

MAY 13 1997

Resolution No.: 13-865  
Introduced: April 29, 1997  
Adopted: April 29, 1997

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY

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By: County Council

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Subject: APPLICATION NO. G-713 FOR AMENDMENT TO THE ZONING ORDINANCE MAP  
Lerch, Early and Brewer, Attorneys for Camalier Limited Partnership and Davis Brothers/Montgomery  
Farm Limited Partnership, Applicants. OPINION AND RESOLUTION ON APPLICATION  
Tax Account No. 4-1-47746

**OPINION**

Application No. G-713 requests reclassification from the R-H Zone to the MXPDP Zone of 53.4 acres known as Rock Spring Centre, located at the northwest quadrant of the intersection of Old Georgetown Road and Rock Spring Drive, Bethesda, in the 4th Election District.

The Hearing Examiner recommends that the revised development plan and the application be approved. This recommendation is based on conclusions that the development plan will comply with the objectives, purposes, and requirements of the MXPDP Zone and the provisions of §59-D-1.61 of the Zoning Ordinance; that the proposed development will be compatible with the surrounding area; that the proposed development will constitute a proper use for the coordinated, comprehensive, adjusted, and systematic development of the regional district; and that the proposed development is consistent with the applicable master plan. The Technical Staff and Planning Board provided similar recommendations. The District Council agrees with the findings and conclusions of the Hearing Examiner, the Technical Staff and the Planning Board.

The irregularly-shaped parcel is located in the North Bethesda-Garrett Park Planning Area at the southwest corner of the intersection of Old Georgetown Road and the I-270 Spur. The site is almost completely surrounded by roads including the I-270 Spur on the north, Old Georgetown Road on

the east, Rock Spring Drive on the south, and Rockledge Drive on the west. The site forms the last remaining portion of the original 270-acre Davis family farm and is largely unimproved except for the Davis Estate House, a barn and shed which are all located in the southeast corner of the property.

The site contains natural features that will restrict future development. The topography reflects slopes generally ranging between 2 to 10%, although there are some areas having slopes of 15% or greater. Open fields are located in the northeastern and southwestern portions of the site. An intermittent stream runs through the central portion of the site which is joined by a northern fork fed by a spring. The stream valley includes wetlands and some large trees, many of which have diameters of 30" or more. There are several other mature tree groves to the south and west of the stream valley. About 27.7 acres contain trees and include young seedlings, samplings, and mature oaks.

The zoning history reveals that the site was initially classified under the R-90 Zone by the 1954 comprehensive zoning. This zoning was reconfirmed by comprehensive zoning in 1958. However, in 1966, the property was reclassified to the R-H Zone under Local Map Amendment No. E-646, and the property has remained in that classification ever since. The last comprehensive zoning reconfirmed the R-H Zone in 1993.

The surrounding area is bounded by the Capital Beltway on the south, the I-270 Spur on the west, Tuckerman Lane on the north, and the I-270 Spur on the east. This area contains mature development, significant population, and a variety of land uses. The Rock Spring Office Park, which is located immediately west of the site, constitutes a major land use and contains 19 buildings used as corporate offices for a number of national and regional employers. These offices were developed under the C-P and I-3 Zones. The State Highway Administration plans major road projects at or near Rock Spring Park. A direct interchange connection between Rock Spring Park and I-270 will be provided in the near future. Other planned or completed nearby road projects include I-270 interchange

improvements at Old Georgetown Road and at Democracy Boulevard, installation of HOV lanes along the I-270 corridor, and an HOV access to Rock Spring Park at Fernwood Road.

Other commercial uses in the area include the Georgetown Park Shopping Center, located immediately south of Rock Spring Drive, and the Wildwood Shopping Center, located directly southeast of the site on the east side of Old Georgetown Road. These uses were developed under the C-1 Zone. Significant medium density residential development is also located in close proximity to the site. The residential communities of Luxmanor and Timberlawn are located on the north side of the I-270 Spur along both sides of Old Georgetown Road. The communities of Fernwood, Marymont, Ashburton and Stratton Woods are located on the south side of Democracy Boulevard and west of Old Georgetown Road. The communities of Wildwood Manor, Lone Oak and Alta Vista Gardens are located on the east side of Old Georgetown Road and south of the I-270 Spur. These residential areas were developed under the R-200, R-90, R-60, R-30, and PD-9 Zones and include a variety of housing types such as single-family detached homes, townhouses, apartments and condominiums. There are several institutional uses located in the area. The Walter Johnson High School is located immediately south of the subject property. The Davis Library is located on the south side of Democracy Boulevard. The Tilden/Woodward Middle School is located along the east side of Old Georgetown Road a short distance north of Tuckerman Lane. Several religious institutions are located along both sides of Old Georgetown Road.

The proposed development represents a large scale project that would include retail and office uses, entertainment and institutional uses, residential areas, public amenities, and an open space network. The applicants propose a range of densities with maximum levels of 1,250 residential units, including 226 MPDUs, 1,050,000 square feet of combined retail and office space, 185,000 square feet of institutional uses, 30,000 square feet for a community center, and 90,000 square feet for a theater or cinema. The proposal includes 7,485 total residential and commercial parking spaces in parking garages

located near perimeters of the site. The applicants propose dedication of land for the North Bethesda Community Center, a transitway, direct access ramps from I-270, and public streets. The proposal also includes as private open space the existing Davis Estate House grounds and a large wooded central park area.

The proposed development will also have a significant impact on local roads which currently operate at unacceptable levels of service. Up to 7,000 people will be drawn to the site as employees and residents and more people will be attracted as customers and clients of the businesses located there. The proposed development is predicted to yield almost twice the number of vehicular trips that would likely be generated under the current zoning. The development will also cause significant congestion at intersections along Old Georgetown Road unless adequate and timely mitigation is provided. In view of these circumstances, the applicants submitted a revised phasing plan, dated April 14, 1997, which keys four separate phases to financial commitments for traffic mitigation, participation in the North Bethesda Transportation Management District, comprehensive review of separate phases by the Planning Board under specified performance standards, subdivision and site review, improvements to the I-270 interstate, and provision for a development plan amendment in the event that performance standards cannot be met. The phasing plan ensures that adequate and timely mitigation will be provided to support the proposed development.

The District Council determines that the application satisfies the requirements of the MXPDP Zone. The revised development plan complies with the objectives and purposes of the MXPDP Zone. The proposed development will revitalize one of the premier office parks in Maryland and will attract business and retail trade to this area of the County with substantial residual benefits including recreational and cultural amenities for residents and workers, enhanced employment opportunities, and increased tax revenues.

There is a high degree of correlation between the elements of the development plan and the master plan. The *1992 Amendment to the North Bethesda-Garrett Park Master Plan* provided for 25 site-specific development guidelines which were the result of collaborative efforts by public officials, community representatives, and the Applicants. The 25 points cover phasing, affordable housing, offices and retail use, circulation and parking, building locations, height, and land uses. During the hearing process the Applicants agreed to incorporate all 25 points into the development plan as binding elements and they are now part of the plan.

The development plan satisfies the 20-acre minimum area and locational requirements of the MXPB Zone. The proposal meets the permitted use limitations required under §59-C-7.52. The residential landbay consists of 21.326 acres or 39.8% of the site which is within the 40% limitation of the zone. The retail, office, entertainment and institutional uses are grouped under a commercial landbay area of 34.14 acres. The retail component will consist of a maximum of 220,000 square feet which represents 19% of the total commercial floor area and is within the 20% limitation of the zone.

The proposed residential density is within the limitations specified in §59-C-7.53. The plan shows that residential density will be within the 44 dwelling units per acre limitation for residential areas exclusive of moderately priced dwelling units. Some 89 residential units will be located within the commercial area which is within the 75 dwelling units per acre limitation for commercial areas. The commercial density is proposed at a floor area ratio of 0.75 which complies with the density limitation specified in §59-C-7.54. The proposal meets all the compatibility requirements of §59-C-7.55 in terms of setbacks, building height and use. The revised phasing plan will ensure adequate traffic mitigation so development will not be incompatible with the area road network.

Green space, dedication and parking requirements are all satisfied. The revised development plan proposes a total residential green space area of 50.16% and a commercial green area of 41.3%, both of which exceed the minimum green area requirements specified by §59-C-7.56. The revised

development plan specifies dedication of 3.5 acres for the Rockledge Connector Interchange, 0.14 acres for transit station with air rights for the transitway, 0.3 acres for the community center, and 12.0 acres for internal streets with ownership to be determined at the site plan stage.

The District Council finds that the development plan complies with the requirements of §§59-D-1.61(a) through (e). In this respect, the development plan is in compliance with the use and density recommendations of the master plan and in conformity with other County plans and policies. Similarly, the proposed development will satisfy the zoning requirements, especially with respect to compatibility with area road capacity because of the safeguards contained in the revised phasing plan. The proposed vehicular and pedestrian circulation systems are safe, adequate and efficient. The site design contains sufficient open space area to ensure the preservation of many existing trees and the protection of sensitive environmental features of the site. Perpetual maintenance of common areas will be provided under agreements to be entered into at the site plan review stage which will ensure that the Applicants or their successors in interest will be required to provide for the perpetual maintenance of all recreational, common, or quasi-public areas.

The District Council also finds that the application is proper for the comprehensive and systematic development of the county, is capable of accomplishing the purposes of the zone, and is compatible with the General Plan and applicable master plan.

For these reasons and because to grant the instant application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, and to protect and promote the health, safety, morals, comfort and welfare of the inhabitants of the Regional District, the application will be granted in the manner set forth below.

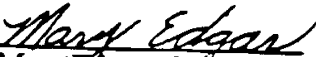
## ACTION

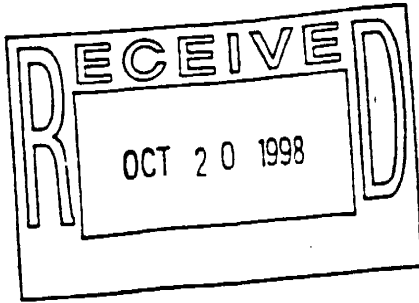
The County Council for Montgomery County, Maryland, sitting as a District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, approves the following resolution.

The revised development plan, submitted as Ex. 695(a) and Ex. 780(a), is approved; and

Zoning Application No. G-713, for the reclassification from the R-H Zone to the MXPB Zone of 53.4 acres known as Rock Spring Centre, located at the northwest quadrant of the intersection of Old Georgetown Road and Rock Spring Drive, Bethesda, in the 4th Election District, is granted in the amount requested, provided that, within 10 days of receipt of this resolution, the Applicants must submit the revised development plan for certification in accordance with §59-D-1.64 and include on the face of the plan a notation which incorporates by reference the revised phasing plan, dated April 14, 1997, Ex. 780(b).

This is a correct copy of Council action.

  
Mary Edgar, CMAC  
Secretary of the Council



Resolution No: 13-1442  
Introduced: September 29, 1998  
Adopted: September 29, 1998

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND

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By: District Council

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Subject. Approval of Development Plan Amendment (DPA) 99-1

Background

1. On July 17, 1998, Lerch, Early and Brewer, Chartered, Attorneys for Camalier Limited Partnership, filed a DPA to clarify the phasing component of the development plan for 53.4 acres known as Rock Spring Centre located at the northwest quadrant of Old Georgetown Road and Rock Spring Drive, North Bethesda, in the 4th Election District.
2. The site was initially approved for the MXPD Zone under Zoning Application G-713 for a mixed use residential, office and retail project to be developed in four distinct phases. The DPA proposes to clarify the phasing component so that the Applicant can apply for available threshold capacity under the policy area transportation review without alteration to the performance standards that will govern review of intersection capacity.
3. The Technical Staff of the Maryland-National Capital Park and Planning Commission, by memorandum dated July 27, 1998, recommended approval of DPA 99-1 without modification. The full Planning Board conducted a public meeting on July 30, 1998, and unanimously recommended approval of DPA 99-1 without modification.
4. On August 4, 1998, a letter was filed in opposition and requested a hearing under the provisions of §59-D-1.74(b)(1). A hearing was convened on August 21, 1998. As a result of revisions to the DPA, the opposition was withdrawn and the Hearing Examiner recommended approval of the revised DPA.
5. On September 29, 1998 the District Council reviewed DPA 99-1 and concluded that the DPA meets the requirements of the Zoning Ordinance and its approval would be in the public interest.



Action

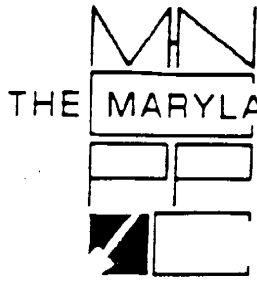
For these reasons and because to grant the DPA would aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the DPA will be approved in the manner set forth below.

The County Council sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following resolution:

DPA 99-1, which proposes to clarify the phasing component of the development plan for 53.4 acres known as Rock Spring Centre located at the northwest quadrant of Old Georgetown Road and Rock Spring Drive, North Bethesda, in the 4th Election District, is approved, subject to the specifications and requirements of the revised DPA, provided that within 10 days after receipt of this resolution, the Applicant must submit the revised development plan for certification by the Hearing Examiner in accordance with §59-D-1.64 with reference to Ex. 780(b) as modified by DPA 99-1 and include the revised phasing plan as an attachment.

This is a correct copy of Council action.

  
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Mary A. Edgar, CMC  
Secretary of the Council



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
6767 Georgia Avenue • Silver Spring, Maryland 20910-3760

MONTGOMERY COUNTY PLANNING BOARD  
OPINION

Preliminary Plan No.: 1-98092  
Project: Rock Spring Center  
Date of Hearing: May 27, 1999

Action: APPROVAL SUBJECT TO CONDITIONS. (Motion to approve was made by Commissioner Holmes; duly seconded by Commissioner Bryant; with a vote of 5-0, Commissioners Holmes, Bryant, Hussmann, Richardson and Perdue voting in favor.)

The date of this written opinion is October 25, 1999. Any party authorized by law to take an administrative appeal must initiate such an appeal as provided in the Maryland Rules of Procedure. If no administrative appeal is timely filed, then this Preliminary Plan shall remain valid as set forth in Section 50-35(h).

INTRODUCTION

On May 8, 1998, Camalier Limited Partnership and Davis Brothers Montgomery Farm Limited Partnership ("Applicant") filed a preliminary plan application seeking approval of the first portion of the Rock Spring Center project. The application was designated Preliminary Plan No. 1-98092.

After due notice, the Montgomery County Planning Board ("Planning Board") held a public hearing on the application on May 27, 1999, in accordance with the requirements of Maryland Code Ann., Art. 28 ("Regional District Act"), the Montgomery County Code, Chapter 50 ("Code"), and the Planning Board's Rules of Procedure. At the public hearing, the Planning Board heard testimony from its expert technical staff ("Staff"), the Applicant, neighboring property owners and community and civic organizations, and received evidence into the record on the application.

In presenting the application to the Planning Board, Staff prepared packets of information which included, *inter alia*, a Staff report and analysis of the proposal dated May 21, 1999; plan drawings; vicinity maps; Transportation Staff memo dated May 21, 1999; other information supplied by the Applicant including a traffic study dated April 16, 1999; correspondence from the community; and the Planning Board's letter to the Highway Design Division of the Maryland Department of Transportation State Highway Administration ("MDSHA"), dated March 24, 1999, regarding Mandatory Referral No. 98809-SHA-1. Staff distributed the information packets to the Planning Board and they are part of the record on the application.

THE SUBJECT PROPERTY

The subject property is located in North Bethesda in the northwest quadrant of the intersection of Old Georgetown Road (MD 187) and Rock Spring Drive, south of and adjoining the east spur of Interstate I-270. The site contains approximately 53.4 acres and is zoned MXPDP (Mixed Use Planned Development). The property is bordered on the north by I-270, on the east by Old Georgetown Road, on the south by Rock Spring Drive, and on the west by Rockledge Drive.

The Rock Spring Office Park, which was developed under C-P and I-3 zoning, is located immediately west of the site and contains corporate offices for several national and regional employers. The properties located directly south and southeast are zoned C-1 and contain office and other commercial uses. The Walter Johnson High School is also located immediately south of the site. Several residential communities are also located in close proximity to the site to the north across I-270, to the east across Old Georgetown Road, and to the south. The nearby residential communities are zoned R-200, R-90, R-60, R-30 and PD-9, and include single-family detached houses, townhouses, apartments and condominiums. In addition, MDSHA plans major road projects in the site area, including a new interchange connecting Rock Spring Park and I-270 via realigned Rockledge Drive ("the Rockledge Connector"), and I-270 interchange improvements at Old Georgetown Road and at Democracy Boulevard.

The property is irregularly-shaped and improved only by the Davis Estate House, a barn and a shed, which are located in the southeastern corner of the site. An intermittent stream and stream valley corridor runs diagonally southeast to northwest through the central portion of the site, ultimately draining under I-270. The stream valley contains a substantial stand of mature trees and undergrowth. The property is served by public water and sewer.

The Applicant proposes the ultimate buildout of the subject site with 1,355,000 square feet of office, entertainment/retail, institutional and community center uses and 1,250 multi-family dwelling units. However, because of traffic capacity limitations under the current staging ceiling for the North Bethesda Policy Area, the subject application requests approval of the residential component of the project and only approximately 70% of the non-residential component (637,200 square feet of office space, 310,000 square feet of entertainment/retail and a 30,000 square foot community center). The remaining non-residential development will be reviewed when additional capacity for the policy area becomes available.

The center of the site will be restored as a park/open space and will serve as the unifying element of the project. The residential component will occupy the northern portion of the site, with 4-story midrise buildings located along I-270 and two high-rise buildings positioned closer to the center of the property. The commercial development will be located in the southern portion of the site and will include a variety of uses integrated into a pedestrian-scaled "main street". The western end of the "main street" will include an anchor retail use and cinema. A town square, market hall, restaurants, retail uses and outdoor activities will be located in the center. The eastern end of the "main street" will include a fountain plaza, the restored Davis Estate House, retail and office uses. A portion of the site will also be provided for the North Bethesda Community Center. The buildings will be oriented to provide views into the park and views from the park back into the public areas. The open space system will include the forested stream valley, passive recreation areas in the park, developed urban open spaces and informal mowed ornamental gardens surrounding the Davis Estate House. Access will be provided from Rock Spring Drive, Rockledge Drive and Old Georgetown Road. The entrance to a parking structure, mostly below grade, will be located at a controlled intersection off Rock Spring Drive. A pedestrian gateway will lead from the parking area into the central town square. Some additional parking will be located along the main street. Stormwater management will consist of on-site water quantity and quality control via infiltration (or sand filters) for the first flush and a flow splitter which will bypass the larger storm flow via an enclosed pipe system to a downstream in-stream hybrid wet/dry stormwater management facility.

The proposed in-stream quantity control facility will serve the subject property and the new I-270/Rockledge Connector interchange.

In addition to the construction of internal roads, pedestrian and bicycle pathways and parking facilities, the Applicant will dedicate right-of-way and participate in funding MDSHA's I-270 and Old Georgetown Road interchange improvements, construct a segment of the Rockledge Connector, make improvements along Old Georgetown Road, provide an easement for the future dedication of right-of-way for the North Bethesda Transitway and provide landscaping and street trees along the frontage of the subject property. The Applicant will also join and participate in the North Bethesda Transportation Management Organization to assist the North Bethesda Transportation Management District in achieving and maintaining its 39% non-driver traffic mitigation goal.

### PROJECT BACKGROUND

The subject property is located within the area covered by the 1992 Approved and Adopted North Bethesda-Garrett Park Master Plan ("Master Plan"). The Master Plan recommends that the subject property be developed as a new town center for North Bethesda under MXPDP zoning, with a mixture of land uses including affordable housing, offices, retail uses and parking. The Master Plan also recommends a direct connection between Rock Spring Park and the I-270 East Spur and provides designations for the adjacent and nearby roadways. In addition, the Master Plan provides guidelines for the North Bethesda Transitway, including an easement along Rock Spring Drive for the future dedication of all necessary right-of-way for the transitway, station, bikeway and bus pull-off as well as for streetscaping between the transitway and the realigned roadway. The Master Plan also requires that the North Bethesda Policy Area be moved to Stage II before additional staging ceiling may be allocated to North Bethesda.

In accordance with the Master Plan recommendations, the District Council rezoned the site to the MXPDP Zone in April 1997 (Zoning Case No. G-713). The rezoning approval was conditioned upon several roadway improvements in the site area, including the programmed construction of the I-270 interchange at the Rockledge Connector, the construction of ramps between the I-270 split and the new interchange, and improvements to the I-270/Old Georgetown Road interchange and I-270 West Spur at Democracy Blvd. interchange. The conditions also provided maximum calculated critical lane volumes for several nearby intersections. The Planning Board subsequently held a public hearing, on July 30, 1998, to clarify the phasing element of the development plan (Development Plan Amendment No. 99-1). In addition, in March 1999, the Planning Board moved the North Bethesda Policy Area to Stage II, basing its decision on the progress that had been made in implementing the transportation infrastructure and transportation demand management programs in North Bethesda.

The Planning Board also recently considered several of the proposed roadway improvements for the site and surrounding area under Mandatory Referral No. 98809-SHA-1. On March 18, 1999, MDSHA staff presented the I-270/Rockledge Drive/Old Georgetown Road interchange and the Old Georgetown Road/Tuckerman Lane intersection improvements to the Planning Board. In considering these projects, the Planning Board noted the importance of the improvements for better circulation and improved entry to the Rock Spring Park area. The

Planning Board forwarded its comments regarding the importance of the project and the need for improved landscaping and additional right-of-way to MDSHA's Highway Design Division on March 24, 1999.

### THE SUBDIVISION CRITERIA

An application for subdivision requires the Planning Board to undertake its legislatively delegated authority under the Regional District Act and the Montgomery County Code ("Code"). The Planning Board administers Chapters 50 ("Subdivision Regulations") and 59 of the Code ("Zoning Ordinance"). In order to gain approval, the application must meet all of the requirements of the Subdivision Regulations as well as those in the Zoning Ordinance applicable to the subject preliminary plan.

Section 50-35 of the Subdivision Regulations provides the approval procedure for preliminary plans of subdivision. After a hearing on the Preliminary Plan, the Planning 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 Code and all other applicable regulations.

Among other requirements, Section 50-35 provides that the plan must include provisions for erosion and sediment control and that it must substantially conform to the applicable master plan. In addition, Section 50-35(k) of the Code (the "Adequate Public Facilities Ordinance" or "APFO") directs the Planning Board to approve preliminary plans of subdivision only after finding "that public facilities will be adequate to support and service the area of the proposed subdivision . . . [including] roads and public transportation facilities . . . in accordance with the guidelines and limitations established by the County Council in its Annual Growth Policy."

### DISCUSSION OF ISSUES

In its report and through testimony at the public hearing, Staff described the subject property, the proposal, the surrounding neighborhood, existing traffic conditions and planned road improvements. Staff noted that the Applicant has requested a slight modification of the square footage allocation to slightly decrease the office space (from 650,000 square feet to 637,200 square feet) and increase the retail space (from 310,000 square feet to 340,000 square feet) in order to include the proposed community center in the subject application. Staff testified that the subject application is in conformance with the development standards for the MXPB Zone; the District Council's adopted resolution approving Zoning Application No. G-713; and the amended phasing element of the Development Plan. In addition, the Staff found that the subject application is consistent with the recommendations of the Master Plan and that it complies with the provisions of the Subdivision Regulations. Staff recommended approval of the plan, subject to conditions.

#### Transportation

The main issue raised at the public hearing concerned the adequacy of roads and public transportation facilities in the site area. Staff testified that the subject application satisfies the policy area and local area components of Subdivision Regulations APFO review.

Regarding the Policy Area Review, or threshold capacity, Staff testified that development of the site is limited to 1,250 housing units and approval of 637,200/office and 340,000/retail comprising of a total of 977,200 square feet of non-residential uses. Available staging ceiling consists of a total of 3,667 jobs (417 jobs remaining in the current staging ceiling, 3,000 jobs for the Rockledge Connector access to I-270 East Spur, and 250 jobs for the improvements to Old Georgetown Road.) Staff explained that, until recently, there was no staging ceiling available in the North Bethesda Policy Area. However, in their work sessions on the FY99 Annual Growth Policy ("AGP"), the County Council recognized the possibility that the I-270 East Spur Interchange and improvements to Old Georgetown Road might become available to be counted for AGP capacity during FY99.

Accordingly, the County Council directed the Planning Board to add 3,250 jobs and 1,200 housing units when the following three conditions were met: (1) the transportation improvements are fully funded within the next four years; (2) an agreement is signed between the Applicant and MDSHA delineating the responsibilities for each in the interchange project and related improvements; and (3) Staff has confirmed that the capacity associated with the interchange and improvements to Old Georgetown Road has not changed. Staff advised the Planning Board that a completed agreement between the Applicant and MDSHA is anticipated and the other two conditions have been met. Staff also noted that the policy area was moved to Stage II in March, 1999, which satisfied the Master Plan requirement that the policy area be moved to Stage II before new capacity can be allocated to North Bethesda.

To satisfy Local Area Transportation Review ("LATR"), Staff recommended several conditions, including: (1) the realignment of Rockledge Drive associated with the construction of the Rockledge Connector; (2) a signed agreement with MDSHA obligating the Applicant to participate in funding the I-270 interchange improvements and to construct a segment of the Rockledge Connector; and (3) full bonding of the design and construction of improvements contiguous to the site along Old Georgetown Road and at the interchange of the I-270 West Spur and Democracy Boulevard. Staff also noted that the Applicant's traffic study and the subject application include several proposed improvements to add capacity to nearby intersections.

Staff further stated that the subject application satisfies the conditions imposed in Zoning Case No. G-713 regarding APF review. Staff explained that construction of 1) the future I-270/Rockledge Connector interchange, 2) the improvements to the I-270/Old Georgetown Road interchange, and 3) improvements to the intersection of Old Georgetown Road and Fuckerman Lane, are all programmed for construction within two years.

In response to a question from Chairman Hussmann about the Planning Board's recommendations on the mandatory referral, Staff stated that MDSHA has not yet finalized the interchange design. However, MDSHA has indicated that it is trying to accommodate the Planning Board's recommended improvements. Staff further noted that obtaining the land for the recommended pedestrian access and landscaping improvements should not be a problem because the proposed conditions for the subject application require the Applicant to provide the land.

The Applicant testified that the State, the County and the Applicant have worked together to ensure the provision of the direct access connection into Rock Spring Park from the interstate system, known as the "Rockledge Connector". The Rockledge Connector is a critical part of the

application, which will vastly change the dynamics of the existing traffic conditions along Old Georgetown Road and Rock Spring Drive and improve the transportation system in the site area.

Neighboring property owners and citizen associations submitted correspondence and a petition into the record detailing their concerns. Several neighbors and representatives of community organizations also testified at the public hearing. They contended that the subject application does not comply with the conditions of the District Council's rezoning decision and its approval would undermine the intent and purpose of the APFO. They stated that allowing the MDSHA I-270 improvements to be counted for LATR review at this time would be premature and would result in excessive traffic congestion. The neighbors noted that the Applicant and MDSHA have not yet signed an agreement regarding funding of the roadway improvements, as required by the conditions in Zoning Case No. G-713. They also testified that the Applicant and Staff are relying upon future MDSHA improvements, for which full funding has not been appropriated, to meet current LATR requirements. They explained that the funds necessary for the completion of the MDSHA projects are appropriated for only the current year and procedurally not appropriated for the out-years, but are described as "for Planning Purposes Only".

In addition, the neighbors' argued that 1) the current project budget, including the programmed funds, does not include necessary sound barriers, safety barriers or visual screening; 2) that the final interchange design is not complete; 3) that there are unresolved issues regarding whether and when MDSHA will require adjoining residential property to achieve the road improvements and the costs of obtaining that property; and 4) that significant delays may result from legal challenges and/or the need for approval of additional funding.

The neighbors also contended that the LATR Guidelines contain conflicting requirements. They stated that the language of Section VII.A of the LATR Guidelines, which allows the Applicant to include programmed transportation improvements into its LATR analysis and relies on the use of the Montgomery County Approved Road Program (ARP) to identify roads that are "programmed," requires that 100 percent of the construction funds be already appropriated for a project to be included. However, the ARP criteria for inclusion of a road in LATR requires that 100% of construction funds be programmed in the MDSHA Consolidated Transportation Program within the five-year program period, rather than appropriated. In addition, the neighbors expressed concern about Staff's reliance on the County Executive to determine construction funding requirements and the likely timing of construction. They contended that the Planning Board illegally delegates a portion of its authority to administer the APFO by relying on the ARP criteria, which are determined by the County Executive.

In response to the neighbors' concerns, the Applicant testified that it has signed the agreement with MDSHA regarding the implementation of the Rockledge Connector improvements. In addition, the Applicant and Staff explained that the provisions of the LATR Guidelines are not conflicting, but that the terms used to define "programmed" road improvements are different for County and State projects. Thus, County road projects require that 100% of construction funds must be "appropriated" or otherwise committed, but State projects require that 100% of construction funds must be "programmed" in the MDSHA Consolidated Transportation Program (CTP ) within the five-year program period. The I-270/Rockledge Connector improvements are State projects. Therefore, including the programmed I-270 improvements in LATR for the subject application is timely and appropriate. Staff also explained that, because of past difficulties in

determining which road improvement projects should be counted for development review, the Planning Board, the County Executive and the County Council agreed several years ago that the ARP would be the defining document for determining which road projects can be counted for APF and LATR purposes. They agreed that the County Executive is in the best position to determine what funding will be committed in the County budget, which projects will move ahead when, and to coordinate projects with the State. Finally, in response to a question from Chairman Hussmann, Staff stated that funding in the out-years, beyond the current and budget years, is described as "For Planning Purposes Only" for all projects in the CTP.

### Noise

In its report, Environmental Staff stated that the subject property will be heavily impacted by noise from the surrounding roads. Staff also found that setbacks and physical barriers would be of limited value in noise attenuation. Therefore, Staff supported the Applicant's use of intervening noise-compatible uses (e.g., parking structures), building orientation, acoustical design and building layout to mitigate noise on the site.

Through testimony at the public hearing, the owners of property adjoining the interchange to the north expressed concerns about the noise that will be generated by the new interchange improvements. They testified that their concerns are relevant to the subject application because funding for necessary sound barriers, which could cost up to three million dollars, is not included in the MDSHA project budget. They also contended that the environmental impact study and MDSHA's noise analysis for the road improvements are flawed and that MDSHA's plan revisions will result in even more noise than originally projected. In addition, the neighbors advised the Planning Board that WSSC plans to clearcut its 50-foot easement for a water main project along I-270, which will eliminate the existing noise barrier between the houses and I-270 and increase the need for new barriers. Finally, the neighbors expressed concern that the environmental impacts of MDSHA's revised design for the I-270/Rockledge Connector interchange and ramps, in particular the replacement of a retaining wall with a dirt slope, and WSSC's clearcutting have not been studied.

### FINDINGS

After review and consideration of the evidence of record, including testimony given at the public hearing, the Planning Board finds that Preliminary Plan No. 1-98092 is in accordance with the Subdivision Regulations, the Zoning Ordinance and the Regional District Act. The Planning Board further finds that the Preliminary Plan is consistent with the recommendations of the 1992 Approved and Adopted North Bethesda-Garrett Park Master Plan, the conditions imposed in Zoning Case No. G-713 and the amended phasing element of the Development Plan. The Planning Board also finds that the proposed conditions will ensure the appropriate use of the subject property, and adequate access and road improvements, forest conservation measures and stormwater management. The Planning Board accepts the Montgomery County Department of Permitting Services' ("MCDPS") determination that the Stormwater Management Concept 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. In addition, the Planning Board finds that the Applicant's compliance with the conditions of approval of the



preliminary forest conservation plan will meet the requirements of Montgomery County Code Chapter 22A. Therefore, the Planning Board adopts Staff's recommended conditions.

Regarding the adequacy of public facilities, the Planning Board adopts Staff's findings and recommendations and finds that the site is adequately served by public facilities, including roads and public transportation, pursuant to the Fiscal Year 1999 Annual Growth Policy. The Planning Board further finds that Staff's use of the ARP to determine which road improvements are available for LATR purposes is appropriate. The Planning Board also finds that the CTP contains the same "For Planning Purposes Only" notation on funding for road improvements in the out-years for all projects. Such a delineation of funds is reasonable and the funds may be treated as "programmed".

Finally, the Planning Board acknowledges the neighbors' concern about the need for sound barriers along the interchange improvements, but notes that the interchange design issues were discussed at length at the public hearing on the mandatory referral and are not the subject of the current public hearing. Nevertheless, the Planning Board has significant interests in the design of the interchange and will reiterate its concerns to the MDSHA in a stronger, more pointed letter regarding the design issues and the protection of the adjacent community.

## CONCLUSION

Based on the testimony, evidence and exhibits presented, as well as the contents of the Preliminary Plan file, the Planning Board finds Preliminary Plan No. 1-98092, as modified by the Applicant, to be in accordance with the Subdivision Regulations of the Montgomery County Code and the provisions of the Maryland Code Ann., Art. 28. Therefore, the Planning Board approves Preliminary Plan No. 1-98092, as modified by the Applicant, subject to the following conditions:

- 1) Prior to recording of plat(s), Applicant to submit an Adequate Public Facilities (APF) Agreement with the Planning Board limiting development to 637,200 square feet of Office, 340,000 square feet of Retail, including a 30,000 square foot Community Center, and 1,250 Multi-Family Dwelling units; and providing for the roadway improvements and conditions outlined in the revised Transportation Planning Division memorandum dated May 27, 1999 and the Maryland Department of Transportation (MDSHA) memorandum dated May 11, 1999.
- 2) Prior to submission of site plan application, Applicant and MDSHA must ratify the Memorandum of Understanding for the necessary participation in roadway improvements and securing the necessary rights-of-way.
- 3) Compliance with the provisions and phasing elements contained in County Council Resolution No. 13-865 for Zoning Application G-713.
- 4) Compliance with the conditions of approval of the preliminary forest conservation plan. The Applicant must meet all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permit, as appropriate.

- 5) Final dedication line of Rockledge Drive and Rockledge Connector to be established by record plat.
- 6) Terms and conditions of access to be finalized and approved by MCDPW&T prior to recording of plats per memorandum dated 5-24-99.
- 7) Record plat to reflect area of transit alignment and proposed station location.
- 8) Conditions of MCDPS stormwater management approval, dated 5-20-99.
- 9) No clearing, grading or recording of plats prior to site plan approval.
- 10) Final building location, public use space and other amenities to be reviewed and approved at site plan.
- 11) Other necessary easements.
- 12) Upon determination of the County to use a portion of this site for a community center, Applicant shall dedicate to the County, without cost to the County, that portion of the site designated for use as a community center.

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DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Douglas M. Duncan  
County Executive

November 20, 2003

Elizabeth B. Davison  
Director

Mr. Derick Berlage, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Dear Mr. Berlage:

Recently, Mr. Eric Larsen, Manager, MPDU Section, and I, met with representatives of Penrose Development Company, LLC ("Penrose"), developer of two high-rise residential buildings, containing 351 units each, and a mixed-use retail/residential building, containing 158 residential units (the "Project"), to discuss the Project's provision of Moderately Priced Dwelling Units ("MPDUs"). Penrose has submitted Site Plan 8-03036 for site plan approval for the first high-rise building and plans to submit site plan applications for the second high-rise building and the mixed-use building by next summer. These three buildings will constitute the remaining residential component of the Rock Spring Centre. As a function of Rock Spring Centre's original zoning approval, a total of 1,250 units, including 226 (18.08 percent) MPDUs, were approved. Avalon, at Rock Spring has already constructed a garden apartment project containing 390 units, 71 of which are MPDUs, at Rock Spring Centre. Therefore, 155 MPDUs are required as part of Penrose's development of the remaining 860 units.

After a careful review and analysis of the financial projections for the Project at the 18 percent requirement, we have determined that the provision of required MPDUs on-site would constitute a hardship for Penrose. In this regard, the Project has a number of high costs and development expenses, including ground rents, product type, and extensive structured parking. Therefore, pursuant to Section 25A-5(c)(1)(c) of the Montgomery County Code, I have approved an alternative arrangement to allow a contribution of a fee in lieu of 48 MPDUs that cannot be accommodated on-site to the Montgomery County Housing Initiative Fund (HIF).

Therefore, pursuant to the Department of Housing and Community Affairs' ("DHCA") approval, 107 MPDUs will be provided on-site, 32 in each of the high-rise buildings and 43 in the mixed-use building. A contribution to the Housing Initiative Fund for the remaining 48 units will be made by Penrose. The fee paid for the remaining 48 units will provide for the construction of significantly more MPDUs in the same or in an adjoining planning area. Additionally, even with this contribution, 12.5 percent of the residential units being developed as part of Penrose's project will be MPDUs, and 14.24 percent of all the residential units at Rock Spring Centre will be MPDUs, well above the typical 12.5 percent.



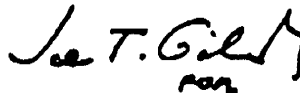
Office of the Director

Mr. Derick Berlage, Chairman  
Montgomery County Planning Board  
November 20, 2003  
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Finally, DHCA recognizes that 14 of the required MPDUs are being transferred to the mixed-use portion of the development to be constructed at a later date. Penrose has committed to work with DHCA to develop a method acceptable to the County to ensure the timely provision of these MPDUs.

We believe this alternative arrangement is fair and reasonable in light of the particular circumstances of this case and meets all of the criteria outlined in Section 25A-5(e) of the Code. If you have any questions or require any additional information, please do not hesitate to contact me at 240-777-3600.

Sincerely,



Elizabeth B. Davison  
Director

EBD:tl

cc: Olav B. Kollevoll, Jr., Esq.  
The Penrose Group

Barbara A. Sears, Esq.  
Linowes & Blocher