

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

10
10-16-03

August 6, 2003

Stephen P. Elmendorf
301.961.5110
selmendorf@linowes-law.com

Derick Berlage, Esq.
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

Re: LCOR - North Bethesda Town Center: Alternative Procedure for Preapplication Submission

Dear Chairman Berlage:

This law firm represents LCOR White Flint LLC, the ground lessee of a certain 30.99-acre tract of land, located at the southeast corner of Maryland Route 355 (Rockville Pike) and Old Georgetown Road in North Bethesda, Montgomery County, Maryland (the "LCOR Property"). On behalf of our client, we are submitting the enclosed Preapplication Submission application and are requesting the alternative procedure for review of this Submission, as provided in Section 50-33A, Chapter 50 (the "Subdivision Regulations"), Montgomery County Code 1994 (as amended).

Pursuant to the provisions of Section 50-33A(a)(1), we are requesting a decision by the Planning Board on the following matters:

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

Adequacy of School Facilities

On July 8, 2003, the Montgomery County Council approved the Ceiling Element for the FY 2004 Annual Growth Policy. With its adoption of the Ceiling Element, which went into effect

Derick Berlage, Esq.

August 6, 2003

Page 2

on July 15, 2003, the County Council found that “[a]ll high school clusters passed the AGP’s current School Test, which means that, for the purposes of reviewing subdivisions, the AGP requires the Planning Board to find public schools to be adequate countywide.” See, Memorandum from Karl Moritz, Research and Technology Center, dated July 10, 2003, attached to this cover letter as Exhibit “A”. With this Preapplication Submission, we request that the Planning Board find the public school facilities to be adequate for the LCOR subdivision.

Adequacy of Roads and Public Transportation Facilities

On April 29, 2003, the Montgomery County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, approved LCOR’s rezoning request, Zoning Application No. G-801, to rezone the LCOR Property to the TS-M Zone, pursuant to the revised Development Plan [88(b) in G-801]. A copy of the Development Plan approved by the County Council and certified by the Hearing Examiner is included as part of this Preapplication Submission.

The certified Development Plan includes fifteen (15) Binding Elements. Binding Element No. 2 provides as follows:

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

Utilizing Section 50-33A’s Alternative Procedure for Preapplication Submissions, we request that the Planning Board, for purposes of roads and public transportation facilities under Section 50-35(k), approve the LCOR subdivision pursuant to the AGP’s provisions for Alternative Review Procedures for Metro Station Policy Areas. Those Alternative Review Procedures provide as follows:

An applicant for a subdivision which will be built completely within a Metro station policy area need not submit any application or take any action under Policy Area Transportation Review or Local Area Transportation Review if the applicant agrees in a contract with the Planning Board and the County Department of Public Works and Transportation to:

Derick Berlage, Esq.

August 6, 2003

Page 3

- meet trip reduction goals established by the Planning Board as a condition of approving that subdivision, which must require the applicant to reduce at least 50% of the number of trips attributable to the subdivision, either by reducing trips from the subdivision itself or from other occupants of that policy area;
- participate in programs operated by, and take actions specified by, a transportation management organization (TMO) to be established by County law for that policy area (or a group of policy areas including that policy area) in order to meet the mode share goals established under the preceding paragraph;
- pay an ongoing annual contribution or tax to fund the TMO's operating expenses, including minor capital items such as buses, as established by County law; and
- pay the applicable development impact tax without claiming any credits for transportation improvements.

The Planning Board must conduct a comprehensive Local Area Transportation Review for each policy area in which it approves a subdivision under this procedure and should specify for inclusion in the Capital Improvements Program any transportation improvements needed to support that subdivision.

In support of this Section 50-33A request that the Planning Board approve LCOR's subdivision pursuant to the Alternative Review Procedures for Metro Station Policy Areas, we have enclosed with this cover letter the appropriate number of copies of the following:

- Preapplication Submission Application
- Preapplication Submission Checklist
- Certified Development Plan for the LCOR Property
- List of Adjoining and Confronting Property Owners (labels and printed copy of list)
- Concept Plan Drawing

Derick Berlage, Esq.

August 6, 2003

Page 4

- Proposed Contract (Trip Reduction Agreement) with the Planning Board and the County Department of Public Works and Transportation to establish the North Bethesda Town Center Trip Reduction Program for the LCOR Property
- Fee Schedule and Work Sheet, along with Preapplication Submission Fee

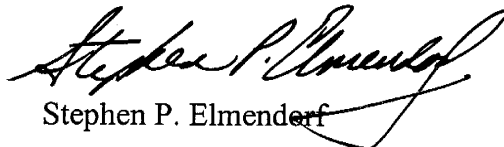
The enclosed Trip Reduction Agreement includes a detailed description of the Trip Reduction Program for the LCOR Property. This program is designed to exceed the 50% trip reduction goal identified in the AGP's Alternative Review Procedures for Metro Station Policy Areas. We have also enclosed a step-by-step summary of the Trip Reduction Program that describes how it will achieve the 50% trip reduction goal. The North Bethesda Town Center Trip Reduction Program is basically the same program that was favorably reviewed by the Planning Board, its Technical Staff and the Hearing Examiner as part of the District Council-approved rezoning of the LCOR Property.

Pursuant to the provisions of Section 50-33A(b), it is our intent to file a preliminary plan application for the LCOR Property to address all remaining preliminary plan issues within 90 days of Planning Board approval of this Preapplication Submission.

Thank you for your anticipated consideration of this Preapplication Submission. For reference purposes, I have also enclosed a copy of Section 50-33A of the Subdivision Regulations with this letter.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen P. Elmendorf

Enclosures



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

July 10, 2003

Memorandum

To: Interested Persons

From: Karl Moritz, Research & Technology Center, 301-495-1312

Re: Adopted Annual Growth Policy "Ceiling Element" for FY 2004

The Montgomery County Council approved the attached "Ceiling Element for FY 2004 Annual growth Policy" on July 8, 2003 without changes. Planning staff will be preparing the usual bound version with explanatory material, but until then, the attached document contains the entire resolution approved by the County Council.

The new AGP goes into effect July 15, 2003. The new AGP lifts a moratorium on non-residential subdivision approvals in Bethesda-Chevy Chase and North Bethesda. It also increases staging ceilings in the three North Bethesda Metro Station policy areas: Grosvenor, White Flint, and Twinbrook.

All high school clusters pass the AGP's current School Test, which means that for the purposes of reviewing subdivisions, the AGP requires the Planning Board to find public schools to be adequate countywide.

The Planning Board is considering comprehensive changes to the AGP's transportation and schools adequacy tests. The Planning Board's recommendations will be the focus of County Council worksessions this fall.

MONTGOMERY COUNTY CODE
Chapter 50

- (i) *Regulations.* The board may use regulations adopted under Chapter 22A to administer this Section or adopt additional regulations under Method (2) and any other State law applicable to its rulemaking. (Mont. Co. Code 1965, § 104-21; Ord. No. 7-19, § 1; Ord. No. 8-41, § 2; Ord. No. 11-63, § 2; Ord. No. 12-16, § 1.)

Editor's note—Res. No. 9-280, introduced and adopted on June 19, 1979, recognized the authority of the Maryland Department of Natural Resources to regulate construction within the one-hundred-year floodplain.

Sec. 50-33. Preapplication submissions.

Subdivision applicants are authorized to submit informal preapplication plans, including location maps, sketch plans and such other information as is necessary, and seek advice from and confer with the planning staff, and if appropriate, the subdivision review committee and, in the case of major features, with the board, prior to formal submission of a preliminary plan. (Mont. Co. Code 1965, § 104-22; Ord. No. 8-92, § 1.)

Sec. 50-33A. Alternative procedure for preapplication submission.

- (a) *Filing and approval procedures.* If an applicant requests, in writing, the following alternative procedure for review of a preapplication submission shall be followed:
- (1) The applicant shall submit a concept plan concerning those major aspects of the submission on which a decision of the board is requested prior to preparation and submission of a preliminary plan. The concept plan may include, but shall not be limited to, the generalized layout of the subdivision; the location and classification of streets, public rights-of-way, easements, and dedications of land, the method of controlling erosion, sediment, and stormwater; the relationship to existing or planned subdivisions; the provisions for water and sewerage; and such other features or information as the applicant shall choose to submit or the board shall require in order to reach the decisions requested by the applicant. For concept plans involving proposed development under the cluster method of subdivision, the applicant shall provide sufficient information for the planning board to make a finding that the proposed development satisfies the requirements for cluster development as outlined in section 50-39(c)(1)(c).
 - (2) Upon receipt of the concept plan, the submission shall be referred to each or any of the public agencies which has a direct interest in any feature of the plan for its review and recommendations which shall be returned to the board in writing within thirty (30) days. Within the same period of time, the application shall also be placed on the agenda of the subdivision review committee for its review and advice.

- (3) After receiving the recommendations of the public agencies and the advice of the subdivision review committee, the staff of the board shall present the application to the board, together with its recommendations for approval, disapproval or approval with conditions, provided the staff shall, to the extent practicable, present the plan to the board within forty-five (45) days from the date on which the application was received. The board shall act to:
 - (i) Approve the concept plan;
 - (ii) Disapprove it, stating in writing to the applicant the reasons therefor;
 - (iii) Approve it, subject to such conditions or modifications as the board finds are necessary, with respect to those features of the concept plan on which its decision is requested by the applicant, or recommended by a public agency, to produce a preliminary plan that would meet the requirements of sections 50-34 and 50-35, assuming all other features of the preliminary plan not included in the concept plan to be in accordance with the provisions of this chapter. Approval of any feature of a concept plan shall not limit the ability of the board to impose further conditions as required by subdivision regulations on features of the preliminary plan not included in the concept plan.
 - (4) Within five (5) days, the board shall provide the applicant, in writing a statement of its action with respect to the concept plan.
- (b) *Modification of procedures in sections 50-34 and 50-35.* When a preapplication submission of a concept plan has been approved, or approved with conditions, pursuant to this section, the procedures required in sections 50-34 and 50-35 of this chapter shall be modified to the extent that the following is different; provided that an application for a preliminary plan shall be filed within ninety (90) days following the action of the board on the preapplication submission, otherwise the concept plan shall expire, unless extended by action of the board:
- (1) The preliminary plan application shall contain the statement of the board's action on the preapplication submission concept plan.
 - (2) In their review of the plan as provided in section 50-35, the agencies to which the plan is referred, and the board's staff, shall not recommend changes or modifications in the preapplication conditions imposed by the board, unless requested in writing by the applicant or unless the applicant substantially changes some feature of the approved concept plan. The purpose of review with respect to these conditions is to determine that they have been met by the preliminary plan, as required in the statement of the board, and if the preliminary

MONTGOMERY COUNTY CODE
Chapter 50

plan is, in all respects, substantially the same as the concept plan as approved, the thirty-day period for agency review may be waived, at the discretion of the board's staff.

- (3) To the extent practicable, the staff shall accelerate review of the preliminary plan and its presentation to the board.
- (4) The board, in its review of the plan, shall consider only those features of the plan which are not in conformity with the conditions it imposed in the preapplication review, plus any features not considered or acted upon in that review. (Ord. No. 8-92, § 1; Ord. No. 10-12, § 1.)

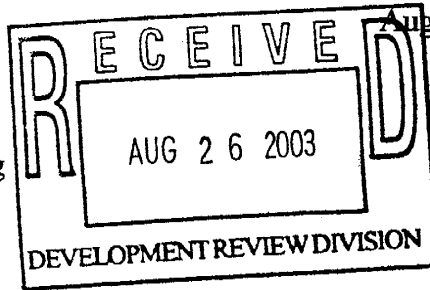
Sec. 50-34. Preliminary subdivision plans—Filing and specifications.

- (a) *General.* Every proposed subdivision or resubdivision shall be submitted to the board for tentative or conditional approval in the form of a preliminary plan prior to the submission of a subdivision record plat. The plan shall show graphically all facts needed to enable the board and other public agencies to determine whether the proposed layout of the land in question is satisfactory from the standpoint of the public health, safety and welfare and the regulations, ordinances and laws applicable.
- (b) *Filing of plan with application and processing fee.* The subdivider or his agent shall file the preliminary subdivision plan with the board in the form of a tracing drawing, together with the application for its approval and at the same time shall deposit the appropriate fee for its processing. Fees for processing shall be established by resolution adopted by the board from time to time. Such fees shall not be higher than reasonably necessary to cover the cost of processing and administration.
- (c) *Application for approval.* Written application by the owner or agent must be filed with each preliminary plan and must be made on forms prescribed by the board and contain such information as the board requires; If land or rights-of-way is owned or controlled by the State of Maryland, the county, or other political subdivision, government entity or agency, or the Washington Metropolitan Area Transit Authority ("WMATA"), a person may file an application for the land if the application includes an agency agreement or other written authorization from the government entity, agency or WMATA authorizing the person to include the public land or rights-of-way as part of the application. If a property lies entirely within an area designated as an urban renewal area under Chapter 56 of the Montgomery County Code, the landowner, contract purchaser, a legal entity, or individual holding legal interest, whether in whole or in part, may file a combined urban renewal project plan application that may include any other property also located entirely in the urban renewal area.

10
10-16-03

GARRETT PARK ESTATES-WHITE FLINT PARK CITIZENS' ASSOCIATION

Mr. Malcolm Shaneman
Development Review Division
Montgomery County Department of Park & Planning
8787 Georgia Avenue
Silver Spring Maryland 20910-3760



August 22, 2003

Re: Pre-Preliminary Plan, North Bethesda Town Center, 7-04001

Dear Mr. Shaneman:

Garrett Park Estates-White Flint Park is pleased to have the opportunity to comment on the pre-preliminary plan for the North Bethesda Town Center. Our primary concern is the traffic impact from this development, especially on Rockville Pike, and especially during mid-week and weekend non-rush hours.

We believe that the Preliminary Plan needs to emphasize transit oriented design, pedestrian access, and use of alternative routes to Rockville Pike for the vehicular traffic. With this in mind, we offer the following recommendations:

1. Removal of the new vehicular access from Rockville Pike

- **Vehicular access across the WMATA property is inconsistent with the Master Plan.** Removal of new vehicular access from Rockville Pike is supported by the Master Plan, which as part of the Conference Center Amendment, removed B-10 (now Main Street) from continuing past B-11 (now Station Street) and supported the pedestrian friendly B-10 only from Station Street to Nebel Street (Page 354).
- **Keeping the vehicular access to Main Street encourages use of Rockville Pike.** This project should attempt to minimize the impact on Rockville Pike by encouraging non-transit access via Marinelli, Old Georgetown, and Nebel Street. If this is transit oriented design, transit should provide the most convenient access, not automobiles.
- **There is a safety issue with the bus loading and unloading areas just south of the proposed new vehicular access.** Having citizens make right turns in and out at this point, directly north of the many busses that load and unload on Rockville Pike, creates a serious safety issue. The visibility available on exiting from Main Street onto Rockville Pike is limited by the bus activity. Citizens attempting to turn right into Main Street will either need to cut in front of the bus queue, or wait until the bus lanes are empty, creating additional backups of Rockville Pike. It was suggested during the rezoning hearing that some of these buses could be moved to Station Street. But, we point out that maintaining convenient access to bus service needs to remain a priority from the new Conference Center and Hotel as well as the housing on the east and west side of Rockville Pike.

- **Implementation of the continuous median between Marinelli and Old Georgetown Road provides negative side effects.** Removal of the existing median break, shown in the pre-preliminary plan, would limit existing access to the retail on the west side of Rockville Pike and increase the turning movement at Old Georgetown Road. Additionally, it would require state effort. There is nothing in the Master Plan supporting this. Rather, the Master Plan supports improvements at the intersection of Marinelli and Rockville Pike.

We have been told that the purpose of this vehicular access (bridge across the tracks) is to provide a Rockville Pike address for the North Bethesda Town Centre project. We fail to understand why this address cannot be achieved without a Rockville Pike access road. There must be another way to obtain the address without the need for a direct entrance on Rockville Pike and cutting that block into two small pieces.

2. Encourage vehicular access to the new grocery store via Nebel Street.

We recognize that the grocery store is primarily designed for residents and office workers, but we urge that Nebel Street provide access to the parking for this store. We would suggest putting the grocery store in building block E, and the parking just north, which is the only spot showing direct access to Nebel Street.

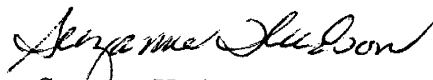
3. Implement the significant public amenities including the on-site day care facility early in the phased development.

We are concerned that this development is spread over six phases and that the community facilities may be implemented anywhere from Phase II to Phase VI. We believe the day-care facility will provide additional incentives for Metro usage within the broader community and for that reason would like to see it implemented soon after the WMATA garage is complete.

In summary, the Garrett Park Estates-White Flint Park Citizens' Association recognizes that this development contains many Smart Growth benefits. However, there are serious negative traffic impacts that need to be minimized. We look forward to continuing discussion of our concerns as the plan evolves.

Thank you for your consideration.

Cordially,



Suzanne Hudson, President

Garrett Park Estates-White Flint Park Citizens' Association