 **

For reconsideration of the *
Planning Board's approval of: **

In re: Resolution Nos. 10-156; 10-157

Resolution No. 10-157, *
mailed on January 12, 2011, *
approving Site Plan No. 820100140 *
(The Shops at Seneca Meadows) *
*

and *

Resolution No. 10-156, *
mailed on January 13, 2011, *
approving Preliminary Plan *
Amendment No. 11998004A *
(Seneca Meadows Corporate Center) *
*

* * * * *

PETITION FOR RECONSIDERATION

Petitioner, Gregory Pringle, through his attorney, G. Macy Nelson, herein petitions the Planning Board for Montgomery County Maryland ("Board"), pursuant to the Board's Rule of Procedure 4.12.1, to reconsider its approval of Resolution Nos. 10-157 and 10-156 ("Resolutions"), respectively mailed on January 12, 2011 and January 13, 2011. Resolution No. 10-157 approved Site Plan No. 820100140 (The Shops at Seneca Meadows) and Resolution No. 10-156 approved Preliminary Plan Amendment 11998004A (Seneca Meadows Corporate Center). Because the Resolutions are related

and dependent on one another, planning staff reviewed the Resolutions in conjunction and the Board itself considered and voted on the Resolutions together at a public hearing on November 4, 2010. Petitioner was a party to the proceeding before the Board – he submitted written comments to the Board prior to the public hearing (attached as Ex. A), and he presented oral testimony before the Board at the public hearing.

Petitioner urges the Board to reconsider the Resolutions because they effectively approve a commercial development (“The Shops at Seneca Meadows”) that is contrary to law. Specifically, this development contradicts and undermines the recently-adopted Germantown Employment Area Sector Plan (“Sector Plan”), thus directly violating the provisions of the TMX-2 zone, which applies to this development.

INTRODUCTION

On September 22, 2009, the County Council for Montgomery County Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland (“Council”) approved the Sector Plan, which amends the approved and adopted 1989 Germantown Master Plan. *See* Montgomery County Council Res. No. 16-1126 (2009).¹ The Sector Plan advocates smart growth and transit-oriented planning for Germantown, and states that “[t]he Plan establishes a vision that will transform Germantown’s central employment corridor into vibrant town center and mixed-use districts.” *See* Sector Plan at 8.

¹ References herein to the “Sector Plan” refer to the February 2009 revised Planning Board Draft Plan, which was approved by the Council. References to specific changes made to the draft plan by the Council’s resolution will cite to Montgomery County Council Res. No. 16-1126 (2009).

Subsequent to the adoption of the Sector Plan, the Council approved Sectional Map Amendment G-887 (“SMA”), which implemented the Sector Plan’s zoning recommendations on May 18, 2010. The SMA re-zoned the Subject Property from I-3 to TMX-2. *See* Staff Report at 2.² The Montgomery County Zoning Ordinance requires that “[d]evelopment under the TMX zone [which includes the TMX-2 zone] must be consistent with the recommendations of the applicable master or sector plan.” *See* Section 59-C-14.213.

The Resolutions work together to approve a 239,440 square-foot commercial development called “The Shops at Seneca Meadows,” located in the Seneca Meadows District at the intersection of Seneca Meadows Parkway and Observation Drive in Germantown, Maryland (“Subject Property”). The Shops at Seneca Meadows Site Plan includes 206,570 square feet of commercial/retail space, including an approximately 150,000 square-foot Wegmans grocery store, with 1,244 accompanying parking spaces.

Minkoff Development Corporation (“Applicant”) filed applications for Site Plan No. 820100140 (“Site Plan”) and Preliminary Plan Amendment 11998004A (“Amendment”) on July 16, 2010. The Preliminary Plan, first approved in 1997, covers about one third of the Seneca Meadows District, and includes the area approved for development under the Site Plan. The Preliminary Plan was originally approved for only 83,000 square feet of retail uses, and 1,577,000 square feet of office uses. Thus, the

² References herein to the “Staff Report” refer to the October 24, 2010 report produced by planning staff for the Board for its consideration of the Resolutions.

Applicant was required to amend the Preliminary Plan to increase the retail uses allowed in this area before securing approval for the Site Plan.

On October 24, 2010, planning staff completed the Staff Report recommending approval of the Site Plan and Amendment. On November 2, 2010, Petitioner submitted written comments to the Board urging that the Site Plan and Amendment be disapproved because both failed to conform to the applicable Sector Plan requirements. *See Ex. A.*

The Board held a public hearing on the Site Plan and Amendment on November 4, 2010. Representatives for the Applicant gave a presentation in support of the Site Plan and Amendment. Petitioner and his counsel presented oral testimony to the Board in opposition to the Site Plan and Amendment. Ultimately, the Board voted to approve the Site Plan and Amendment at the public hearing. The Board subsequently adopted the Resolutions on January 6, 2010. The Resolutions were then finalized and mailed on January 12, 2011 and January 13, 2011, respectively. The Board's Rule of Procedure 4.12 allows a party to the proceeding to petition the Board for reconsideration of any resolution within ten days of the date on which the resolution is mailed.

Petitioner has resided and worked in Germantown for the past fifteen years. He resides at 11608 Doxdam Terrace, Germantown, Maryland 20876 and he owns a business, Corvedia, which is located at 20010 Century Boulevard, Germantown, Maryland 20876. Mr. Pringle's residence is approximately 0.75 miles from the approved Development, and Mr. Pringle's business, which provides data communication for the transportation industry, including the Port of Baltimore, is just under one mile from the Development.

ARGUMENT

The Board should reconsider the Resolutions because they will result in a big-box commercial development that does not conform to the Sector Plan, as required by law.

This development, which must comply with the Sector Plan since it is within the TMX-2 zone, undermines the general goals of the Sector Plan, and violates the Sector Plan's requirements related to transit-oriented development, parking limits, retail concentration, building heights, street-frontage, and stormwater management design.

I. Applicable law requires that the Site Plan and Amendment comply with the requirements of the Sector Plan.

Recently, the Court of Special Appeals explained that “[b]oth the Court of Appeals and this Court have considered the role of general planning documents on several occasions. A plan may serve as a mere guide or it may have greater effect.”

Archers Glen Partners, Inc. v. Garner, 176 Md.App. 292, 312, 933 A.2d 405, 417

(2007). The Court in *Archers Glen* went on to explain this distinction:

[T]he Court of Appeals has found statutory language giving plans greater effect, in the context of regulating subdivision development. The Court of Appeals has held that a plan had binding effect and could serve as a basis for a planning board to refuse to approve a proposed subdivision when it was not compatible with the plan. . . . In *Richmarr Holly Hills, Inc. v. American PCS, L.P.*, 117 Md.App. 607, 636, 701 A.2d 879 (1997), after reviewing reported cases, we concluded that, with one exception, the weight to be given a plan depends upon the language used in the applicable ordinance and the nature and purpose of land use and general planning. Ultimately, as observed in *Richmarr* and again in *Trail v. Terrapin Run, LLC*, [174 Md.App. 43, 920 A.2d 597 (2007)], in a given situation, the two questions are whether the body adopting the plan had authority to do so and if so, whether the plan was enacted as a guide or a strict regulatory device.

Id., 176 Md.App. at 313, 933 A.2d at 417–18 (footnote omitted).

Stated concisely, the rule is that “the weight to be accorded a master plan or comprehensive plan recommendation depends upon the language of the statute, ordinance, or regulation establishing the standards pursuant to which the decision is to be made.” *Richmarr*, 117 Md.App. at 636, 701 A.2d at 893.

Applying the rule outlined above, the Montgomery County Zoning Ordinance states that “[d]evelopment under the TMX zone must be consistent with the recommendations of the applicable master or sector plan.” § 59-C-14.213. The ordinance further states that all references to the TMX zone apply to the TMX-2 zone. § 59-C-14.211. The Sector Plan applies to the area covered by the TMX-2 zone in the Seneca Meadows District. Thus, development in the TMX-2 zone must conform to the requirements of the Sector Plan.

II. The Shops at Seneca Meadows development violates specific Sector Plan requirements, and undermines the overall Sector Plan goal of smart growth and pedestrian-friendly, transit-oriented development in Germantown.

Contrary to the requirements of the TMX-2 zone, the Shops at Seneca Meadows development violates the general goals and specific requirements of the Sector Plan. For this reason, Petitioner requests that the Board reconsider its approval of the Site Plan and Resolution.

- A. The Shops at Seneca Meadows development will be a “big-box” destination shopping center, which undermines and contradicts the Sector Plan’s goals and vision for smart growth and transit-oriented development.**

The Sector Plan aims to “redirect[] the character of land use in the Germantown employment corridor from a suburban pattern of low-rise buildings and large areas of surface parking into compact, walkable places with lively streets, activating uses, businesses and houses.” *See* Sector Plan at 17. The Sector Plan further directs development in Germantown to support a transit-oriented community. *Id.* at 25.

The Site Plan, in direct contradiction with the central goals of the Sector Plan, proposes a suburban-style 150,000 square foot Wegmans accompanied by 1,244 parking spaces on site. The development proposed by this Site Plan is truly a “destination” shopping center that will rely on customers driving significant distances to shop at the Wegmans. Regarding this proposed Wegmans, the company’s media relations director Jo Natale has been quoted as stating that, “[w]e are a destination for many folks so we can draw people from 10 miles [away], 25 or even 30, so we need good regional access.” *See* Meghan Tierney, *Wegmans Grocery Store in Germantown Could be Open by 2012*, *Montgomery Gazette*, June 30, 2010, available at http://www.gazette.net/stories/06302010/poolnew173840_32548.php. Further, Minkoff Vice President Brad Chod was quoted as stating that “[s]ome county residents travel as far as 40 miles to shop at the Wegmans in Sterling, Va.” *Id.*

- B. The Shops at Seneca Meadows development directly impedes the future construction of a Corridor Cities Transitway (“CCT”) station, which the Sector Plan indicates will be adjacent to the area depicted by the Site Plan.**

Regarding the importance of transit in Germantown, the Sector Plan states the following:

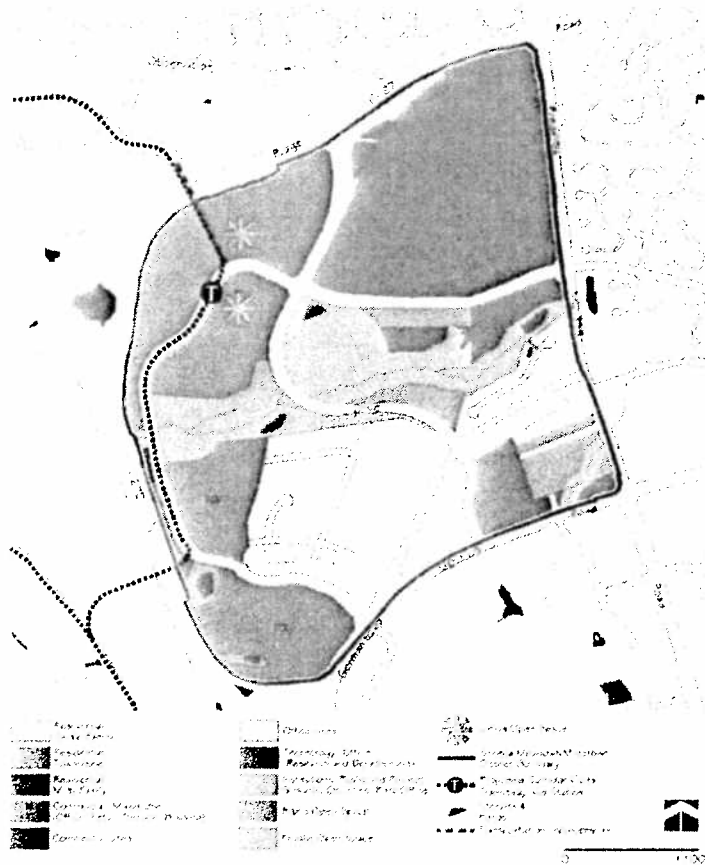
Germantown will become a transit center. Along with MARC and bus service, the Corridor Cities Transitway will provide redevelopment capacity and travel options. The CCT will also be a force in shaping the Germantown community, forming and connecting distinct centers. It is vital to make pedestrian connections to these facilities. . . . The CCT is a pivotal infrastructure investment for Germantown and the entire north County. This Plan is focused on delivery of the transit line. The densities proposed are determined by the location of the proposed transit stops.

See Sector Plan at 25.

To achieve its vision of a transit-oriented Germantown, the Sector Plan states that planners must “[c]oncentrate development at transit stations creating compact, walkable centers. Place highest densities nearest transit stations, transitioning down to lower densities adjacent to existing residential communities.” *See* Sector Plan at 17–18.

The Sector Plan envisions a CCT station (represented by a bold T below) directly adjacent to the development proposed in this Site Plan, as illustrated in the following picture from page 51 of the Sector Plan. The Shops at Seneca Meadows will be located at the approximate location marked by the north asterisk on the map below (this asterisk indicates the future location of an urban open space).

Seneca Meadows/Milestone District Land Use



This Site Plan proposes a stormwater management design that directly impedes the path of the CCT, as shown above in the Sector Plan. As the Staff Report notes, “[t]he Applicant is proposing to locate a significant portion of the required stormwater management facilities on Parcel L, which is designated as future dedication for right-of-way to serve the CCT.” See Staff Report at 5. Moreover, the Sector Plan specifically states that in the Seneca Meadows district, the County should “[e]xpand the street network (B-25) with a bridge over MD 27/Ridge Road that accommodates the CCT,

pedestrians, and bicyclists.” *See* Sector Plan at 51. The current stormwater design would impede future construction of such a bridge over MD 27.

The stormwater facilities on the right-of-way for the transit line are intended to be permanent. *See* Staff Report at 20. If the transit line were to actually be built, the County would be responsible for the complicated task of designing and constructing elevated infrastructure to allow the transit line to cross over the stormwater management facilities proposed under this Site Plan. *Id.* at 21. While the location of the stormwater management facilities was a point of discussion during the public hearing, neither of the Resolutions mentions this issue and/or justifies the decision to allow the Applicant to locate these facilities on the right-of-way intended for the CCT.

C. The Shops at Seneca Meadows development violates the Sector Plan’s density and street-level retail requirements near the transit station.

The Shops at Seneca Meadows will undermine the CCT’s likelihood of success in fostering transit-oriented development in the Seneca Meadows District because the development violates the Sector Plan’s density and street-level retail requirements.

As noted in the Site Plan Resolution, the Sector Plan specifically states that in this district, development should “[c]oncentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary.” *See* Res. No. 10-157 at 5; Sector Plan at 51. The Sector Plan further states that developers should “[l]ocate limited retail uses along streets. Big box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing the street.” *Id.* Finally, the Sector Plan states that “[b]uilding heights of up to

143 feet (12 stories) are appropriate at the transit station to create a focus for the mixed-use neighborhood.” *Id.*

This Site Plan violates or undermines each of the above Sector Plan requirements. First, as the Staff Report states, this development “proposes 206,570 square feet of commercial/retail space (approximately 71% of this phase of the proposed development), which exceeds the proportionate amount of retail envisioned for this area.” *See* Staff Report at 5. Second, the FAR proposed by this Site Plan is only 0.26, far below the 1.0 average required under the Sector Plan. *See* Resolution No. 10-157 at 5. Third, a majority of the buildings proposed by this Site Plan do not front the streets. *Id.* at 7. Finally, the tallest building proposed will be 42 feet, much lower than the 143 height maximum prescribed by the Sector plan. *Id.* at 5.

Planning staff and the Board fail to justify each of the development’s shortcomings recognized above. Staff explains that the entire Seneca Meadows Corporate Center includes 1,526,700 square feet, and that “Staff would not support more retail being added to other parts of the larger site.” *See* Staff Report at 5. But this type of planning involving overwhelming concentration of isolated uses is exactly what the Sector Plan intended to eliminate. In fact, when the County Council approved the Sector Plan, it added specific language for the Seneca Meadows district, which states, “[r]ezone portions of the Seneca Meadows property (SM-1) from I-3 to TMX-2 to allow a mix of uses at the Seneca Meadows CCT station.” *See* Resolution 16-1126 at 23. Allowing a development that proposes 71% commercial/retail use at this location and that therefore

automatically forecloses future retail development throughout the rest of the Seneca Meadows site significantly undermines the purpose of the Sector Plan.

Next, in noting the FAR inconsistency between the development and Sector Plan, Resolution No. 10-157 states that “[a]lthough the Subject Property has a 0.26 FAR, it achieves a higher density than what currently exists in the northern Seneca Meadows property.” Res. No. 10-157 at 6. The Resolution further states that “[t]he Application increases the mix of uses by providing a mixed use development of retail and office.” *Id.* These observations are, of course, meaningless since nearly all of the northern Seneca Meadows property is at this time undeveloped and thus has a 0.0 FAR and no uses whatsoever.

As for the lack of street-frontage, planning staff and the Board admit that The Shops at Seneca Meadows is internally-focused and that most of the stores will not front the streets, but excuse this glaring discrepancy between the development and the Sector Plan by arguing that the streets in the vicinity and the topography of the Subject Property did not allow for the Applicant to do any better. *See* Staff Report at 6; Resolution No. 10-157 at 7.

Clearly, planning staff and the Board considered the Sector Plan more as a guide than as a set of requirements that must be respected and conformed to by future development. Indeed, the Site Plan Resolution states that “[i]t is important to understand that the land use recommendations in master plans do not, and cannot specify all development possibilities, particularly a commitment to a particular design detail until the physical limitations of a site are understood.” *Id.* This general point is incorrect for

several reasons. First, as noted above, according to the law in this circumstance, development in the TMX-2 zone MUST comply with the Sector Plan. Second, this is not a case where a planner is attempting to apply general master plan provisions to a specific site. Instead, the Sector Plan provides site-specific requirements for the Seneca Meadows District, including the area covered by the Subject Property. These requirements are tailored to the Seneca Meadows area, and to the future land use goals for the District as a whole.

D. The Shops at Seneca Meadows does not include an urban open space, as clearly required at this location by the Sector Plan.

As noted above on the Seneca Meadows District map excerpted from the Sector Plan, an urban open space is specifically required by the Sector Plan at the Subject Property.

Both planning staff and the Board admit that The Shops at Seneca Meadows does not provide the urban open space envisioned by the Sector Plan. Staff notes that “[r]egarding open space, the [Sector Plan] calls for a designated urban open space near Seneca Meadows Parkway and the future alignment of the Transitway. This site plan as proposed does not contain a significant urban open space – instead relying on sidewalks and plazas.” Staff Report at 5. Yet planning staff ignores the requirement of the Sector Plan and unilaterally states that “[g]iven the location of the project towards the periphery of any ‘walkable’ street network, a larger open nodal space is not necessary here.” *Id.*

The Resolution, like the Staff Report, further attempts to justify the development’s failure to follow the Sector Plan’s urban open space requirement:

Rather than one large area or plaza that would work well with an office development, numerous smaller areas have been programmed throughout the development to connect the retail spaces. The smaller plazas and open spaces work better for the smaller buildings and smaller street frontages.

Resolution No. 10-157 at 6.

In essence, planning staff and the Board subscribe to the flawed theory that two wrongs will make a right. First, the development violates the Sector Plan's vision and requirements for high-density mixed-use development with limited street-level retail. Subsequently, the big-box retail-heavy development that is approved is not compatible with the urban open space planned for this area under the Sector Plan. Staff and the Board are justifying one error with another.

E. The amount of parking spaces approved for this development exceeds the maximum allowed by the Sector Plan and the TMX-2 zone.

Regarding parking requirements, the Sector Plan states that “[p]arking should not exceed the minimum required in the Zoning Ordinance. Encourage shared use parking and, if feasible, develop private/public parking facilities.” Sector Plan at 18. The TMX-2 zone requires only 926 spaces of parking for this development. *See* Staff Report at 12. Yet the Site Plan proposes 1,244 spaces of parking. *Id.* Staff admits that this development will be “over-parked” under the TMX-2 zone requirements. *Id.* While planning staff attempts to justify approval of this plan by comparing the old and the new rules for parking, the result is clear: this Site Plan proposes a significant amount of parking spaces in excess of the minimum for the TMX-2 zone, and therefore directly

violates the Sector Plan. Neither of the Resolutions even attempts to offer a justification for this clear error.

F. The stormwater management design approved for The Shops at Seneca Meadows does not conform to the goals or requirements of the Sector Plan.

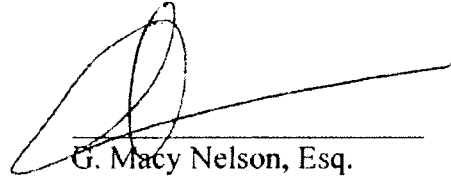
The Sector Plan states that developments should “minimize impacts with comprehensive stormwater management approaches including green roofs, rain gardens, innovative stormwater outfalls, green streets, cisterns, rain barrels, grass swales, street trees, vault retention, and infiltration systems . . . to the fullest extent possible during the development review process.” *See* Sector Plan at 33.

For this development, one of the reasons that the stormwater management facilities on the CCT right-of-way are necessary is that the developer refused the Montgomery County Department of Public Service’s request to construct a green roof for the Wegmans. Apparently, Wegmans’ architectural requirements prevent a green roof from being installed. Indeed, this fact only further emphasizes the incompatibility between this development and the Sector Plan’s vision for smart growth and environmentally conscious development in Germantown.

CONCLUSION

For all of the above reasons, Petitioner respectfully requests that the Board reconsider the Resolutions.

Respectfully Submitted,



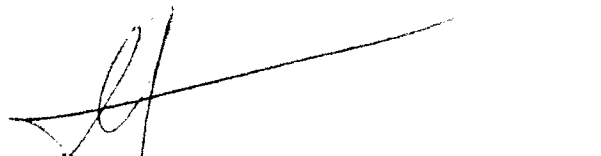
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of January, 2011, a copy of the foregoing Petition for Reconsideration was mailed first-class, postage prepaid, to:

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Minkoff Development Corporation
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Germantown, Maryland 20876

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November 2, 2010

Via Federal Express

Françoise Carrier, Chair
Montgomery County Planning Department
8787 Georgia Avenue
Silver Spring, MD 20910
MCP-Chair@montgomeryplanning.org

**Re: Written comments on Item 9 at the November 4, 2010 Planning Board
Hearing; Seneca Meadows Preliminary Plan Amendment 11998004A and
Shops at Seneca Meadows Site Plan 820100140**

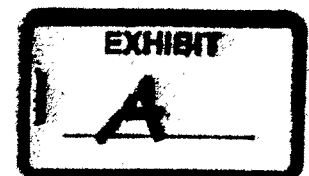
Dear Ms. Carrier:

On behalf of my client, Gregory Pringle, 11608 Doxdam Terrace, Germantown, Maryland 20876, I am submitting the following comments for your consideration regarding Item 9 at the Planning Board's November 4, 2010 hearing, which includes the Seneca Meadows Preliminary Plan Amendment 11998004A ("Amendment") as well as The Shops at Seneca Meadows Site Plan 820100140 ("Site Plan").

I. Introduction

I urge the Board to disapprove the Preliminary Plan Amendment and Site Plan for the Seneca Meadows property. The Site Plan and Amendment are not in conformance with the Germantown Employment Area Sector Plan ("Sector Plan"), as required by law.

As you know, on September 22, 2009, the County Council for Montgomery County Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland ("Council") approved the Sector Plan, which amends the approved and adopted 1989 Germantown Master Plan. Subsequently, on May 18, 2010, the Council then approved the Sectional Map Amendment ("SMA") implementing the Sector Plan's recommendations. The SMA re-zoned the portion of the Seneca Meadows property covered by the Site Plan from I-3 to TMX-2 (see Staff Report at 2). The Montgomery County Zoning



Letter to Françoise Carrier, Chair
 November 2, 2010
 Page 2

Ordinance requires that “[d]evelopment under the TMX zone must be consistent with the recommendations of the applicable master or sector plan.” See Section 59-C-14.213. My client’s specific comments are listed below.

II. Comments

1. This big-box “destination” shopping center proposed by the Site Plan directly contradicts the basic purpose and goals of the Sector Plan.

The Sector Plan “redirects the character of land use in the Germantown employment corridor from a suburban pattern of low-rise buildings and large areas of surface parking into compact, walkable places with lively streets, activating uses, businesses and houses.” See Sector Plan at 17. The Sector Plan further directs development in Germantown to support a transit-oriented community. *Id.* at 25.

The Site Plan, in direct contradiction with the goals of the Sector Plan, proposes a suburban-style 150,000 square foot Wegmans accompanied by 1,244 parking spaces on site. The development proposed by this Site Plan is truly a “destination” shopping center that will rely on customers driving significant distances to shop at the Wegmans. Regarding this proposed Wegmans, the company’s media relations director Jo Natale has been quoted as stating that, “[w]e are a destination for many folks so we can draw people from 10 miles [away], 25 or even 30, so we need good regional access.” See Meghan Tierney, *Wegmans Grocery Store in Germantown Could be Open by 2012*, *Montgomery Gazette*, June 30, 2010, available at http://www.gazette.net/stories/06302010/poolnew173840_32548.php. Further, Minkoff Vice President Brad Chod was quoted as stating that “[s]ome county residents travel as far as 40 miles to shop at the Wegmans in Sterling, Va.” *Id.*

The Staff Report states that “[u]nfortunately, this section of Seneca Meadows Parkway and, even more so, Observation Drive do not have the character needed to create viable, pedestrian-oriented retail edges.” Staff Report at 6. Even if this is true, it is hard to contemplate how the construction of an automobile-reliant destination-type shopping center will help to make this area any more viable or pedestrian-oriented in the future.

2. The Site Plan directly undermines the Sector Plan’s vision for a transit-oriented community centered around the future CCT station at Seneca Meadows.

Regarding the importance of transit in Germantown, the Sector Plan states the following:

Germantown will become a transit center. Along with MARC and bus service, the Corridor Cities Transitway will provide redevelopment capacity and travel options. The CCT will also be a force in shaping the Germantown community, forming and connecting distinct centers. It is vital to make pedestrian connections to these facilities. . . . The CCT is a pivotal infrastructure investment for Germantown and the entire north

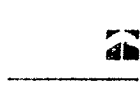
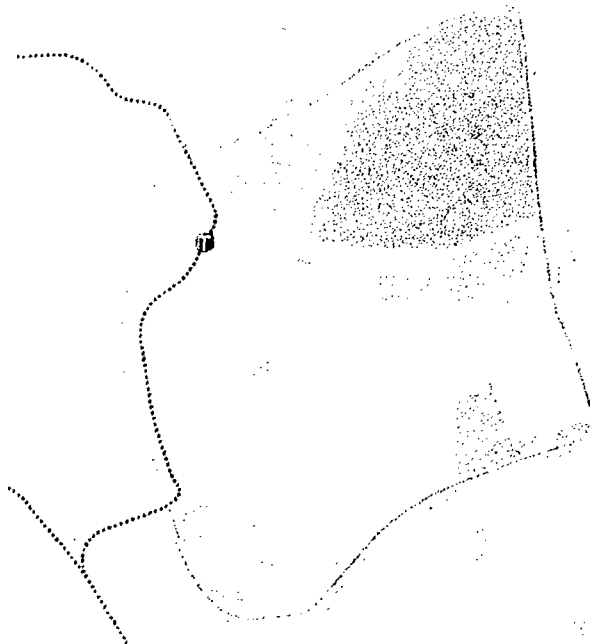
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County. This Plan is focused on delivery of the transit line. The densities proposed are determined by the location of the proposed transit stops.

See Sector Plan at 25.

To achieve its vision of a transit-oriented Germantown, the Sector Plan states that planners must “[c]oncentrate development at transit stations creating compact, walkable centers. Place highest densities nearest transit stations, transitioning down to lower densities adjacent to existing residential communities.” See Sector Plan at 17–18.

The Sector Plan envisions a CCT station (represented by a bold T below) directly adjacent to the development proposed in this Site Plan, as illustrated in the following picture from page 51 of the Sector Plan.



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Beyond the inherent land use conflict involved in locating a big box shopping center beside a transit station, this Site Plan proposes a stormwater management design that directly impedes the path of the CCT, as shown above in the Sector Plan. As the Staff Report notes, “[t]he Applicant is proposing to locate a significant portion of the required stormwater management facilities on Parcel L, which is designated as future dedication for right-of-way to serve the CCT.” See Report at 5. Indeed, the Sector Plan specifically states that in the Seneca Meadows district, the County should “[e]xpand the street network (B-25) with a bridge over MD 27/Ridge Road that accommodates the CCT, pedestrians, and bicyclists.” See Sector Plan at 51. The current stormwater design would impede future construction of such a bridge over MD 27.

In a meeting with my office, a representative from the Montgomery County Department of Permitting Services (MCDPS) indicated that he would not have approved the stormwater management concept plan for this Site Plan if he had not received the letter, dated October 5, 2010 (and contained in the Staff Report packet at page 20), from the Deputy Director for Transportation Policy in Montgomery County. In this letter, the Deputy Director states that it is his *opinion* that the transit line will not be included in the near term, if at all. The stormwater facilities on the right-of-way for the transit line are intended to be permanent. See Staff Report at 20. If the transit line were to actually be built, the County would be responsible for the complicated task of designing and constructing elevated infrastructure to allow the transit line to cross over the stormwater management facilities proposed under this Site Plan. *Id.* at 21.

3. This Site Plan’s proposed parking design violates the Sector Plan.

Regarding parking requirements, the Sector Plan states: “Parking should not exceed the minimum required in the Zoning Ordinance. Encourage shared use parking and, if feasible, develop private/public parking facilities.” Sector Plan at 18. The TMX-2 zone requires only 926 spaces of parking for this development. See Staff Report at 12. Instead, the Site Plan proposes 1,244 spaces of parking. *Id.* Staff admits that this development will be “over-parked” under the TMX-2 zone requirements. *Id.* While Staff attempts to justify approval of this plan by comparing the old and the new rules for parking, the result is clear: this Site Plan proposes a significant amount of parking spaces in excess of the minimum for the TMX-2 zone, and therefore directly violates the Sector Plan.

4. The concentration of retail proposed in this Site Plan does not conform to the Sector Plan’s vision for Germantown.

The Sector Plan includes several specific requirements for future development in the Seneca Meadows District. The Sector Plan states:

Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary (SM-1). To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include

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limited street level retail and a maximum of 30 percent residential uses. Street level retail must conform to the Plan's urban design guidance.

Sector Plan at 51.

The Sector Plan further states that "[b]uilding heights of up to 143 feet (12 stories) are appropriate at the transit station to create a focus for the mixed-use neighborhood." *Id.* Finally, the Plan states that developers should "[l]ocate limited retail uses along streets." *Id.*

This Site Plan violates or undermines each of the above instructions from the Sector Plan. First, as the Staff Report states, this development "proposes 206,570 square feet of commercial/retail space (approximately 71% of this phase of the proposed development), which exceeds the proportionate amount of retail envisioned for this area." Indeed, the Sector Plan requires 70% employment uses in this area. *See* Sector Plan at 51. Second, the FAR proposed by this Site Plan is only 0.26, far below the 1.0 average required under the Sector Plan. Finally, the tallest building proposed will be 42 feet, much lower than the 143 height maximum prescribed by the Sector plan.

Staff attempts to justify recommendation of this development by noting that the entire Seneca Meadows Corporate Center includes 1,526,700 square feet, and that "Staff would not support more retail being added to other parts of the larger site." *See* Staff Report at 5. In fact, the Seneca Meadows Corporate Center, as currently approved, also does not allow such a large amount of commercial/retail square footage. This is why the developer has also requested an amendment to the Seneca Meadows Corporate Center Preliminary Plan to change the approved maximum commercial/retail square footage from 83,000 square feet to 206,570 square feet – exactly the amount required to complete this development.

This type of planning involving overwhelming concentration of isolated uses is exactly what the Sector Plan is intended to eliminate. When the County Council approved the Sector Plan, it added specific language for the Seneca Meadows district, which states, "[r]ezone portions of the Seneca Meadows property (SM-1) from I-3 to TMX-2 to allow a mix of uses at the Seneca Meadows CCT station." *See* Resolution 16-1126 at 23. Allowing a development that proposes 71% commercial/retail use at this location and that therefore automatically forecloses future retail development throughout the rest of the Seneca Meadows site significantly undermines the purpose of the Sector Plan.

5. The design for the big box store proposed by this Site Plan contradicts the Sector Plan requirements for street-frontage.

The Staff Report states that "[t]he importance of street-to-building relationships . . . is paramount to the future success of transit and reduction of vehicle trips in this area. The use of such relationships is reiterated by the Plan's statement to 'locate limited retail uses along streets' and reinforced by the Plan's Resolution which states that plans should, 'concentrate a limited amount of street level retail near the transit station.'" *See* Staff Report at 6. Moreover, the

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Sector Plan states that “[b]ig box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing the street.” Sector Plan at 51.

The buildings proposed by this Site Plan do not front the streets, and do not have active store fronts with multiple entrances. In fact, Staff admits that this development is internally focused. See Staff Report at 6. In an attempt to nevertheless justify this development, the Staff Report inexplicably states that the Wegmans “is not, technically, a ‘big box retailer.’” See Report at 6. But the Maryland Department of Planning has defined “Big-Box” stores as “large, industrial-style buildings or stores with footprints that generally range from 20,000 square feet to 200,000 square feet.” See Theodis L. Perry, Jr., *Managing Maryland's Growth: Models and Guidelines – “Big-Box” Retail Development*, Maryland Department of Planning, October, 2001, http://www.mdp.state.md.us/PDF/OurProducts/Publications/ModelsGuidelines/bigbox_v3.pdf. The Wegmans is proposed to be built as a 150,000 mega-structure.

Staff again resorts to the argument that the streets in this area “do not have the atmosphere necessary to create viable, street-oriented retail in such an early phase of development.” See Staff Report at 6. But this statement again begs the question of how a new big box destination shopping center will in any way help to transform the Seneca Meadows District into the mixed-use pedestrian-friendly community envisioned by the Sector Plan.

6. The Site Plan includes a stormwater management design that contradicts the Sector Plan.

The Sector Plan states that developments should “minimize impacts with comprehensive stormwater management approaches including green roofs, rain gardens, innovative stormwater outfalls, green streets, cisterns, rain barrels, grass swales, street trees, vault retention, and infiltration systems . . . to the fullest extent possible during the development review process.” See Sector Plan at 33.

For this development, one of the reasons that the stormwater management facilities on Parcel L are necessary is because the developer refused MCDPS’s request to construct a green roof for the Wegmans. Apparently, Wegmans’s architectural needs prevent a green roof from being installed. Indeed, this fact only further emphasizes the incompatibility between this development and the Sector Plan’s vision for smart growth and environmentally conscious development in Germantown.

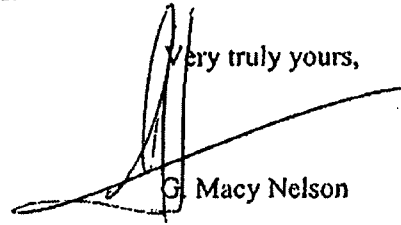
III. Conclusion

The new Germantown Employment Area Sector Plan was intended to usher in a smart, organized, and sustainable form of development for Germantown. Unfortunately, just months after the plan was passed, The Shops at Seneca Meadows Site Plan and proposed Wegmans indicate that a vision for sustainable, smart development has already begun to give way to traffic-inducing “destination” shopping centers that are transit-averse, unorganized, and environmentally destructive. This Site Plan directly contradicts several requirements of the

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Sector Plan. Therefore, my client urges you not to approve this Site Plan or Amendment to the Preliminary Plan as currently proposed.

Very truly yours,

A handwritten signature in black ink, appearing to be 'G. Macy Nelson', written over a horizontal line. The signature is stylized with a large, vertical loop on the left side.

G. Macy Nelson

cc: Gregory Pringle



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

MCPB No. 10-156
Preliminary Plan No. 11998004A
Seneca Meadows Corporate Center
Date of Hearing: November 4, 2010

JAN 13 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

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

WHEREAS, on July 16, 2010, Minkoff Development Corporation ("Applicant"), filed an application for approval of a preliminary plan amendment to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, ("Property" or "Subject Property"), within the Germantown Employment Area Sector Plan ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 11998004A, Seneca Meadows Corporate Center ("Preliminary Plan" or "Application"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated October 24, 2010, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, on November 4, 2010, 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 November 4, 2010, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor, with Commissioner Presley abstaining and Commissioner Alfandre absent.

Approved as to
Legal Sufficiency:

Christina Jones 12/22/10

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NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 11998004A to create two lots (Lots 11 and 12) and two recorded parcels for future dedication (Parcels K and L) approximately 21 acres, 4.4 acres, 1 acre, and 1.9 acres, respectively, in the TMX-2 Zone; located in the southwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive, within the Sector Plan Area, subject to the following conditions:

- 1) Approval under this Preliminary Plan amendment is limited to 1,319,700 square feet of R&D office use and 206,570 square feet of retail use.
- 2) Applicant must address Forest Conservation encroachment issues outlined in the Staff Report as detailed in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.
- 3) The Applicant must submit a revised Final Forest Conservation Plan for Phase 4 to address Staff comments dated October 19, 2010.
- 4) The Category I Easement area on proposed Lot 11 must be recorded on a plat prior to release of any building permits.
- 5) The Applicant must satisfy provisions for access and improvements as required by MCDOT prior to issuance of access permits.
- 6) The Applicant must comply with the conditions of the Montgomery County Department of Permitting Services (MCDPS) stormwater management approval dated October 13, 2010. These conditions may be amended by MCDPS, provided any modifications do not conflict with any other condition of the preliminary plan approval.
- 7) The record plat(s) for proposed Lots 11 and 12, and Parcel L, will note that these properties are subject to a covenant with Montgomery County regarding use of, and future access to, Parcel L by Lots 11 and 12. The text of the covenant to be recorded covering the properties will be in accordance with terms and conditions contained in an MCDOT letter dated October 5, 2010. The Liber and Folio of the recorded covenant must be placed on the record plat(s).
- 8) Site Plan # 820100140 must be approved by the Board and certified by the Development Review Division prior to the approval of the record plat.
- 9) Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of the Phase 4 Final Forest Conservation Plan, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices on Lot 11.
- 10) All previous conditions of Preliminary Plan No. 119980040 remain in full force and effect unless specifically amended by this approval.
- 11) The Adequate Public Facility (APF) review for the Preliminary Plan remains valid per the original plan approval until January 22, 2012.

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

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

The Subject Property is located in the Seneca Meadows/Milestone District of the Sector Plan. The original Preliminary Plan covered approximately a third of the Seneca Meadows/Milestone District and was approved in December 1997 prior to the adoption of the Sector Plan in September 2009. The Preliminary Plan Amendment, by necessity covers the same area that was originally approved in the 1997 Preliminary Plan, but the lot that is undergoing development is only a fraction of that area and the Seneca Meadows/Milestone District. Although the Preliminary Plan covers this large area, the Planning Board focused its review on the new development of Lot 11 that affects the current composition of the Seneca Meadows/Milestone District for this finding. Based on its review, the Planning Board finds that the development of Lot 11 substantially conforms to the Sector Plan and begins the transition for the Preliminary Plan to ultimately fulfill the Sector Plan recommendations for the Seneca Meadows/Milestone District. The Sector Plan makes the following recommendations for the Subject Property:

"Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary."

The Sector Plan recommends concentrated mixed-use development at the proposed transit station with an average density of 1.0 FAR for the Seneca Meadows property north of the Crystal Rock tributary ("northern Seneca Meadows property"). The higher density is to be located at the proposed transit station, which has a proposed location to the west of the Subject Property and is adjacent to two undeveloped lots. Although the Subject Property has a 0.26 FAR, it achieves a higher density than what currently exists in the northern Seneca Meadows property. Further, it is expected that the average FAR of the northern Seneca Meadows property will increase significantly when the proposed transit station is built and full development build out is achieved. The Application also increases the mix of uses with Lot 11 providing a mixed use development of retail and office. It is expected that the mix of uses will continue to increase on the lots closer to the proposed transit station. The Planning Board finds that the Application is a mixed use development that increases the density of what currently exists on the northern Seneca Meadows property and provides a solid transition for this part of the Seneca Meadows/Milestone District to fulfill the Sector Plan recommendations.

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"To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include limited street level retail and a maximum of 30 percent residential uses."

The Application proposes 206,570 SF of commercial/retail space, which is a small amount of the total possible development for the northern Seneca Meadows property. Although Lot 11 that will contain a Wegman's store will have a high percentage of retail, it represents a small amount of the overall development of the northern Seneca Meadows property. The mix of uses as proposed for Lot 11 will include office, retail, and service, which is in conformance with the Sector Plan's land use designation for the Subject Property of "Commercial Mixed Use" (office, retail, service, housing). The Planning Board finds that 206,570 SF of commercial/retail space is in conformance with the Sector Plan's recommendation of limited retail use and that all of the proposed uses generate employment. It is also important to note that Wegman's is not a typical grocery store in terms of employment. Wegman's is considered a high employment retailer with a wide array of employment opportunities at both entry and advanced levels. Further, the mix of uses in the northern Seneca Meadows property will continue to be refined by further phases, which should include residential and other commercial uses.

"Concentrate a limited amount of street retail near the transit station. Big Box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing Seneca Meadows Parkway and Observation Drive"

The proposed retail on Lot 11 is a few blocks east of the proposed transit station. The Planning Board finds that the location of retail on Lot 11 substantially conforms to the Sector Plan's recommendation for retail "near the transit station". The Planning Board applied the Sector Plan's recommendation for "Big Box retailers" to the Wegman's grocery store. It is important to understand that the land use recommendations in master plans do not, and cannot specify all development possibilities, particularly commitment to a particular design detail until the physical limitations of a site are understood. There are many site specific reasons why locating the retail uses on Seneca Meadows Parkway and Observation Drive was not feasible for this Property. First, development of this site under the new Environmental Site Design features of the new Stormwater Management Regulations requires the Applicant to essentially use every green area to take in water. This site drains naturally to the intersection of Seneca Meadows Parkway and Observation Drive. One of the low points for this site happens to be at the corner of Seneca Meadows Parkway and Observation Drive where the Sector Plan has called for retail frontage. Second, the grades at that intersection make it difficult to front buildings there, and in order to accommodate the topographical limitations of the site, these retail buildings have been fronted on an interior street.

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The orientation of buildings and layout of the internal street network were heavily considered in this Application. The Applicant did front retail buildings on Seneca Meadows Parkway and Observation Drive per the Sector Plan's recommendations where the topography is flat enough. The Applicant sited two buildings as an entrance to the development on Observation Drive that act as a gateway into the site. Likewise a separate building has been fronted on Seneca Meadows Parkway at the opposite entrance point to the site. For the rest of the development, the Applicant ultimately established a network of internal streets with smaller blocks that are pedestrian oriented as envisioned by the Sector Plan. Views and pedestrian relationships along each frontage street have been designed to begin the transformation of this environment to the urban form recommended in the Sector Plan. Due to the constraints of the Subject Property, the Planning Board finds that the retail's frontage on an internal network of streets relatively near the proposed transit station substantially conforms to the Sector Plan.

"Street level retail must conform to the Plan's urban design guidance."

The Sector Plan also calls for street level retail to conform to its design guidance. The urban design recommendations of the Sector Plan include the call for street-oriented development, public amenities including plazas and gathering places, and the creation of vibrant pedestrian spaces. The Application consists of a street network of smaller internal streets that will fulfill the Sector Plan's recommendation for urban form better than fronting retail along Seneca Meadows Parkway and Observation Drive at this location. Grading, drainage, and existing conditions do not currently promote the location of retail fronts on Seneca Meadows Parkway and Observation Drive. Future development phases that will occur to the west of the Subject Property will be better able to utilize Seneca Meadows Parkway itself for street activation. However, locating retail on Observation Drive and Seneca Meadows Parkway at this point in the development in this area will not likely translate into viable retail.

In keeping with the urban design recommendations, the Application focuses the entry of the Wegman's to Seneca Meadows Parkway as much as possible. The open space where a café and clock tower are located have been pulled close to Seneca Meadows Parkway. The placement of the structure, along with the primary entrance and outdoor seating courtyard allows for direct pedestrian access from the Parkway, the internal street, and parking areas. In addition, unlike most development of this density and in this context, much of the parking will be structured which serves to decrease the impermeable footprint that is typically created by a standard big box store and gives the development more of the urban form that the Sector Plan calls for.

Several plazas and open spaces have been built in along the interior streets of this Application. Rather than one large open space area or plaza that would work well

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with an office development, numerous smaller areas have been programmed throughout the development to connect the retail spaces. The smaller plazas and open spaces work better for the smaller buildings and smaller street frontages. The plazas and open space provide pedestrian friendly public amenities throughout the Subject Property.

The Application provides for pedestrian crossings and streets that are very pedestrian oriented. The Applicant used the guidance on street-level retail design in the Sector Plan to create a more urban atmosphere within the site rather than at its edges. In this case, the proposed retail uses are organized along an internal primary street and on secondary drives between buildings and parking. The Applicant has also provided streetscape improvements on Observation Drive and Seneca Meadows Parkway. The Application creates a streetscape for a smaller street on the internal street rather than concentrating seating, street trees, and amenities on Observation Drive. The street activation is better focused internally to create a vibrant, pedestrian friendly, urban atmosphere.

The Planning Board finds that the Application substantially conforms to the recommendations of the Sector Plan for urban design and that this Application will transition the Seneca Meadows/Milestone District towards implementing the Sector Plan's vision. Later phases will build on this development and allow Seneca Meadows Parkway and other streets to take on the desired character of a more urban, walkable place.

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

Roads and Transportation Facilities

Adequate vehicular access to the site is provided by a full-movement driveway connection to Seneca Meadows Parkway and Observation Drive. A separate loading and unloading full-movement driveway is provided for trucks from Seneca Meadows Parkway near the west side of the Subject Property. The general traffic access point already exists on Seneca Meadows Parkway as does a 5-foot wide sidewalk on Seneca Meadows Parkway. Observation Drive has an existing 8-foot wide sidewalk. The internal vehicular facilities have not yet been constructed. Primary pedestrian access is provided via 8-foot wide sidewalks, which connect to the existing sidewalks along the street frontage, and will provide pedestrian access throughout the entire site.

Adequate Public Facility (APF) Analysis

An APF analysis, which was conducted at the time of the original preliminary plan for 1,577,000 SF of office and 83,000 SF of retail, concluded that the project would

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meet the transportation APF requirements after providing specific roadway improvements. These improvements have been provided, and the previous APF approval remains valid. Up to this point, 701,332 square feet of office and none of the retail have been constructed.

Under this Application, the Applicant proposes a reduction of 257,300 square feet of the approved but un-built office use, and an addition of 123,570 square feet of new retail. This will result in a total of 1,319,700 SF of approved R&D office use and a total of 206,570 SF of retail use over the entire Preliminary Plan area. All of the new retail would be constructed as part of the site plan on proposed Lot 11. Based on the traffic statement submitted by the Applicant and reviewed by Staff, the 257,300 square feet of previously approved office development would generate approximately the same amount of peak hour trips as will be generated by the 123,570 square-feet of proposed retail development. Therefore, a reduction of 257,300 square feet of office space will accommodate the proposed addition of 123,570 square feet of retail space. It should be noted that in estimating trips for the proposed retail development, actual surveyed trips generated by existing Wegman's stores in other locations have been used. Therefore, in order for the Applicant to meet the requirements of the APF approval in place, the Applicant is required to reduce 257,300 square feet of office space from the originally approved preliminary plan to accommodate the proposed total of 206,570 square feet of retail use.

Other Public Facilities and Services

Other public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities such as schools, police stations, firehouses and health services are currently operating within the standards set by the Growth Policy resolution currently in effect. Electrical, gas, and telecommunications services are available to serve the Property.

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

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed size, width, shape and orientation of the lots are appropriate for the location of the subdivision. The lots were reviewed for compliance with the dimensional requirements for the TMX-2 zone as specified in the Zoning Ordinance. The proposed lots meet the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended

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approval of the Preliminary Plan. Therefore, the Planning Board finds that the size, shape, width, and area of the lots are appropriate for their location within the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

A Natural Resource Inventory/Forest Stand Delineation (NRV/FSD) was submitted for the Subject Property (Lot 11 only) and was approved by Environmental Planning staff in November of 1997. As previously stated, with the exception of approximately 3.6 acres of forest, there are no regulated environmental features onsite such as streams, wetlands, 100-year floodplain, environmental buffers, steep slopes, or highly erodible soils. Therefore, the Application complies with the Montgomery County Environmental Guidelines.

Forest Conservation

The proposed development is the 4th and final phase of the Forest Conservation Plan for the entire Preliminary Plan area, which covers approximately 156 acres. The site is located within a *use class IV/ IV-P* portion of Little Seneca Creek watershed. The site is not within a Special Protection Area.

The current Application and site plan address forest conservation requirements and tree save issues for the development of the proposed uses and the associated parking lots and infrastructure. Lot 10 and Parcel P125 are also included under the current phase.

The current phase has approximately 3.6 acres of existing forest which contains a number of significant and specimen trees. No other environmentally sensitive features occur on-site for this phase. Approximately 2.2 acres of forest clearing is proposed, which was conceptually approved during the earlier phases. An onsite buffer strip of forest retention/planting area is proposed within a new Category I easement on proposed Lot 11 along Ridge Road. The new easement area will buffer Ridge Road and the confronting residents from the proposed grocery store and parking structure. Compared to the previously approved concept, some portions of the proposed buffer have been widened while other areas have been narrowed. The easement area is less than 50' wide in some sections, but meets the overall intent of the previously proposed easement since the total area placed in easement is approximately equal in size.

The overall site contains existing recorded Category I and Category II Forest Conservation Easement areas which satisfied earlier phases of the projects (the

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easements are also connected with the current proposal). A number of encroachment issues and concerns with the existing easement areas surfaced during the review of the current Application. These encroachments will be address by the Applicant as outlined in the November 4, 2010 letter from Jody Kline, Esq. to Rose Krasnow.

Forest Conservation Variance

Section 1607(c) of the Natural Resources Article, MD Ann. Code, identifies certain individual trees as high priority for retention and protection. Any impact to trees, including removal or any disturbance within a tree's critical root zone (CRZ), requires a variance. An Applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the Montgomery County Code. The law requires mitigation for any impacts to all trees that measure 30" diameter at breast height (DBH) or greater; any tree designated as the county champion tree; trees with a DBH 75% or greater than the diameter of the current State champion for that species; rare, threatened and endangered species; and trees part of a historic site or associated structure. This project did have a Preliminary Forest Conservation Plan prior to the October 1, 2009 effective date. However the approved plan showed an LOD that resulted in only minor impact to the subject tree. The current proposal shifts the LOD approximately 20' feet closer to the subject tree, creating new impacts (which would also necessitate removal of the tree). The newly proposed impacts to this greater than 30" DBH tree trigger the variance requirement.

Other trees on site which are 30" or greater were either previously approved for removal or will actually experience lesser impacts than previously approved (due to LOD changes). The additional impacts subject to the variance requirements are limited to the one tree.

In accordance with Section 22A-21(e), the Planning Board must find that the Applicant has met all criteria required to grant the variance. The Board finds the Applicant has satisfied the requirements for a Forest Conservation Variance for the following reasons:

- a) The variance will not confer on the Applicant a special privilege that would be denied to other applicants.

The Subject Property is located in the Sector Plan and the property is zoned TMX-2. The location of the proposed development is strategic in that it is easily accessible from I-270, several State roads (MD-27, MD-355, MD-118), and the future Corridor Cities Transitway (CCT). Granting the variance will allow the Sector Plan for this property to be implemented (which would be an expected outcome for other applicants and therefore not a special privilege).

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Seneca Meadows Corporate Center
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b) The variance is not based on conditions or circumstances which are the result of the actions by the Applicant.

The Applicant has utilized structured parking and integrated Stormwater Management (SWM) facilities into the surface parking areas. These measures have reduced the overall footprint of the development to the maximum extent practical, and enabled additional forest save measures in other areas when compared with the preliminary forest conservation plan. The impact to T62 is necessary and unavoidable to implement the Application as proposed. Staff believes the variance can be granted under this condition if mitigation for the 31" DBH tree is provided. Staff recommends that 31 four to six foot tall holly trees be planted within the proposed easement area, as mitigation for the resource removed. The evergreen plantings will enhance the ultimate effectiveness of the buffer screen (from which the subject tree is proposed for removal). Final locations of the plantings will be determined by the forest conservation inspector.

c) The need for the variance does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property.

The requested variance is a result of the proposed site design and layout on the Subject Property and not a result of land or building use on a neighboring property.

d) The variance will not violate State water quality standards or cause measurable degradation in water quality.

The site is the subject of Stormwater Management and Sediment Control Plans affiliated with development applications 11998004A and 820100140. The Department of Permitting Services is satisfied that the Application meets sediment control and water quality requirements. The location of the subject tree is not directly associated with a stream, floodplain, or wetland. State water quality standards would not be violated by the impact or removal of the 31" tree, and no measurable degradation of water quality would occur.

As a result of the above findings, the Planning Board approves the Applicant's request for a variance to remove one tree associated with the site.

Therefore, the Board finds that the Application satisfies the Forest Conservation Law and the Environmental Guidelines.

- 5. The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting*

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Services ("MCDPS") that the Stormwater Management Concept Plan approval meets MCDPS' standards.

The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved the stormwater management concept for the project on October 13, 2010. The stormwater management concept consists of utilizing Environmental Site Design (ESD) to the maximum extent practicable in accordance with Chapter 19 of the County Code. Runoff that is not managed by onsite ESD practices will be managed in existing regional ponds

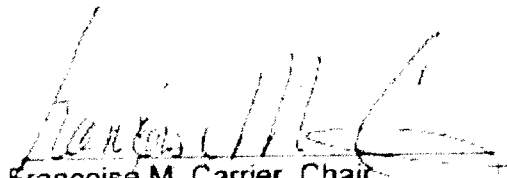
BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is JAN 13 2011 (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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, January 6, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

ATTACHMENT 2
ATTACHMENT ONE



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

Hannah Murray
Rodgers Consulting
19847 Century Boulevard
Germantown, MD 20874

October 19, 2010

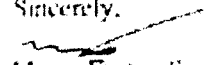
Re: Preliminary Plan 11998004A & Final Forest Conservation Plan 820100140
Name of Plan: The Shops at Seneca Meadows

Based on the review by Environmental Planning staff of the Montgomery County Planning Department, the Final Forest Conservation Plan submitted to M-NCPPC on September 21, 2010 for the plan identified above, is rejected for the following reasons:

1. Clarify/revise plans to remove the additional planting credits sought within the supplemental planting area (shown on sheet FC-3). The area was already credited as reforestation under an earlier phase, and cannot be used for additional credit. Provide any required credits in other areas of the site. New comment based on new information.
2. The new detailed information provided on the 50 scale drawing has revealed that portions of the easement area (near Observation Drive) contain proposed grading in excess of 3:1. The steep slopes proposed are not acceptable within the easement area. Adjust grading, utilize retaining wall and/or adjust easement footprint as appropriate.
3. Adjust locations of newly proposed permanent boundary posts to correspond with each corner of the Category I Easement area including the north side of boundary). Provide additional posts along boundary lines so that the spacing does not exceed approximately 125'.
4. The legend item for the proposed Category I easement has been deleted since the previous submission. Provide graphics and corresponding legend item to clearly identify the boundary of the proposed easement. Distinguish the currently proposed easement from the conceptually approved easement shown from the 11/5/1998 plan.
5. Correct the size of the newly shown tree #63.
6. Coordinate with staff regarding minor adjustments/clarifications to be made on notes and details.
7. Note: plans will require further revisions to address any changes in easement boundary, restoration of easement areas and/or other conditions of approval that are adopted by the Planning Board. Staff recommendations for conditions of approval will be issued under separate cover and/or within the pending staff report.

If you have any questions regarding these comments, please feel free to contact me at (301) 495-4521 or at marco.fuster@mncppc-mc.org.

Sincerely,


Marco Fuster, Senior Planner
Environmental Planning Division
M-NCPPC

ATTACHMENT TWO

LAW OFFICES



MILLER, MILLER & CANBY

CHARTERED

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* Attorneys admitted in Maryland and where indicated

JKLINE@MMLC.COM

November 4, 2010

Ms. Rose Krasnow
Chief, Development Review Division
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Preliminary Plan Amendment Application No. 119980004A,
Site Plan Application No. 820100140;
Seneca Meadows Corporate Center

Dear Ms. Krasnow:

As a follow-up to our discussions over the past four days, the Applicant in the above-referenced preliminary plan amendment and site plan applications, Minkoff Development Corporation, submits the following plan of action to address encroachments into recorded forest conservation easement areas which are the subject of Preliminary Plan Conditions 2 through 6 in the Staff Report and Recommendation dated October 24, 2010.

The Plan of Action which we agreed upon with Staff is described as follows:

- 1. By January 1, 2011, representatives of the Applicant and Staff will meet at the Seneca Meadows site to inspect the features which were described in Conditions numbered 2 through 6 in the Staff Report dated October 24, 2010 ("Section 3: Preliminary Plan Recommendations and Conditions", page 15).
2. Prior to the site visit the applicant must accurately demark in the field all existing easements that overlap with the conservation easement including stormwater management easements, WSSC easements and any other easement that may restrict the planting of forest and trees and the stream valley buffer.

ATTACHMENT 2

3. Prior to the site visit the applicant must calculate, identify and delineate:
 - a. the total acreage of conservation easements;
 - b. total acreage of forest saved (as shown on the approved final forest conservation plans);
 - c. the total acreage of forest planted (as shown on the approved final forest conservation plans);
 - d. the total acreage of landscape planting (as shown on the approved final forest conservation plans) that are within the category I conservation easement areas; and
 - e. the total acreage of naturally regenerated forest that is outside of "b", "c", and "d" above.

4. After the site visit Applicant will amend the Forest Conservation Plan to:
 - A. Remove the encroachment area from the Conservation Easement to eliminate the generator and concrete vault as encroachments; and
 - (1) The record plat covering the areas where the generator and concrete vault are located must be re-recorded to accurately display the boundaries of the revised Conservation Easement area.

 - B. To address the treatment of concrete pad(s) supporting picnic tables located in the conservation easement.
 - (1) A determination will be made during the site visit if the concrete pad(s) are to be removed or if they will be allowed to remain and the area of the conservation easement will be modified to exclude the area of encroachment of the concrete pad(s), in which event the record plat must be amended to reflect any change in the boundaries of the conservation easement.

 - C. Allow the asphalt path to remain within the Conservation Easement and request approval for such pathway to remain as shown on the Forest Conservation Plan,

 - D. Areas that are currently within the conservation easement that are allowed to remain being mowed will be excluded from the conservation easement area and the record plat covering such area must be re-recorded to accurately display the boundaries of the revised conservation easement.

ATTACHMENT 2

5. Applicant must submit an application within 120 days following the site visit described in paragraph numbered 1 above for an amended preliminary plan of subdivision, amended Forest Conservation Plan, and an administrative amendment to the site plan to reconcile conditions of preliminary and site plan approvals with the terms and conditions of this Plan of Action and must obtain approval from the Montgomery Planning Board on the preliminary and Forest Conservation plans prior to submitting revised record plats.
6. For the asphalt path remaining in the existing Conservation Easement areas, and for reductions in the Conservation Easement due to carving out the generator and concrete vault, and for any other mitigation situation, mitigation of the area impacted by the encroachments will be provided by the Applicant in the following manner.
 - A. Applicant will undertake forest planting at a replacement rate of 1:1 in areas that are within the boundaries of the conservation easement but were not previously shown on the approved Forest Conservation Plan for forest planting, landscape planting, forest retention, or have not naturally regenerated since the approval of the forest conservation plan.
 - (1) Staff will determine during the site visit and inspection whether the "surplus" conservation area described above is appropriate for forest planting or whether the area has so regenerated in natural growth that using the area for mitigation purposes would be inappropriate.
 - B. Alternatively, Applicant and Maryland-National Capital Park and Planning Commission ("M-NCPPC") Staff will identify new areas to be subjected to the Conservation Easement at a replacement rate of 2:1 and will plant such areas.
 - (1) Any changes to the Conservation Easement, including additions, must be reflected on the revised plats and recorded by the Applicant.
7. Any revised plats to be recorded will be submitted to M-NCPPC within 90 days of the mailing date of the Planning Board's resolution for the Preliminary Plan Amendment referenced in paragraph numbered 5 above.
8. Applicant must enter into a 2 year Maintenance and Management Agreement with a surety for any planting required by the revised Forest Conservation Plan. The maintenance and management agreement must be submitted and approved by M-NCPPC prior to any planting occurring.
9. Any required planting must occur within the first planting season after Planning Board approval of the amended preliminary plan of subdivision referenced in paragraph 5.

10. During the site visit, the parties will determine what areas, if any, may continue to be mowed. The area within the conservation easement that will continue to be mowed must be the subject of mitigation measures specified in paragraph 6 above. Areas that will continue to be mowed must be removed from the conservation easement pursuant to the provisions of Paragraphs 4 and 7.
11. Applicant must remove nonnative and invasive vegetation, such as Canadian Thistle, by the means directed by a governmental agency that will cause the least damage to the conservation easement and will allow for natural regeneration to occur within the easement area.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "JODY KLINE". The signature is written in a cursive style with a horizontal line underneath the name.

Jody S. Kline

JSK/dlt

cc: Rollin Stanley
Mark Pfefferle
Cathy Conlon
Patrick Butler
Robert Kronenberg
Josh Sloan
Carol Rubin, Esquire
Christina Sorrento, Esquire
Paul Chod
Bradley Chod
Andy Chod
Gary Unterberg
Kim McCary



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

MCPB No. 10-157
Site Plan No. 820100140
Project Name: The Shops at Seneca Meadows
Date of Hearing: November 4, 2010

JAN 12 2011

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 June 30, 2010, Seneca Meadows Corporate Center VII, LLLP ("Applicant"), filed an application for approval of a Site Plan for construction of a 150,000 SF grocery store, 28,570 SF of general office, 4,300 SF of professional office, and 56,570 SF of retail/restaurant uses ("Site Plan" or "Plan") on 21.0 acres of TMX-2-zoned land, located in the northwest quadrant of the intersection of Seneca Meadows Parkway and Observation Drive ("Property" or "Subject Property") within the Germantown Employment Area Sector Plan ("Sector Plan"); and

WHEREAS, Applicant's Site Plan application was designated Site Plan No. 820100140, The Shops at Seneca Meadows ("Site Plan" or "Application"); and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 24, 2010, 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 staff of other governmental agencies, on November 4, 2010, 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 November 4, 2010, the Planning Board approved the Application subject to conditions on the motion of Commissioner Dreyfuss; seconded by Commissioner Wells-Harley; with a vote of 3-0; Commissioners Carrier, Dreyfuss, and Wells-Harley voting in favor; Commissioner Presley abstaining and Commissioner Alfandre being absent.

Approved as to
Legal Sufficiency:

Christina Jones 12/22/10
M-NCPPC Legal Department

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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

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Site Plan No 820100140
The Shops at Seneca Meadows
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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. 820100140 for construction of a 150,000 SF grocery store, 28,570 SF of general office, 4,300 SF of professional office, and 56,570 SF of retail/restaurant uses on 21.0 acres of TMX-2-zoned land, subject to the following conditions:

Conformance with Previous Approvals

1. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for preliminary plan 11998004A as listed in the Planning Board Resolution unless amended.

Environment

2. Forest Conservation

The proposed development must comply with the conditions of the approved final forest conservation plan. The Applicant must resolve all comments enumerated in the memorandum dated October 19, 2010 prior to the recording of a plat(s) or the issuance of sediment and erosions control permits by the Montgomery County Department of Permitting Services.

Open Space

3. Maintenance of Public Amenities

The Applicant and future owners are responsible for maintaining all publicly accessible amenities including, but not limited to, plazas, sidewalks, benches, plantings, and lighting.

Site Plan

4. Lighting

- a. The lighting distribution and photometric plan with summary report and tabulations must conform to IESNA standards for commercial development.
- b. All onsite down- light fixtures must be full or partial cut-off fixtures.
- c. The height of the light poles must not exceed 27 feet including the mounting base in all surface parking areas and 35 feet including the mounting base in the loading area. The height of the light poles on top of the structured garage must not exceed 22 feet including the mounting base.

5. Landscape Surety

The Applicant shall provide a performance bond in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

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- a. The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of the first building permit and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which, upon Staff approval, will establish the initial bond amount.
- c. Completion of plantings to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the Applicant and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

6. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved prior to the approval of the Certified Site Plan. The development program must include the following items in its phasing schedule:

- a. Street lamps and sidewalks must be installed within six months after street construction is completed for each section of the development. Street tree planting may wait until the next growing season.
- b. On-site amenities for each open space, including but not limited to sidewalks, benches, trash receptacles, and bicycle facilities, must be installed prior to release of any building occupancy permit for adjacent buildings.
- c. Clearing and grading must correspond to the construction phasing to minimize soil erosion and must not occur prior to approval of a Final Forest Conservation Plan for Phase 4 for proposed Lot 11, Sediment Control Plan, and M-NCPPC inspection and approval of all tree-save areas and protection devices.
- d. The development program must provide phasing for installation of on-site landscaping and lighting.
- e. Landscaping associated with each parking lot and building shall be completed prior to use and occupancy of each parking lot and building.
- f. The development program must provide phasing of dedications, stormwater management, sediment and erosion control, afforestation, trip mitigation, and other features.

7. 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. Public use space exhibit that limits qualifying open space to plazas and sidewalks along the primary internal street.

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 Site Plan No 820100140
 The Shops at Seneca Meadows
 Page 4

- b. Include the final forest conservation approval for Phase 4, Lot 11, stormwater management concept approval, development program, inspection schedule, and Site Plan Resolution on the approval or cover sheet.
- c. Add a note to the Site Plan stating that "M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading".
- d. Modify data table to reflect development standards enumerated in the Staff Report.
- e. Ensure consistency of all details and layout between Site Plan and landscape plan.
- f. Minor modifications to labeling, layout, and details for clarity and to address conditions.
- g. Provide a building envelope for each building/pad site and include in the data table.

BE IT FURTHER RESOLVED, that all site development elements as shown on The Shops at Seneca Meadows drawings stamped by the M-NCPPC on September 22, 2010, 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 except as modified herein, 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.*

The Site Plan is not subject to any development, diagrammatic, schematic development, or project plan.

2. *The Site Plan meets all of the requirements of the TMX-2 zone and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Site Plan meets all the intents and standards of the TMX-2 zone. The Application will serve as a first link in the creation of a networked area of open spaces and mixed uses with desirable relationships between circulation systems, public spaces, and buildings. The Application proposes uses that are permitted in the zones and meets all of the development standards required by the zone,

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as shown on the data table below, including maximum density, building coverage, and height, and minimum public use space and parking. The following data table sets forth the development standards approved by the Planning Board and binding on the Applicant.

Development Standards for the TMX-2 Zone Standard Method Development		
Standard	Required/Allowed	Approved by the Planning Board and Binding on the Applicant
Lot area (min square feet)	none	914,991
Building coverage (max %)	75	36
Public use space (min %)	10	28 ¹
Building height (max feet)	42	42
Setbacks (min feet)		
Adjacent building on a separate lot	15	n/a
Adjacent commercial or industrial zone	20	n/a
Adjacent single-family residential zone	25	n/a
Public right-of-way	10	10
Density (floor area ratio)	0.5	0.26
BLT requirement	none	n/a
Parking (min)	926	1244

A further general requirement of the TMX-2 zone is that "development under the TMX zone must be consistent with the recommendations of the applicable master or sector plan" [59-C-14.213(a)]. Based on its review, the Planning Board finds that the Application is consistent with the Sector Plan and begins the transition for the Seneca Meadows/Milestone District to ultimately fulfill the Sector Plan recommendations. The Sector Plan makes the following recommendations for the Subject Property:

"Concentrate mixed-use development at the transit station with an average density of 1.0 FAR on the Seneca Meadows property north of the Crystal Rock Tributary."

The Sector Plan recommends concentrated mixed-use development at the proposed transit station with an average density of 1.0 FAR for the entire Seneca Meadows property north of the Crystal Rock tributary ("northern Seneca Meadows property"). The higher density is to be located at the proposed transit station, which has a proposed location to the west of the Subject Property and is adjacent to two

¹ This number may be reduced up to 2% below the amount proposed per the conditions of approval.

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undeveloped lots. Although the Subject Property has a 0.26 FAR, it achieves a higher density than what currently exists in the northern Seneca Meadows property. Further, it is expected that the average FAR of the northern Seneca Meadows property will increase significantly when the proposed transit station is built and full development build out is achieved. The Application also increases the mix of uses by providing a mixed use development of retail and office. It is expected that the mix of uses will continue to increase on the lots closer to the proposed transit station. The Planning Board finds that the Application is a mixed use development that increases the density of what currently exists on the northern Seneca Meadows property and provides a solid transition for the Seneca Meadows/Milestone District to fulfill the Sector Plan recommendations.

“To ensure the area retains an employment profile, develop with a minimum of 70 percent employment uses that include limited street level retail and a maximum of 30 percent residential uses.”

The Application proposes 206,570 SF of commercial/retail space, which is a small amount of the total possible development for the northern Seneca Meadows property. Although Lot 11 that will contain a Wegman's store will have a high percentage of retail, it represents a small amount of the overall development of the northern Seneca Meadows property. The mix of uses as proposed for Lot 11 will include office, retail, and service, which is in conformance with the Sector Plan's land use designation for the Subject Property of "Commercial Mixed Use" (office, retail, service, housing). The Planning Board finds that 206,570 SF of commercial/retail space is consistent with the Sector Plan's recommendation of limited retail use and that all of the proposed uses generate employment. It is also important to note that Wegman's is not a typical grocery store in terms of employment. Wegman's is considered a high employment retailer with a wide array of employment opportunities at both entry and advanced levels. Further, the mix of uses in the northern Seneca Meadows property will continue to be refined by further phases, which should include residential and other commercial uses.

“Concentrate a limited amount of street retail near the transit station. Big Box retailers, if proposed, should have active store fronts with multiple entrances and smaller retail uses facing Seneca Meadows Parkway and Observation Drive”

The proposed retail is a few blocks east of the proposed transit station. The Planning Board finds that the location of retail on the Subject Property is consistent with the Sector Plan's recommendation for retail "near the transit station". The Planning Board applied the Sector Plan's recommendation for "Big Box retailers" to the Wegman's grocery store. It is important to understand that the land use recommendations in master plans do not, and cannot specify all development possibilities, particularly a commitment to a particular design detail until the physical

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limitations of a site are understood. There are many site specific reasons why locating the retail uses on Seneca Meadows Parkway and Observation Drive was not feasible for this Property. First, development of this site under the new Environmental Site Design features of the new Stormwater Management Regulations requires the Applicant to essentially use every green area to take in water. This site drains naturally to the intersection of Seneca Meadows Parkway and Observation Drive. One of the low points for this site happens to be at the corner of Seneca Meadows Parkway and Observation Drive where the Sector Plan has called for retail frontage. Second, the grades at that intersection make it difficult to front buildings there, and in order to accommodate the topographical limitations of the site, these retail buildings have been fronted on an interior street.

The orientation of buildings and layout of the internal street network were heavily considered in this Application. The Applicant did front retail buildings on Seneca Meadows Parkway and Observation Drive consistent with the Sector Plan's recommendations where the topography is flat enough. The Applicant sited two buildings as an entrance to the development on Observation Drive that act as a gateway into the site. Likewise a separate building has been fronted on Seneca Meadows Parkway at the opposite entrance point to the site. For the rest of the development, the Applicant ultimately established a primary internal main street with smaller blocks that are pedestrian oriented as envisioned by the Sector Plan. Views and pedestrian relationships along each frontage street have been designed to begin the transformation of this environment to the urban form recommended in the Sector Plan. Due to the constraints of the Subject Property, the Planning Board finds that the retail's frontage on an internal network of streets relatively near the proposed transit station is consistent with the Sector Plan.

“Street level retail must conform to the Plan’s urban design guidance.”

The Sector Plan also calls for street level retail to conform to its design guidance. The urban design recommendations of the Sector Plan include the call for street-oriented development, public amenities including plazas and gathering places, and the creation of vibrant pedestrian spaces. The Application consists of a street network of smaller internal streets that will fulfill the Sector Plan's recommendation for urban form better than fronting retail along Seneca Meadows Parkway and Observation Drive at this location. Grading, drainage, and existing conditions do not currently promote the location of retail fronts on Seneca Meadows Parkway and Observation Drive. Future development phases that will occur to the west of the Subject Property will be better able to utilize Seneca Meadows Parkway itself for street activation. However, locating retail on Observation Drive and Seneca Meadows Parkway at this point in the development in this area will not likely translate into viable retail.

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In keeping with the urban design recommendations, the Application focuses the entry of the Wegman's to Seneca Meadows Parkway as much as possible. The open space where a café and clock tower are located have been pulled close to Seneca Meadows Parkway. The placement of the structure, along with the primary entrance and outdoor seating courtyard allows for direct pedestrian access from the Parkway, the internal street, and parking areas. In addition, unlike most development of this density and in this context, much of the parking will be structured which serves to decrease the impermeable footprint that is typically created by a standard big box store and gives the development more of the urban form that the Sector Plan calls for.

Several plazas and open spaces have been built in along the interior streets of this Application. Rather than one large open space area or plaza that would work well with an office development, numerous smaller areas have been programmed throughout the development to connect the retail spaces. The smaller plazas and open spaces work better for the smaller buildings and smaller street frontages. The plazas and open space provide pedestrian friendly public amenities throughout the Subject Property.

The Application provides for pedestrian crossings and streets that are very pedestrian oriented. The Applicant used the guidance on street-level retail design in the Sector Plan to create a more urban atmosphere within the site rather than at its edges. In this case, the proposed retail uses are organized along an internal primary street and on secondary drives between buildings and parking. The Applicant has also provided streetscape improvements on Observation Drive and Seneca Meadows Parkway. The Application creates a streetscape for a smaller street on the internal street rather than concentrating seating, street trees, and amenities on Observation Drive. The street activation is better focused internally to create a vibrant, pedestrian friendly, urban atmosphere.

The Planning Board finds that the Application is consistent with the recommendations of the Sector Plan for urban design and that this Application will transition the Seneca Meadows/Milestone District towards implementing the Sector Plan's vision. Later phases will build on this development and allow Seneca Meadows Parkway and other streets to take on the desired character of a more urban, walkable place.

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. Locations of buildings and structures

As discussed in Finding 2, above, the buildings are located with maximum efficiency given the grading and environmental context of the site. They are

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adequately spaced with regard to streets, open space, and each other for the early development of a location that will eventually become more transit and pedestrian friendly. The layout is safe, providing visual and physical access directly from primary roads and sidewalks.

b. Open Spaces

Open spaces are provided in front of or between the office, retail/restaurant, and grocery stores. These spaces are efficiently placed along the primary sidewalks and will adequately address the needs of shoppers, employers, and patrons. A variety of plantings, paving, seating arrangements and amenities provide a diversity of spaces at each building frontage or side. They are safe for use during the day and evening with adequate lighting and visual access.

c. Landscaping and Lighting

A significant number of plantings will occur on site including forest conservation areas, parking lot treatments, street trees, ornamental plantings, and screen plantings. This variety of plant material will provide efficient and adequate comfort and visual enjoyment throughout the year. The plantings are safely arranged to maintain sight lines and minimize encroachment into pedestrian areas; the lighting provided along and within these areas will ensure safe use after dark.

d. Recreation Facilities

No recreation facilities are required by this development since this is a commercial development.

e. Pedestrian and Vehicular Circulation Systems

Vehicular access for employees and visitors is established by an internal main street that acts as the curved hypotenuse of a triangle formed by the intersection of Seneca Meadows Parkway and Observation Drive. A second access point further west on Seneca Meadows Parkway will serve as the loading entrance for the grocery store. The primary internal street serves as an axis along which the primary pedestrian sidewalks have been located and from which smaller streets and sidewalks extend. Parking for the site is provided along the internal street and on surface and structured facilities throughout the site.

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

The proposed retail, restaurant, office, and grocery uses are compatible with the adjacent commercial and office development and will provide services for the

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nearby residential areas. The scale, massing, and height of the buildings are compatible to and similar to the scales, massing, and height of adjacent development, especially across Observation Drive. No other site plans are currently under review in the immediate vicinity.

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.*

The Site Plan has approximately 3.6 acres of existing forest which contains a number of significant and specimen trees. No other environmentally sensitive features occur on-site for this phase. Approximately 2.2 acres of forest clearing is proposed, which was conceptually approved during the earlier phases. An onsite buffer strip of forest retention/planting area is proposed within a new Category I easement along MD 27. The new easement area will buffer MD 27 and the confronting residents from the proposed grocery store and parking structure. Compared to the previously approved concept, some portions of the proposed buffer have been widened while other areas have been narrowed. The easement area is less than 50' wide in some sections, but meets the overall intent of the previously proposed easement since the total area placed in easement is approximately equal in size.

The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved the stormwater management concept for the project on October 13, 2010. The stormwater management concept consists of utilizing Environmental Site Design (ESD) to the maximum extent practicable in accordance with Chapter 19 of the County Code. Runoff that is not managed by onsite ESD practices will be managed in existing regional ponds.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board 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

JAN 12 2011 BE IT FURTHER RESOLVED, that the date of this Resolution is _____ (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

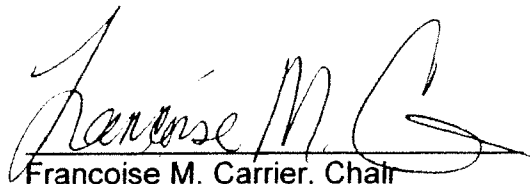
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Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Dreyfuss, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Alfandre, Dreyfuss, and Presley present and voting in favor of the motion, at its regular meeting held on Thursday, January 6, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board



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

Hannah Murray
Rodgers Consulting
19847 Century Boulevard
Germantown, MD 20874

October 19, 2010

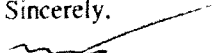
Re: Preliminary Plan 11998004A & Final Forest Conservation Plan 820100140
Name of Plan: The Shops at Seneca Meadows

Based on the review by Environmental Planning staff of the Montgomery County Planning Department, the Final Forest Conservation Plan submitted to M-NCPPC on September 21, 2010 for the plan identified above, is rejected for the following reasons:

1. Clarify/revise plans to remove the additional planting credits sought within the supplemental planting area (shown on sheet FC-3). The area was already credited as reforestation under an earlier phase, and cannot be used for additional credit. Provide any required credits in other areas of the site. New comment based on new information.
2. The new detailed information provided on the 50 scale drawing has revealed that portions of the easement area (near Observation Drive) contain proposed grading in excess of 3:1. The steep slopes proposed are not acceptable within the easement area. Adjust grading, utilize retaining wall and/or adjust easement footprint as appropriate.
3. Adjust locations of newly proposed permanent boundary posts to correspond with each corner of the Category I Easement area including the north side of boundary). Provide additional posts along boundary lines so that the spacing does not exceed approximately 125'.
4. The legend item for the proposed Category I easement has been deleted since the previous submission. Provide graphics and corresponding legend item to clearly identify the boundary of the proposed easement. Distinguish the currently proposed easement from the conceptually approved easement shown from the 11/5/1998 plan.
5. Correct the size of the newly shown tree #63.
6. Coordinate with staff regarding minor adjustments/clarifications to be made on notes and details.
7. Note: plans will require further revisions to address any changes in easement boundary, restoration of easement areas and/or other conditions of approval that are adopted by the Planning Board. Staff recommendations for conditions of approval will be issued under separate cover and/or within the pending staff report.

If you have any questions regarding these comments, please feel free to contact me at (301) 495-4521 or at marco.fuster@mncppc-mc.org.

Sincerely,


Marco Fuster, Senior Planner
Environmental Planning Division
M-NCPPC



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** All attorneys admitted in Maryland and where indicated*

JKLINE@MMCANBY.COM

February 1, 2011

Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RE: Site Plan Application No. 820100140
("The Shoppes at Seneca Meadows");
Preliminary Plan Amendment Application No. 11998004A
("Seneca Meadows Corporate Center");
Request for reconsideration by Gregory Pringle

Dear Chair Carrier and Members of the Planning Board:

On behalf of the Applicant in the above-referenced applications, we request that the Planning Board deny the request for reconsideration filed by Mr. Gregory Pringle. Representatives of the Applicant appeared at your public hearing on November 4, 2010 and participated in the formulation of the record which is the foundation of the Board's Resolutions mailed on January 12th and January 13th.

The Applicant's request that the Planning Board deny Mr. Pringle's request for reconsideration is a simple one; the Petition for Reconsideration submitted to the Board on January 18, 2011 provides no new information which differs from the information in the record on which the Board originally made its decision. Indeed, information in the Petition for Reconsideration is, in some cases, verbatim from what appeared in the letter which the Board received from the petitioner's attorney dated November 2, 2010.

Section 4.12.1 of the Planning Board's Rules of Procedure indicates that reconsideration should be granted only if the petitioner demonstrates that the Board's previous action was based on "...mistake, inadvertence, surprise, fraud, or other good cause." Seneca Meadows Corporate Center VII, LLP submits that the Petition for Reconsideration contains no information which would support any of the findings required by the Board in order to grant reconsideration. Therefore, granting reconsideration would simply allow for a re-argument of the same issues before the Planning Board.

For the reasons set forth above, the Applicant requests that the Planning Board deny Mr. Pringle's request for reconsideration of both the site plan and preliminary plan of subdivision Opinions.

Thank you for your consideration of these comments.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody Kline". The signature is written in a cursive style with a horizontal line above the name.

Jody S. Kline

JSK/dlt

cc: Rollin Stanley
Christina Sorrento, Esquire
Paul Chod
Bradley Chod
Andy Chod
Gary Unterberg