



Mailing Date: September 11, 2003

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## MONTGOMERY COUNTY PLANNING BOARD OPINION

Preliminary Plan No.: 1-03052  
Project: Maple Ridge Townhomes  
Date of Hearing: May 8, 2003

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**Action:** **APPROVAL SUBJECT TO CONDITIONS.** (*Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Robinson; with a vote of 3-1, Commissioners Bryant, Perdue, and Robinson voting in favor of the motion. Commissioner Wellington voting against the motion. Commissioner Berlage was necessarily absent.*)

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*The date of this written opinion is September 11, 2003 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before October 13, 2003 (which is thirty days from the date of this written opinion).*

*This Preliminary Plan will remain valid for thirty-seven (37) months from the date of mailing of this Planning Board Opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.*

*The Adequate Public Facility (APF) Review for this Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Opinion.*

### **I. INTRODUCTION**

On January 10, 2003, HD-Maple Ridge, L.L.C. ("Applicant") submitted an application for approval of a preliminary plan of subdivision to create fifty-nine (59) lots on 8.1 acres of land in the RT-8 Zone. The application was designated Preliminary Plan No. 1-03052 ("Preliminary Plan" or "Application").

Following due notice, the Preliminary Plan was brought before the Montgomery County Planning Board ("Planning Board" or "Board") for a public hearing on May 8, 2003, in accordance with the requirements of the Maryland Code Annotated, Article 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Subdivision Regulations"), and the Planning Board's Rules of Procedure. In accordance with Section 50-34 of the

Subdivision Regulations the Application included all of the information required for the Planning Board's consideration of the Preliminary Plan.

At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), representatives of the Applicant, the Burnt Mills Citizens Association and the Hillandale Citizens Association, and a neighboring property owner, and received evidence into the record on the application. In presenting the application to the Planning Board, Staff prepared and distributed packets of information, including the Transportation Planning Division report, dated April 30, 2003, which contained Staff's expert analysis of the proposal; plan drawings and vicinity maps; and correspondence from the Applicant, community associations and neighboring property owners. At the public hearing, Staff submitted revised conditions of approval and additional correspondence. The information packets and additional materials are part of the record on the Preliminary Plan application and are incorporated herein by reference.

## **II. THE SUBJECT PROPERTY**

The subject property is located in the Fairland/White Oak Policy Area on the west side of Lockwood Drive, approximately 100 feet south of Oakleaf Drive, across from Arrington Drive and abutting Columbia Pike (US 29) ("Subject Property"). The Subject Property is comprised of three unrecorded parcels. The site is zoned RT-8.0 (Residential Townhouse), which zone permits a maximum density of development of 8 dwelling units per acre of usable area. The Subject Property is improved with a single-family residence, which will be removed. There are numerous specimen trees located throughout the site. There are no wetlands or 100-year flood plains on the Subject Property and no part of it is listed on the inventory of historic sites.

### **1. Vicinity**

The surrounding neighborhood consists primarily of residential development. The adjoining property to the north is zoned RT-12.5 and is improved with condominium townhomes. Further north, on the east side of Lockwood Drive, is a complex of high-rise, rental, multi-family dwelling units. Adjoining the Subject Property to the south, and confronting to the east, are residential communities, zoned R-90, consisting of single-family detached houses. Columbia Pike (US 29) borders the site on the west.

### **2. Prior Approvals**

The Board of Appeals and the Planning Board previously approved the development of a 112-unit assisted-living facility (Preliminary Plan No. 1-99062 and Site Plan No. 8-99031) and a residential development of four single-family detached or six attached units (Preliminary Plan No. 1-99063) on the Subject Property. Although approved, that project was never recorded by plat.

### 3. Master Plan

The subject property is located within the area covered by the 1997 Approved and Adopted White Oak Master Plan ("Master Plan"). The Master Plan confirms the RT-8.0 zoning of the Subject Property. The Master Plan designates Lockwood Drive, between US 29 to the southwest and a point 400 feet west of MD 650 to the northeast, as a two-lane closed-section arterial, with a minimum right-of-way width of 80 feet. The Master Plan recommends on-street parking, sidewalks, tree panel and a Class I or II bikeway along Lockwood Drive. Columbia Pike (US 29) is designated as a major highway between the Master Plan area boundary (Northwest Branch) to the southwest and MD 650 to the northeast. The Master Plan recommends a 120-foot minimum right-of-way (six-lane divided) for this section of US 29. The Master Plan also recommends sidewalk improvements along US 29 between Burnt Mill Avenue and Northwest Branch and a Class III bikeway along US 29 between Lockwood Drive and Northwest Branch. In addition, the Master Plan recommends investigating the feasibility of a transit center within the White Oak Commercial Center, consisting of a large number of residential units and office/commercial/retail centers to increase transit service to the area.

### 4. Proposed Development

The Applicant proposes to create 59 lots for 59 single-family attached dwellings; eight (8) of which will be Moderately Priced Dwelling Units ("MPDU"), pursuant to Chapter 25A of the Montgomery County Code. All units will have a garage. Access will be provided from Lockwood Drive, across from Arrington Drive, with four private roads internal to the site. Limited interior parking will be dispersed throughout the site. The Applicant will dedicate right-of-way along Lockwood Road and will provide an eight-foot wide tree panel and an additional thirteen-foot paved area for a future Class II bicycle lane and parking. The plan also includes five-foot wide sidewalks along the frontage of the property and off-site connections to the existing sidewalk along Oak Leaf Drive to the north and to an existing bus stop at the corner of Northwest Drive and Lockwood Drive to the south. Sitting and play areas are located in the central portion of the site. A 50-foot wide afforestation and tree save area and a six-foot high fence will be located along the southern boundary of the site, providing buffering for the neighboring single-family detached dwellings. Another afforestation and tree save area is located in the northwest corner of the site. In addition, the Applicant will preserve numerous specimen trees interior to the site and along Lockwood Drive, including a number of sycamores at the entranceway. The main stormwater management facility will be located in the western portion of the site and a small stormwater management facility is proposed in the eastern portion near the site entrance.

## III. THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Subdivision

Regulations. The application also must meet the requirements of Chapter 59 of the Montgomery County Code ("Zoning Ordinance") applicable to the subject preliminary plan.

The general provisions for lot design for a subdivision are set forth in Section 50-29 of the Subdivision Regulations. In order to be approved by the Planning Board, lot size, width, shape and orientation must be appropriate for the location of the subdivision and for the type of use contemplated.

Section 50-35 of the Subdivision Regulations sets forth the approval procedure for preliminary subdivision plans. After presentation of the plan to the Planning Board, the Board must act to approve or disapprove the plan, or to approve the plan subject to conditions and/or modifications necessary to bring the plan into accordance with the Subdivision Regulations and other applicable regulations. The Planning Board's approval procedure for preliminary plans includes review pursuant to: Section 50-35(k) of the Subdivision Regulations ("Adequate Public Facilities Ordinance" or "APFO"), which directs the Planning Board to approve preliminary plans of subdivision only after determining that public facilities, including roads and schools, will be adequate to support and service the area of the proposed subdivision; Section 50-35(l), which requires a finding that the Preliminary Plan substantially conforms to the Master Plan; and Section 50-35(o), which mandates that the Planning Board ensure that all requirements of the forest conservation law<sup>1</sup> are satisfied before approving a preliminary plan.

#### **IV. SUMMARY OF TESTIMONY AND EVIDENCE OF RECORD**

##### **1. Staff Testimony and Evidence**

Through testimony at the public hearing, Staff recommended approval of the Preliminary Plan subject to certain conditions. Staff testified that the proposed plan has evolved as the Applicant has responded to comments from the community and Staff; and, Staff further testified that some of the issues and concerns raised in the correspondence that has been submitted are no longer at issue. Staff also testified that the proposed use, dedication of additional right-of-way along Lockwood Drive, Class II bikeway, additional pavement for on-street parking, and sidewalk are consistent with the Master Plan.

The record on the subject application includes uncontested information about the lot size, width, shape and orientation of the proposed 59-lot subdivision. The record also contains uncontested information regarding the Preliminary Plan's conformance with the development standards for the RT-8 Zone.

Through, among other things, its memorandum dated April 30, 2003 ("Transportation Memorandum"), Transportation Planning Staff provided the Planning Board with its adequate public facilities review of the Preliminary Plan. The Transportation

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<sup>1</sup> MONTGOMERY COUNTY CODE, ch. 22A.

Memorandum describes vehicular and pedestrian access to the site, bus service in the site area, the Master Plan classification of surrounding roads and proposed transit, pedestrian and bikeway facilities, nearby State and County transportation improvement projects, prior approvals and reviews of proposals for the Subject Property, and the amount of traffic expected to be generated by the project. Regarding Local Area Transportation Review ("LATR"), Staff estimated site-generated traffic to be 28 weekday morning peak hour trips and 49 weekday evening peak hour trips; and, therefore, Staff concluded that a traffic study to analyze traffic impact at nearby intersections was not required because the estimated weekday peak hour traffic is below the LATR threshold of 50 peak hour trips. Regarding Policy Area Review, Staff explained that, although the Fairland/White Oak Policy Area did not have sufficient capacity available to accommodate the proposed housing units, the Applicant could mitigate the project's impact and the units could be approved as a Full-Cost Developer Participation development under the Fiscal Year 2003 Annual Growth Policy ("AGP") Staging Ceiling Flexibility provisions. Accordingly, the Applicant will enter into a transportation mitigation agreement with the Planning Board and the Montgomery County Department of Public Works & Transportation ("DPW&T") to sponsor and implement a trip reduction program for twelve (12) years. Staff attached a summary of the proposed trip reduction/transit fare subsidy program ("Transit Program" or "Program") to the Transportation Memorandum.

At the public hearing, Staff testified that the Applicant has worked with Staff and DPW&T to develop the Transit Program and prepare a draft traffic mitigation agreement ("TMA"). Through implementation of the proposed transit fare subsidy program, the Applicant will offset 49 peak hour trips by purchasing monthly transit fare passes for 51 individuals residing within the Fairland/White Oak policy area ("Policy Area"),<sup>2</sup> with the Applicant paying 80% of the cost and the users paying only 20%. Staff testified, and Applicant subsequently confirmed, that Applicant proposes to target individuals living on the Subject Property and in multi-family residential rental properties located in the vicinity of the Subject Property.<sup>3</sup> Participants in the Program will be required to sign an affidavit confirming that they will use the transit passes for peak hour travel and that they are new transit users. Staff further testified that the Applicant has engaged a nationally recognized commuter benefits firm, WageWorks, Inc. ("WageWorks"), to administer the Transit Program. Staff noted that WageWorks has the ability to track and report pass sales and verify that the users are new and travel during the peak periods. Staff also explained that, in order to achieve a zero net impact, a large percentage of the trip reduction must come from trips generated by other sites. Staff testified that this approach to traffic mitigation has a great deal of precedent and a number of privately-sponsored programs that were previously approved by the Planning Board involved mitigating a development's impact by reducing the number of trips generated by nearby development. Staff recommended the

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<sup>2</sup> The Applicant testified that because of concerns about potential turnover and to ensure that the participation numbers will be high enough on reporting days (discussed *infra*), the Applicant will fund two additional passes, above the required 49.

<sup>3</sup> Applicant has proposed to target the residential complex located in the southeastern quadrant of the intersection of routes 29 and 650.

proposed Program and noted that the details of the TMA would be worked out at the time of site plan review.

## 2. Applicant Testimony and Evidence

Through testimony at the public hearing, Applicant's counsel, Robert Harris, Esquire, described the proposed development as one of an increasing number of infill projects in Montgomery County. Mr. Harris testified that the proposed plan complies fully with the existing zoning. He further testified that townhome use of the Subject Property is not only recommended in the current Master Plan, but in the prior master plan as well. He also testified that the Applicant respects the interests of the community and has made changes to its plans based on comments received from Staff, neighboring property owners, community organizations, and others, over the past year. The changes include significant reductions in project density, from a starting point of 78 units, down to 64 units, and, finally, a further reduction to 59 units. Applicant noted that the resulting density is 28% less than the density allowed by the RT-8 zoning. Applicant also reoriented some of the townhomes to enhance compatibility with surrounding properties. Originally, nineteen townhomes were proposed to back up to the single-family dwellings to the south, arranged in a row along an east-west axis; however, the revised plan, which Applicant presented to the Planning Board, reorients the townhomes at the southern portion of the property along a north-south axis, thereby considerably opening up the site, with only seven units facing those single-family residences.

Applicant has also expanded the setbacks: on the north side of the Subject Property, where the Zoning Ordinance requires 20-foot setbacks from the adjoining townhouse development, the plan provides 30-foot setbacks and retains a hedgerow. On the south side, the Zoning Ordinance requires 30-foot setbacks from the adjoining single-family detached houses and the plan provides 55 feet. Adding in the setbacks on the adjoining properties, the minimum building-to-building distance will be greater than 100 feet. The proposed green area of 64 % significantly exceeds the minimum percentage of tract that must be devoted to green area. In addition, many specimen trees will be preserved, the units will be more upscale in terms of size and building materials, the Applicant will add sidewalks along the frontage and beyond the property line to connect with the existing pedestrian system, and a bicycle lane will be provided along a portion of Lockwood Drive.

The Applicant's counsel also testified that traffic is always an issue for infill development, but one that is responsibly addressed by a combination of public and private actions in the subject case. He noted that the US 29, New Hampshire Avenue, and Lockwood Drive road and intersection improvements are proceeding; however, because of the limited potential of road improvements to address traffic issues, Mr. Harris commented that the Master Plan recommends increasing public transit usage throughout the White Oak area and addressing traffic generated by new development through transit measures. Accordingly, Montgomery County is improving public transportation and making it more accommodating to users. The County is adding routes and buses in the site area and will

be adding super bus stops with real-time transit. He further testified, however, that there are two factors with regard to transit service and ridership: one is cost and the other is service. Montgomery County is taking care of service and the Applicant is working on cost.

He explained that the Applicant's proposed trip reduction program, which is the result of a creative collaboration by the Applicant and its consultants, DPW&T and Staff, will provide a substantial subsidy for people who are willing to take transit rather than drive during the peak hour. He also noted the strong probability that the residents of the numerous affordable housing units in the area will be the primary beneficiaries of the transit fare subsidy program. He further testified that the Applicant considered alternatives to the fare subsidy program, including physical improvements, but that DPW&T considered the fare subsidy to be the most meaningful way to get people out of their cars and improve transit ridership in the site area. In conclusion, the Applicant's counsel stated that the Applicant agrees with the conditions recommended by Staff.

### 3. Neighbor and Community Association Testimony and Evidence

Neighborhood residents and citizens associations submitted correspondence into the record and representatives of the Burnt Mills and Hillandale Citizens Associations and an adjoining property owner testified at the public hearing in opposition to the application. The community expressed concerns about school capacity, traffic, compatibility, and screening of adjoining properties. The adjoining property owner noted that the neighbors are not opposed to development of the subject site and that they supported the previously approved assisted living facility. The President of the Burnt Mills Citizens Association testified that the community is concerned about the privacy of the homeowners along the north side of the 500 block of Northwest Drive. He noted that the Applicant had agreed to provide a six-foot stockade fence along the property line, but many of the neighbors prefer an eight-foot stockade fence. Regarding schools, a representative of a citizens association asserted that Cresthaven Elementary School is the most overcrowded school in Montgomery County, with 17 portables and 216 children over capacity; and, furthermore, Burnt Mills Elementary School is also currently more than 100 students over capacity, with enrollment projected to increase to 150 students over capacity in the next few years. The speaker acknowledged that a new elementary school is scheduled to open in 2006 but contended that, in her opinion, its status is tenuous given the current funding situation. She expressed her opinion that that the schools issue has not been adequately addressed. Certain neighbors asserted that the three-story height of the proposed townhomes would not be compatible with the existing two-story townhomes to the north and the one and two-story single-family detached homes in the existing communities to the east and south.

The neighbors also expressed concern that the proposed development will exacerbate existing traffic problems in the site area and they questioned the effectiveness of the proposed transit incentive program and traffic mitigation agreement. They testified about existing traffic congestion, the use of Lockwood Drive and Northwest Drive by cut-through traffic, and dangers to pedestrians and bicyclists. The neighbors further testified that the intersection of New Hampshire Avenue and Lockwood Drive is already failing and is projected to continue to operate at a Level of Service F, even with the planned State and

County road improvements. An adjoining property owner testified that the Applicant did not reduce the number of units proposed for the site to appease community concerns, but in order to exempt the project from LATR, noting that 59 units is the threshold number that would qualify for the exemption. The neighbors also expressed concerns that the subject application did not take into account the trips that will be generated by the FDA's anticipated move to the area and the resulting increased congestion on neighborhood streets and intersections. In her written testimony, the Vice-President of the Burnt Mills Hills Citizens Association advocated the installation of Class I bikeways, collars at intersections and alternating parking to increase the safety of bicyclists and pedestrians.

Regarding the proposed Transit Program, speakers expressed concern that it is not specific to the Subject Property and that only 25% of the 49 passes will be reserved for use by residents of the proposed development; and, furthermore, that the Applicant will be required only to make "reasonable efforts" to target at least 10% of the 49 passes to Maple Ridge residents throughout the life of the program. The speakers questioned what incentive there would be to encourage residents from outside the site to give up their cars and purchase the passes, and how the program would ensure that the purchasers are not already bus riders who are taking advantage of a better deal. They further questioned whether the neighborhood would have any remedy if the proposed program does not succeed. In addition, the neighbors testified that the White Oak transit center is not current in terms of development or funding and that there is no money for improved bus stops. The community advocated full mitigation of traffic impacts at the site.

#### 4. Applicant's Rebuttal and Responding Testimony

In response to the neighbors' testimony, the Applicant's counsel testified that the Applicant would commit to installing a six-foot fence along the southern property line, at the edge of the 50-foot wide afforestation and tree save area. He stated that an eight-foot fence would exceed the zoning requirements and that a six-foot fence, in conjunction with the existing and proposed vegetation and the proposed setbacks, would be adequate.

In rebuttal to speakers' concerns, and in response to questions from the Commissioners, the Applicant's counsel testified that the proposed Transit Program is the most effective way to deal with transportation issues in the site area and is consistent with the Master Plan, which recommends increasing usage of alternative modes of travel such as transit, carpools, walking and bicycling; increasing the use of transit by providing services and facilities that accommodate users; and developing transportation demand management programs to promote the use of transit. He asserted that the Program will focus on areas in the immediate vicinity of the Subject Property, will remove vehicles from area roads, and will help the County achieve its Master Plan transit objectives. He also described the measures that are included to ensure achievement of the Program objectives, explaining that: the Applicant will post a \$352,000 bond, which DPW&T will have the authority to draw on to fund the fare buy-down or to fund alternative measures, if necessary; there will be high-tech monitoring and quarterly reviews of transit pass usage; passes will be offered to eligible residents based on prescreening that will be done in the



leasing office; and participants will be required to sign affidavits stating that they are new transit users and will use the passes during peak periods. The Applicant will pay approximately \$273,000 to cover 80% of the cost of the passes and approximately \$47,000 for administrative costs. The Applicant also testified that because of its concerns about potential turnover and to ensure that the participation numbers will be high enough on reporting days, the Applicant will fund 51 passes, two more than the 49 required. In addition, the Applicant's counsel explained that the summary of the TMA does not include all of the program details. The Applicant will enter into a TMA with the Planning Board and DPW&T at the time of site plan review, and that agreement will be recorded among the land records of Montgomery County.

#### 5. Responding Staff Testimony

In response to the neighbors' testimony and questions from the Commissioners regarding school capacity in the site area, Staff testified that the Preliminary Plan meets the FY 2003 Annual Growth Policy ("AGP") test for schools and, therefore, meets the requirements of the Adequate Public Facilities Ordinance. Staff further testified that, in its FY 2004 budget, Montgomery County has approved funds for planning and generation of architectural drawings for a new elementary school, which will provide the needed capacity to relieve Burnt Mills and Cresthaven Elementary Schools. Staff added that the County anticipates that the new elementary school will open in September 2006. In addition, after receiving correspondence and telephone calls expressing concern about the impact of the Preliminary Plan on area schools, Staff testified that it requested information from the County about the number of projected school-age children that will reside in the proposed development. Staff testified that the County responded with a projection of 8 elementary school children, 8-15 middle school children and 15 high school children.

Staff also testified that Montgomery County has significant experience with traffic mitigation agreements and the proposed enforcement mechanisms. Staff explained that the TMA will include a provision guaranteeing that the Applicant will get 49 vehicular trips off area roads. For the first year, the Applicant must file monthly reports; and, after the participation goal is achieved, the Applicant will be required to file quarterly reports. If the Applicant does not meet the goal, the Applicant's bond can be called. Staff further testified that, in its previous experience with TMAs, no applicant has failed to meet its goal, preferring, instead, to do whatever is necessary to avoid having a bond called. The Applicant agreed with Staff, explaining that having a bond called would severely impact its bond rating, and a good bond rating is critical for staying in business.

In response to concerns about the immediate traffic impact of the proposed development, Staff testified that the Applicant has agreed to target program marketing to potential users in the vicinity of the Subject Property and that Transportation Staff would monitor its marketing efforts closely. Staff also explained that, because the project will not generate more than 50 peak hour trips, the LATR guidelines and established County policy do not require the Applicant to deal specifically with the traffic impact on Lockwood Drive.

Regarding concerns about the impact of the future FDA relocation, Staff explained that the issue has been addressed from a capital planning perspective and millions of dollars are being spent on roadway improvements, which are coming on line and have been funded. Moreover, Staff asserted that because the FDA development is an entirely separate development project, its impact is not before the Board and it has no regulatory authority to consider that project as part of the subject application.

The Commissioners also asked questions about the relative heights of the proposed townhouses and the existing adjoining houses, the number of garages proposed, and the number of peak hour trips that will be generated by the proposed two-garage townhouses. The Applicant testified that the proposed townhomes will be three stories, with a maximum height of 35 feet. The adjoining residences are one and two stories. The market-rate townhouses will have two-car garages and the 8 MPDU units will have one-car garages. Staff explained that the transportation analysis used trip generation guidelines that came from an extensive survey of Montgomery County uses, which are also consistent with national experience. Staff explained the methods used to determine the number of trips generated by a proposed development. In addition, Staff noted that the number of trips generated during the peak hour is not directly related to the number of cars in the household.

Noting that the Master Plan recommends a Class I or II bikeway, and features such as "collars at intersections, alternating parking, or other design features that are deemed appropriate" Commissioner Wellington also asked about the decision to include a Class II bikeway and whether there would be restrictions on parking along Lockwood Drive. Staff responded that it had not yet considered whether parking restrictions would be necessary during peak hours, but that all of the parking could be used during off-peak hours, nights and weekends. Staff also testified that it did not consider collars at intersections in this case. In addition, Staff explained that a Class I bikeway would take away part of the front yards of the houses along Lockwood Drive.

Commissioner Wellington remained concerned about the adequacy of the proposed traffic mitigation plan. She stated her opinion that the determination whether the application should go through LATR was a close call and that the Transit Program does not relate closely enough to the Subject Property and its immediate traffic impact. She also suggested that there should be further consideration of pedestrian access, bikeway and parking options.

## **V. DISCUSSION OF ISSUES / FINDINGS**

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds Preliminary Plan No. 1-03052 to be in accordance with the purposes and requirements of the Subdivision Regulations, the development standards of the Zoning Ordinance, and the Regional District Act. In addition, the Planning Board adopts Staff's recommendations and finds that the proposed conditions

will ensure the appropriate use of the Subject Property and adequate access and road improvements, forest conservation measures, screening, and stormwater management. Therefore, the Planning Board adopts Staff's recommended conditions.

A. Lot Size, Shape, Width, and Depth

The record for the Application includes uncontested evidence that the lot sizes, widths, shapes, depths and orientations are appropriate for the location of the subdivision and for the proposed uses. The record also contains uncontested evidence that the depth and width of the subject lots are adequate for the off-street service and parking requirements needed by the proposed development. Therefore, the Planning Board finds that the proposed lots are appropriate with regard to lot size, width, shape, and orientation, for the location of the subdivision and the contemplated residential use.

B. Conformance with Development Standards of Zone

The record also contains information regarding the Preliminary Plan's conformance with the development standards for the RT-8.0 zone, and this too was uncontested. Therefore, the Planning Board finds that the Preliminary Plan meets the development standards of the RT-8 Zone.

C. Adequate Public Facilities

County Code Section 50-35(k) (the Adequate Public Facilities Ordinance ("APFO")) directs the Planning Board to approve preliminary plans of subdivision only after "determin[ing] that public facilities will be adequate to support and service the area of the proposed subdivision."<sup>4</sup> The Montgomery County Council ("Council"), pursuant to authority granted under County Code ch. 38 §33A-15, has established an annual growth policy for the County ("AGP"). The Council uses the AGP to direct the Planning Board's administration of the APFO. The APFO requires the Planning Board to find that existing public facilities, and any facilities programmed in the County and State capital improvement programs, will be adequate to serve the proposed subdivision and all other approved development. The AGP, which tests the adequacy of four types of public facilities, supplies the information that enables the Planning Board to make its finding under the APFO.<sup>5</sup> As discussed below, the record includes evidence that the proposed development does satisfy the APFO; and, therefore, the Planning Board adopts Staff's findings and recommendations and finds that the site is adequately served by public facilities, including transportation and schools, pursuant to the Fiscal-Year 2003 AGP.

<sup>4</sup> MONTGOMERY COUNTY CODE § 50-35(k).

<sup>5</sup> The four types of public facilities tested by the AGP are: water and sewerage facilities; police, fire, and health services; transportation; and schools.

i. Water and Sewerage

The record includes uncontested evidence that existing and programmed water and sewerage facilities are adequate to support and service the proposed development. The Subject Property is located within an area in which water and sewer service is presently available.

ii. Police, Fire, and Health Services

The record includes uncontested evidence that existing and programmed police stations, firehouses, and health clinics are adequate to support and service the proposed development. No agency comments have been received to the contrary and there is no other evidence in the record that a local area problem will be generated by the Board's approval of the instant subdivision application.

iii. Transportation Facilities

In general, before the Planning Board can approve a preliminary plan application, it must pass a Policy Area Transportation Review ("PATR") for all plans generating more than 5 trips and a Local Area Transportation Review ("LATR") for all plans generating 50 or more trips.

a. Policy Area Transportation Review

The AGP calculates the amount of development that can be supported by the existing and programmed transportation network within a policy area ("Staging Ceiling"). The Subject Property is located within the Fairland/White Oak Policy Area ("Policy Area"), which, as noted in the Transportation Memorandum and as testified to by Staff at the public hearing, is in moratorium for new residential subdivision approvals because it has no remaining Staging Ceiling capacity.<sup>6</sup> However, the AGP provides that preliminary plan applications that exceed the applicable policy area's staging ceiling can, nevertheless, receive Planning Board approval if the applicant agrees to fully mitigate the traffic impacts of the project.

In the instant case, the evidence of record indicates that the Applicant seeks to take advantage of such a staging ceiling flexibility option, the Full-Cost Developer Participation program.<sup>7</sup> Staff and Applicant testified at the public hearing, and the Transportation Memorandum confirms, that the Applicant has committed to establishing a 12-year Transit Program that will reduce the number of weekday peak-hour, automobile trips by as many trips

<sup>6</sup> The Fiscal Year 2003 transportation staging ceiling for the Policy Area indicates there is no capacity available for additional housing units (-3,544 housing units as of March 31, 2003).

<sup>7</sup> FY03 AGP § TP4.1 (setting forth one option by which the Planning Board may approve subdivision plans for proposed developments that are otherwise in moratorium).

as would be generated by the proposed development. The details of the Transit Program, which proposes the purchase of monthly transit fare passes for 51 individuals residing within the Policy Area, are discussed in detail, above.<sup>8</sup> The Board also reviewed a summary of the Transit Program, which was attached to the Transportation Memorandum. Staff advised the Board that the Board, the County, and the Applicant would enter into a Transportation Management Agreement at the time of Site Plan. The Board considered oral and written testimony by neighbors and several community associations regarding their respective concerns related to the Transit Program.<sup>9</sup>

The Board finds, following a review of the recommendations of County Executive representatives and based on the testimony and evidence presented by Staff and the Applicant, that the Transit Program will reduce the number of weekday peak-hour automobile trips by at least 49 trips, the number of trips that Staff has determined would be generated by the proposed development. The Board finds that the proposed Transit Program is a creative solution that the Board anticipates will be used with increasing frequency in the future in an attempt to entice more County residents to use public transportation; and, that WageWorks, the organization selected by Applicant to administer the Program, has sufficient experience with similar programs to ensure the success of this Transit Program. Moreover, the Board finds, based on evidence of record, that specific aspects of the proposed transit program will provide safeguards to reasonably ensure its success and prevent abuse of the Program, including: the targeting of future residents of the proposed development as well as residents of established communities in the vicinity of Lockwood Drive north of the Subject Property—the Board finding it unreasonable and unnecessary to require the Applicant to target only future residents of the proposed development; the pre-screening of persons prior to offering passes by means of surveys; the requirement that any participants sign an affidavit confirming that they are new users of the transit system and will use the transit passes during weekday peak hours; the requirement that participants be “invested” in the Program, by contributing 20% toward the cost of the transit passes; the use of “Smart Cards” or similar technology to permit the monitoring of usage of the cards; monthly reports to the Transportation Planning Division for the first year of the Program, and quarterly reports thereafter; the testimony by Applicant that he intends to make available two more passes, above the required 49; and, the posting of a significant bond amount, which can be called in the event the Program is not successful. For the forgoing reasons, the Board concludes that Policy Area Review is satisfied.

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<sup>8</sup> See *supra* § IV. 1, 2, 4, 5.

<sup>9</sup> See *generally supra* § IV. 3.

b. Local Area Transportation Review

Staff testified, and the Transportation Memorandum explains, that a traffic study to analyze the impact of the proposed development at nearby intersections is only required when a proposed subdivision would generate 50 or more weekday peak-hour automobile trips. In the instant case, the record, including Staff testimony and the Transportation Memorandum, is clear that the proposed development would generate fewer than 50 total peak hour trips during the weekday morning and evening peak periods. Therefore, the Planning Board concurs with Staff's determination that Local Area Transportation Review is not required for this application. Staff explained that it uses Trip Generation Guidelines to calculate the number of trips generated by a proposed development, which have been developed through extensive surveys of different uses in Montgomery County; Staff advised the Board that the guidelines it uses are consistent with national experience. The Board finds Staff's analysis to be consistent with Commission practice and, therefore, supports Staff's recommendation that no local area transportation review is required for this application.

In arriving at its decision, the Board considered the concerns of neighboring residents and community associations.<sup>10</sup> Among these stated concerns is the potential impact to traffic congestion of a future federal development in the vicinity of the Subject Property. The Board concurs with Staff's contention that it has no jurisdictional authority to consider such potential future development as a part of this application; and, furthermore, the Board notes Staff's testimony that significant sums are being spent for roadway improvements, including state and federal money.

iv. Schools

Letters were received into the record and testimony was given at the public hearing expressing the position that the proposed development would bring more students to existing, overburdened elementary and middle schools that will serve the proposed development. The Board questioned Staff regarding whether it had considered the situation in the schools as a part of its analysis of the application. Staff responded that, as a matter of course, in its review of all residential subdivision applications it consults the AGP in order to confirm that the elementary, middle, and high schools within the applicable high school cluster has adequate capacity. The Subject Property is located in the Northeast Consortium High School Cluster Service Area. The FY03 AGP states that "[t]he Planning Board, in its review of preliminary plans of subdivision in FY 2003, *must* consider schools to be adequate for APFO purposes in all clusters."<sup>11</sup> Consequently, the Planning Board has no

<sup>10</sup> See generally *supra* § IV. 3.

<sup>11</sup> FY03 AGP § S4 (Public School Facilities – Determination of Adequacy) (emphasis added). § S4 also states

discretion to disapprove the instant application on the ground that school capacity is inadequate. The Board further notes, as testified to by Staff—and acknowledged by parties who expressed concern about school overcrowding—that a new elementary school, Northeast Consortium Elementary School #16 “is approved to provide the needed capacity to relieve Burnt Mills and Cresthaven Elementary Schools.”<sup>12</sup> For the foregoing reasons, the Planning Board finds that schools are adequate to accommodate the proposed development.

#### D. Forest Conservation

The record includes uncontested evidence that the Application meets the requirements of the Forest Conservation Law.<sup>13</sup>

#### E. Relation to Master Plan

The Planning Board finds that the Preliminary Plan Application substantially conforms to the 1997 Approved and Adopted White Oak Master Plan (“Master Plan”):

- i. The Master Plan confirms the RT-8.0 zoning of the Subject Property.
- ii. The Master Plan designates Lockwood Drive, between US 29 to the southwest and a point 400 feet west of MD 650 to the northeast, as a two-lane closed-section arterial, with a minimum right-of-way width of 80 feet. The Applicant, as a condition of approval, will dedicate right-of-way to 40 feet from the centerline of Lockwood Drive, the full width mandated by the Master Plan.
- iii. The Master Plan recommends on-street parking, sidewalks, tree panel and a Class I or II bikeway along Lockwood Drive. The Applicant, as a condition of approval, will provide a 5 foot sidewalk, an 8 foot wide tree panel, and a 13 foot paved area (for future on-street Class II bicycle lane and parking) on Lockwood Drive, along the entire frontage of the Subject Property.
- iv. The Master Plan recommends a 120-foot minimum right-of-way (six-lane divided) for this section of US 29. The Applicant, as a condition of approval, will dedicate right-of-way to 60 feet from the centerline of US 29, the full width mandated by the Master Plan.
- v. The Master Plan recommends “[i]mproving access to transit by providing sidewalks leading to and along roadways served by transit.”<sup>14</sup> The Applicant, as a condition of approval, must extend the proposed sidewalk along site frontage on Lockwood Drive off site to

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that “assuming the adopted FY 2002-2008 CIP, the Council declares school capacity for school year 2007 to be *adequate for anticipated growth during 2002-3 in all high school clusters at all grade levels . . .*” (emphasis added).

<sup>12</sup> Superintendent [of Schools] Recommended FY 2004 Capital Budget, pp. 2-63 - 2-64.

<sup>13</sup> Montgomery County Code, Chapter 22A.

<sup>14</sup> White Oak Master Plan, p. 42.

the north to connect with the existing sidewalk along Oak Leaf Drive, and to the south to the bus stop at the corner of Northwest Drive and Lockwood Drive.

- vi. The Master Plan notes that the roadway network conditions in the Master Plan area are generally congested and observes that “[o]ne important way to address this problem is to increase the use of alternative modes of travel such as *transit* . . . .”<sup>15</sup> The Applicant has proposed, as discussed at length above, a Transit Program to remove a minimum of forty-nine peak hour automobile trips from the Policy Area roadways. In furtherance of the goal of increasing transit use, the Master Plan sets forth certain objectives:

1. “Inreas[ing] use of . . . transit within . . . the . . . Master Plan area by providing services and facilities . . . that encourage their use.”<sup>16</sup>
2. “Manag[ing] transportation demand to . . . reduce traffic generated by new and existing development . . . .”<sup>17</sup> Tied to this objective in the Master Plan is the recommendation of the development of a Transportation Demand Management Program, which should include as a goal the promotion of “the use of transit . . . among . . . residents in the US 29 area . . . and monitor[ing] all trip mitigation programs on a periodic basis to evaluate effectiveness.”<sup>18</sup>

#### F. Stormwater Management

The Planning Board accepts the Montgomery County Department of Permitting Services’ (“MCDPS”) determination that the Stormwater Management Concept Plan meets MCDPS’ standards and finds that the subject application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.

#### G. General Items

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

<sup>15</sup> White Oak Master Plan, p. 39.

<sup>16</sup> *Id.* at 40.

<sup>17</sup> *Id.* at 42.

<sup>18</sup> *Id.*



## CONCLUSION

Having considered all of the evidence presented and all of the testimony taken, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-03052 to be in accordance with the purposes and requirements of the Subdivision Regulations of the Montgomery County Code and the provisions of Article 28 of the Maryland Code Annotated. Therefore, the Planning Board approves Preliminary Plan No. 1-03052, pursuant to the FY 2003 Annual Growth Policy Staging Ceiling Flexibility, subject to the following conditions:

- 1) Approval under this preliminary plan is limited to a maximum of fifty-nine (59) single-family attached dwelling units.
- 2) Pursuant to the Policy Area Transportation Review component of the Adequate Public Facilities test the applicant shall enter into a Transportation Management Agreement with the Montgomery County Planning Board and the Montgomery County Department of Public Works and Transportation to sponsor and implement a trip reduction program, including those elements attached to the Summary of Applicant's Trip Reduction-Transit Fare Subsidy Program Proposal, attached to the Transportation Planning Division memo dated April 30, 2003.
- 3) Provide a five (5) foot wide sidewalk, an eight (8) foot wide tree panel, and a thirteen (13) foot paved area (for future on street Class II bicycle lane and parking) on Lockwood Drive along the entire property frontage.
- 4) Extend the proposed sidewalk along site frontage/Lockwood Drive off-site (within the existing 60 foot right of way) to the north to connect with the existing sidewalk along Oak Leaf Drive, and to the south to the bus stop at the corner of Northwest Drive and Lockwood Drive.
- 5) Coordinate (through written notification of intent to record plats and seek building permits from Montgomery County) with the Maryland State Highway Administration, Maryland Mass Transit Administration and the Washington Metro Area Transit Authority on their Capital Beltway Corridor Transportation Study.
- 6) Dedication of Lockwood Drive 40 feet from the centerline and 60 feet from the centerline of Columbia Pike (US 29).
- 7) All road rights of way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Master Plan, unless otherwise designated on the preliminary plan.
- 8) Compliance with the conditions of approval of the preliminary forest conservation plan. The applicant must meet all conditions prior to recording of plats or MCDPS issuance of sediment and erosion control permit, as appropriate.
- 9) Access and improvements, as required, by MCDPW&T pursuant to letter dated April 24, 2003 or as otherwise amended.
- 10) Conditions of MCDPS stormwater management approval dated January 24, 2003.
- 11) Final landscape plan, lighting plan, interior circulation and recreation plan to be reviewed with site plan.
- 12) Provide a minimum of 8 MPDU's dependent upon the final number and location of

units determined at site plan.

- 13) Record plat to delineate all common areas under Home Owners Association control, including the areas of stormwater management.
- 14) Record plat to reflect delineation of all conservation easements.
- 15) No direct vehicular access to Columbia Pike (US 29).
- 16) The Adequate Public Facilities (APF) review for this preliminary plan will remain valid for sixty-one (61) months from the date of mailing of this Planning Board Opinion.
- 17) This preliminary plan will remain valid for thirty-seven (37) months from the date of mailing of this Planning Board Opinion. Prior to the expiration of this validity period, a final record plat for all property delineated on the approved preliminary plan must be recorded or a request for an extension must be filed.