

APPENDIX A

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

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

October 27, 2004

Stephen Z. Kaufman
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skaufman@linowes-law.com

via Hand Delivery

Derick Berlage, Chairperson
and Members of the Planning Board
Maryland-National Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Leesborough - Preliminary Plan No. 1-04068; Mid-County Services Center's Request
for Reservation of the Rafferty Center and Surrounding Area

Dear Mr. Berlage and Members of the Planning Board:

On behalf of Batchellors Forest, LLC, the applicant of the above-referenced Preliminary Plan (the "Applicant"), we want to acknowledge a letter dated October 15, 2004 from Natalie Cantor, the Director of Mid-County Services Center and thank the County for its support of approval with the understanding that a portion of the land will be placed in reservation. In addition, set forth below are certain essential terms that we request be made part of the reservation agreement.

The Applicant agrees with placing in reservation the Rafferty Center and surrounding area as generally outlined in Ms. Cantor's attachment for a limited period of time to be no later than September 30, 2006. We understand that Ms. Cantor's letter indicated a reservation period of two years. It is true that the Applicant had agreed with this time frame; however, this agreement was made in a discussion that occurred some time ago and accordingly, part of the two year time period has expired. The September 30, 2006 date is important because Our Lady of Good Counsel High School (the "School") is scheduled to vacate the property on or about that time. Additionally, the reservation is acceptable provided the following reserved rights for the Applicant are set forth in the Preliminary Plan Opinion:

- ❖ The Applicant will be permitted to record the plat for the entire property including the reservation area with the understanding that no construction will occur during the reservation period until September 30, 2006.

Derick Berlage, Chairperson

October 27, 2004

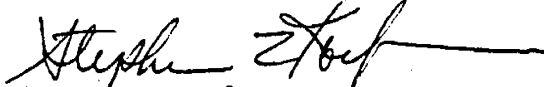
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- ❖ Notwithstanding whether a final agreement to retain the Rafferty Center is achieved between the County and the Applicant, the Applicant will have the right, after September 30, 2006 and the School vacates the site, to enter into the reservation area and demolish the school building with the exception of the Rafferty Center.
- ❖ If the reservation period is extended beyond the September 30, 2006 date by the County and Applicant and if required by the subdivision and site plan approval, that portion of the reservation area designated for recreational facilities must be allowed to come out of reservation in order for the Applicant to provide the recreational facilities to serve the balance of the subdivision in accordance with an alternate recreational plan requested by Park and Planning staff.

Thank you for your continued attention to this matter. Should you have any questions, please feel free to contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman

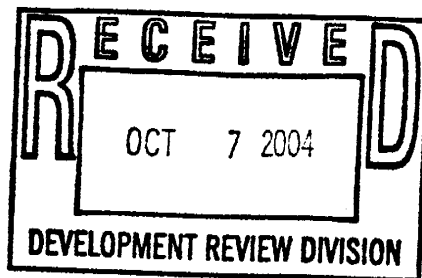


Yum Yu Cheng

cc: Mr. Howard Katz
Mr. Steve Baldwin
Ms. Natalie Cantor
Mr. Joseph Davis
Mr. Robert Kronenberg
Emily J. Vaias, Esq.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

October 7, 2004



Stephen Z. Kaufman
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Via Hand Delivery

Mr. Joseph R. Davis, Director
Wheaton Redevelopment Program
11501 Georgia Avenue
Suite 403
Wheaton, Maryland 20902

Re: Rafferty Center

Dear Mr. Davis:

As a result of our meeting in your office on August 26, 2004 regarding the Rafferty Center and my recent conversation with Diane Schwartz Jones of the County Attorney's Office, we understand that the County is currently not in a position to acquire the Rafferty Center located on the Good Counsel High School site (the "School Site") in Wheaton as originally envisioned in the proposed Memorandum of Understanding dated April 23, 2002.

For factual clarity and in order to provide the background of events leading up to the current situation, you will recall that at the request of the County and the Wheaton Volunteer Rescue Squad (the "Rescue Squad") and pursuant to a settlement agreement with the Wheaton Regional Park Neighborhood Association, Batchellors Forest LLC ("Batchellors Forest") assisted in facilitating the relocation of the Rescue Squad station in part on property owned by the Rescue Squad on Arcola Avenue and in part on a portion of the School Site identified as Lot 22 located in the southeast corner of Georgia Avenue and Arcola Avenue. Batchellors Forest, as the contract purchaser of the School Site, allowed Good Counsel, prior to settlement, to transfer its interest in Lot 22 to the Rescue Squad at no consideration to the Rescue Squad. During the rezoning process of the School Site, Batchellors Forest also agreed to retain the Rafferty Center provided the following conditions were satisfied:

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1. Batchellors Forest would retain and turn over to the County the Rafferty Center in an "as is" condition in order for the County Recreation Department to operate and maintain it as part of the public recreational facilities in Wheaton.
2. In consideration for assisting the Rescue Squad's relocation and retaining the Rafferty Center, Batchellors Forest would exchange the Rafferty Center at no cost to the County for the WMATA site located adjacent to and just south of the School Site; and prior to this exchange, the County would accomplish a straight exchange of its Silver Spring property to WMATA in return for the WMATA site located adjacent to the School Site.
3. Simultaneously, appraisals were to be provided by the respective parties to determine the value of each specific property.
4. Finally, should the appraisals indicate that the WMATA site is more valuable than the Rafferty Center, Batchellors Forest would negotiate a sum to be paid to the County to adjust for the difference.

To date, everything asked of Batchellors Forest has been achieved. The relocation of the Rescue Squad station has been accomplished (construction of the new building is about to begin) and the appraisal of the Rafferty Center is completed. Batchellors Forest is now ready to move forward with the development of the balance of the School Site and will appear before the Planning Board requesting approval of its preliminary plan and site plan on October 28, 2004.

However, Batchellors Forest recently learned the following new facts:

1. The County and Recreation Department have indicated their interest in expanding the area where the Rafferty Center is situated beyond the two acres that were required as part of the rezoning to include a significant portion of the School Site including an area that is planned for a total of 24 residential units (made up of 15 townhouses and 9 two-over-ones).
2. It appears that WMATA will not agree to a straight exchange of its site adjacent to the School Site for the County's Silver Spring site because WMATA believes that its site is more valuable than the County's valuation of it.

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Consequently, in the interest of time, we believe one of the following options will help us proceed forward:

1. Batchellors Forest is still interested in acquiring the WMATA site and is willing to proceed through subdivision as originally envisioned, and if the value of the WMATA site is determined to be of greater value than the Rafferty Center, Batchellors Forest is willing to enter into negotiations with WMATA and the County in order to determine an agreed amount to compensate WMATA.
2. Batchellors Forest is not interested in giving up the land planned for 24 residential units unless it would be included along with the Rafferty Center in any deal for the WMATA site, which would necessarily include a County credit equivalent to the value of the land planned for 24 residential units and the Rafferty Center toward the compensation for the WMATA site. However, if the WMATA site is not available to be exchanged for the Rafferty Center, then the County can directly compensate Batchellors Forest for the Center.
3. Notwithstanding whether there can be a three-way negotiation between the County, WMATA, and Batchellors Forest, Batchellors Forest is interested in proceeding forward with development of the remaining balance of the School Site, including the subdivision and site plan approval process. In order to facilitate the land exchange process, Batchellors Forest is willing to consider placing the Rafferty Center and any additional land in reservation subject to negotiations. We propose that a separate reservation agreement, if any, be immediately prepared and recorded in the Land Records since the record plat will not be recorded until Good Counsel High School departs from the site in approximately two years. Furthermore, any reservation will not exceed a period of two years from the time the preliminary plan and site plan are approved.
4. We also suggest that the County and WMATA agree to an exchange of appraisals for all the properties involved.

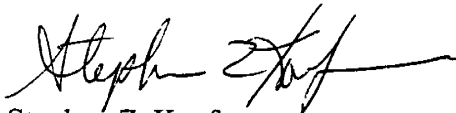
Finally, Batchellors Forest believes that in order for all parties to achieve their respective goals and objectives, there needs to be a sole source negotiation for the WMATA site that would not put Batchellors Forest in competition with others for this site. We suggest a meeting be coordinated as soon as possible between the County, WMATA, and Batchellors Forest to determine which, if any, of the options outlined above is feasible.

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Thank you for your continued cooperation and assistance on this matter. Please let me know when you will be available to meet to discuss this further.

Sincerely yours,

LINOWES AND BLOCHER LLP

A handwritten signature in black ink, appearing to read "Steph Z Kaufman", with a long horizontal flourish extending to the right.

Stephen Z. Kaufman

cc: Mr. Bruce Romer
Mr. Jerry Pasternak
Diane Schwartz Jones, Esq.
Ms. Natalie Canter
Mr. Robert Kronenberg
Mr. Howard Katz
Mr. Steve Baldwin



MID-COUNTY SERVICES CENTER

Douglas M. Duncan
County Executive

October 15, 2004

Natalie Cantor
Director

The Honorable Derick P. Berlage
Chairman, Montgomery County Planning Board
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Preliminary Plan 1-04068 – Leesborough
Request for Reservation

Dear Mr. Berlage:

On behalf of Montgomery County, I would like to request that the Planning Board consider placing in reservation the open space area that includes and surrounds the existing Rafferty Center Gymnasium and some additional land area adjacent to it, as shown on the attached map. We request that the reservation period not exceed two years from the date of the Planning Board's approval of the Preliminary Plan.

This request to place approximately 2.9 acres of the project site in reservation is made in accordance with the requirements of Section 50-30 of the Montgomery County Subdivision Regulations. By placing the area in reservation for a two-year period, the County will be in a position to negotiate the acquisition of the land in concert with County efforts to acquire an adjacent WMATA-owned site. Our intent is to secure a larger land area for the Rafferty Center that could accommodate on-site parking and a better setting for the Rafferty Center as a public use facility. We support the applicant being able to move forward and plat the remainder of the property while we negotiate the Rafferty Center area.

As you are aware, the County Council's Opinion for Zoning Application G-798 which rezoned the Good Counsel High School site to the RT-15 Zone contains a number of binding elements relating to the applicant's schematic development plan. One binding element relates directly to retention of the Rafferty Center and it reads as follows:

"Minimum of two acres of community open space on site, visible and accessible from a public street; Rafferty Center (multi-purpose recreational facility) must be

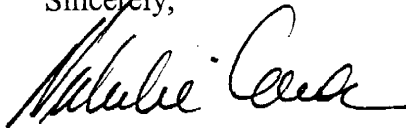
October 15, 2004

retained for public use, provided that a public entity assumes responsibility, with adequate parking, visibility and pedestrian access.”

By placing the 2.9 acre area in reservation, we will be able to better achieve the objectives for a multi-purpose recreational facility with parking, greater visibility and pedestrian access than can be achieved with the plan as currently proposed. Your action to place the area in reservation for up to two years would clearly be in the public interest. The applicant concurs with this request and has agreed to a two-year reservation period.

Thank you for your consideration of this request. Joe Davis of the Wheaton Redevelopment Program and I plan to be in attendance at the Planning Board's public hearing on this application and will be pleased to answer any questions that the Board members may have about the need for reservation of a portion of the application area for public use.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Cantor". The signature is fluid and cursive, with a large initial "N" and "C".

Natalie Cantor
Director

Attachment

cc: Paul Folkers
Stephen Kaufman

Reservation Area

