



Montgomery County Government

November 3, 1994

Larry Gordon  
Linowes and Blocher  
1010 Wayne Avenue, Tenth Floor  
PO Box 8728  
Silver Spring, Maryland

Dear Mr. Gordon:

This is in reference to your application for non-conforming use verification for the property identified as Outlot "A" Block 2, Brooke Manor Farms Subdivision, Olney, Maryland, currently zoned R-200.

Based upon review of the application, affidavits and supporting documents, the Division of Development Service and Regulations has approved the non-conforming use of this property for off-street parking in conjunction with commercial uses subject to the restrictions of Section 53-G-4 of Montgomery County Zoning Ordinance (non-conforming uses, buildings and structures).

If you have further questions, please contact me at your convenience at (301) 217-6280.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Reinhard".

John T. Reinhard  
Program Manager  
Land Use Compliance

JTR:balgordon,lr

## LINOWES AND BLOCHER LLP

ATTORNEYS AT LAW

Silver Spring, MD 20910-5600  
301.588.8580  
Fax 301.495.9044  
Website: www.linowes-law.com

January 2, 2003

C. Robert Dalrymple  
301.650.7008  
crd@linowes-law.com

Mr. David K. Niblock  
Construction Plans Analyst  
Department of Permitting Services  
Montgomery County, Maryland  
255 Rockville Pike, Second Floor  
Rockville, Maryland 20850

VIA OVERNIGHT DELIVERY

Re: Silo Inn Parcel

Dear Mr. Niblock:

Thank you for taking the time to meet with Harvey Maisel and myself on Friday, December 20, 2002, to discuss the old Silo Inn parcel, zoned C-1 and identified on the attached tax map (Attachment "A") as "Parcel B", and the adjacent R-200 zoned parking lot ("Outlot A") located on the east side of Georgia Avenue (Maryland Route 97), south of Silo Inn Drive and east of Martins Dairy Circle (collectively, the "Properties"). The purpose of this letter is to confirm the conclusions which we reached during our meeting relative to permitted uses of the Properties.

As we discussed, Parcel B was previously used for the Silo Inn and Mr. T's Restaurants, and there is an existing 900± square foot building which has been (and remains) located on the Locational Atlas of Historic Resources, but has never been designated on the Master Plan for historic preservation (the "Historic Building"). Outlot A has historically been utilized as a parking facility in conjunction with the commercial uses of Parcel B, this having been confirmed as a legally nonconforming use by previous letter from your Department in 1994 (the "Nonconforming Use Letter", a copy of which letter is attached hereto as Attachment "B"). As we further discussed, the Properties were the subject of a Consent Agreement between the owners of the Properties, the Planning Board and the Historic Preservation Commission back in 1995, in response to a demolition permit filed for the Historic Building. The gist of the Consent Agreement (a copy of which is attached as Attachment "C") was that Parcel B would be redeveloped for commercial purposes, Outlot A would continue to be used for parking in conjunction with the commercial uses and the Historic Building would be restored and refurbished to preserve its historic character and to allow some productive use of the facility for

Mr. David K. Niblock

January 2, 2003

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future purposes. In accordance with the Consent Agreement, the owners of the Properties withdrew the pending demolition permit.

While the Consent Agreement was never implemented (other than withdrawing the demolition permit), and while the restaurants are no longer operating on Parcel B and Parcel B has not been redeveloped with commercial replacement uses as was envisioned in the 1995 Consent Agreement, it is the desire of Mr. Maisel to now implement the Consent Agreement through construction of commercial uses on Parcel B and to utilize Outlot A for surface parking in conjunction therewith (there being insufficient land on Parcel B to provide the necessary parking to serve the commercial uses). Mr. Maisel also intends to restore the Historic Building pursuant to the terms of the Consent Agreement.

As we discussed, while the prior commercial uses on Parcel B have been suspended for a period of time, the parking facility on Outlot A has remained available to serve as a parking facility in conjunction with the adjoining commercially zoned property. As such, you have confirmed for us that the legally nonconforming use of Outlot A for parking in conjunction with commercial uses, as confirmed in the Nonconforming Use Letter, remains a viable and lawful use and Outlot A can be utilized for surface parking in conjunction with the anticipated commercial improvements on Parcel B.

As we also discussed, it is the intention of Mr. Maisel to pursue a special exception on Outlot A for a medical clinic, which special exception application will also include the provision of Code required parking for the medical clinic and surplus parking to continue to partially serve the commercial parking needs of Parcel B. We will also be required to go through subdivision of Outlot A and to satisfy the other requirements required in conjunction with implementing this medical clinic use on Outlot A. At that time, we will create the legal documentation necessary to reflect use of parking on Outlot A for the commercial uses on Parcel B.

We have discussed this situation with Gwen Wright of the Historic Preservation staff of the M-NCPPC, and she has conveyed to us her concurrence with the positions set forth herein and her desire to see the Consent Agreement finally implemented as negotiated back in 1995. With your confirmation of the continued legal use of Outlot A for surface parking in conjunction with new commercial development on Parcel B, we will proceed with permitting activity necessary to allow this Consent Agreement to be implemented. If we have misstated or misinterpreted your conclusions, please advise me as soon as possible. Similarly, by copy of this to Gwen Wright, I would equally invite her to advise us if we have not adequately or appropriately set forth her position with regard to this matter.

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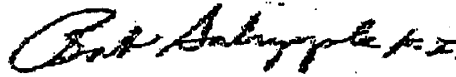
Mr. David K. Niblock  
January 2, 2003  
Page 3

Thank you to both you and Mr. Wright for your cooperation and assistance in allowing this matter to progress, and we look forward to again having these properties put to productive use to serve the surrounding community.

Best regards.

Sincerely,

LINOWES AND BLOCHER LLP

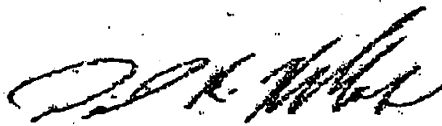


C. Robert Delympo

CRD:pt  
Enclosure

cc: Mr. Green Wright (attach)  
Mr. Harry Meier (attach)

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6



David K. Niblock  
Permitting Services Specialist

**LINOWES AND BLOCHER LLP**

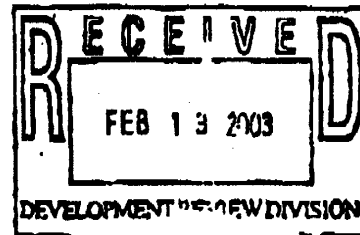
ATTORNEYS AT LAW

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February 5, 2003

C. Robert Dairymple  
 301.550.7008  
 crd@linowes-law.com

Mr. Malcolm Shaneman  
 Development Review Division  
 Maryland-National Capital Park and  
 Planning Commission  
 8787 Georgia Avenue  
 Silver Spring, Maryland 20910



Re: Maisel - Hollins / Silo Inn Parcel

Dear Mr. Shaneman:

I know that you have had several discussions with Harvey Maisel regarding his proposed redevelopment of the commercially zoned property formerly the location of The Silo Inn and Mr. T's Restaurants, with the adjacent parking facility on the residential ground. As you know, this property was included in the larger subdivision and site planning which occurred for the entire Burks - Goldman tract (Preliminary Plan 1-89086 and Site Plan Review No. 8-90034). The purpose of this letter is to confirm that which I understand you have agreed to with Mr. Maisel relating to the application of the APFO to Mr. Maisel's intentions to construct the commercial improvements on the subject property envisioned in the approved plans. In sum, because this property and improvements were included within the APFO review approved with the larger Burks-Goldman project and all of the conditions of the APFO applied to the overall project have been fulfilled through the build-out of the remainder of the project, the conditions applicable to the subject property (i.e., the commercial parcel) relating to APFO are also deemed to have been satisfied. Thus, as we understand it, no further APFO review will be required for this commercial property in conjunction with obtaining building permits in accordance with the previously approved plans.

Mr. Maisel has indicated that I (at your suggestion) should send you this confirmatory letter for acknowledgement of the content herein. Please let me know if there are any problems with this. Thanks for your assistance and cooperation. If you have any questions concerning this or disagree with the conclusions I have set forth, please let me know at your earliest convenience. Thank you.

LINOWES AND BLOCHER LLP

Mr. Malcolm Shaneman

February 5, 2003

Page 2

Sincerely,

LINOWES AND BLOCHER LLP



C. Robert Dalrymple

CRD:pi

cc: Mr. Harvey Maisel

ACKNOWLEDGED AND AGREED TO:

By:



Malcolm Shaneman

Title:

Superintendent

Date:

2/24/03



## DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

December 18, 2003

Robert C. Hubbard  
Director

C. Robert Dalrymple  
Linowes and Blocher LLP  
7200 Wisconsin Avenue  
Suite 800  
Bethesda, Maryland 20814

Dear Mr. Dalrymple:

Thank you for coming in to discuss the R-200 zoned property in the process of being developed in conjunction with the commercially zoned property formally occupied by the Silo Inn.

Although you have a letter signed by this Department stating that the non-conforming use for off-street parking on Outlot A, Block 2, Brooke Manor Farms subdivision, Olney, MD continues to be a legal nonconforming use for off-street parking in conjunction with commercial uses, at the time of that letter we were unaware that the off-street parking had ceased on that property for a period exceeding six (6) months. In accordance with section 59-G-4.14, I find that the use was abandoned and cannot be reestablished.

The consent agreement submitted with your request to David Niblock for verification of the legal nonconforming use of Outlot A appears to deal with the house designated on the Locational Atlas of Historic Resources. Although the consent agreement references the outlot use for off-street parking the consent agreement is not binding upon our determination of a continuation of the legal nonconforming use. A claim that the lot continued to be "available" does not satisfy the requirement that the use continue and not be abandoned under 59-G-4.14. When the commercial buildings were demolished, the use of outlot A for parking stopped.

Outlot A can be used for off-street parking in conjunction with the proposed commercial development of Parcel B if a special exception is obtained from the Board of Appeals.

If I can be of further assistance please contact me at 240-777-6255.

Sincerely,

Susan Scala-Demby  
Permitting Services Manager



**Sec. 50-20. Limitations on issuance of building permits.**

(a) A building permit must not be approved for the construction of a dwelling or other structure, except structures or dwellings on a farm strictly for agricultural use, unless such structure is to be located on a lot or parcel of land which is shown on a plat recorded in the plat books of the county, and which has access as prescribed in Sec. 50-29(a)(2); provided, that such permit may be issued for the following:

(1) A parcel covered by an exception specified in Section 50-9 of this chapter;

(2) A parcel covered by a valid site plan approved no more than four years prior to October 8, 1985, under Division 59-D-3, on which construction had begun as of that date, or on the medical center; or

(3) A parcel covered by a special exception approved under Division 59-G-1, which was being implemented as of October 8, 1985.

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, which crosses a lot line, which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot, except as follows:

(1) A building permit was applied for on or before February 1, 1985.

(2) A building permit approved after February 1, 1985, for development that crosses a lot line where a wall is located on, but not over, the lot line and there are projections for the roof, eaves, and foundation footings which project not more than 2 feet across the vertical plane of the lot line; and projections for sills, leaders, belt courses and similar ornamental features which project not more than 6 inches across the vertical plane of the lot line.

(3) A building permit may be approved for an aboveground or an underground public facility or amenity that crosses the vertical plane of any lot line, as projected below grade, if shown on a CBD Zone Project Plan for optional method development, approved in accordance with the procedures of Division 59-D-2 of the Montgomery County Code; or if shown on a Development Plan approved in accordance with the procedures of Division 59-D-1 of the Montgomery County Code.

(4) A building permit may be approved for an underground parking facility that crosses the vertical plane of any lot line, as projected below grade, and extends into a public right-of-way if approved by the appropriate public agency.

(5) A building permit may be approved for the reconstruction of a one-family dwelling that is located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958, in the event that the dwelling is destroyed or seriously damaged by fire, flood or other natural disaster.



(6) A building permit may be approved for an addition to an existing one-family dwelling, a porch, deck, fence or accessory structures associated with an existing one-family dwelling located on part(s) of a previously platted lot(s), recorded by deed prior to June 1, 1958.

(c) (1) Words and phrases used in this subsection have the meanings indicated in Section 8-30.

(2) Except as provided in paragraph (4) of this subsection and article IV of chapter 8, a building permit may be issued only if a timely determination of the existence of adequate public facilities to serve the proposed development has been made under this chapter.

(3) A determination of adequate public facilities made under this chapter is timely and remains valid:

(i) For twelve (12) years from the date of preliminary plan approval for plans approved on or after July 25, 1989, but before October 19, 1999. However, an adequate public facilities determination for an exclusively residential subdivision remains valid after twelve (12) years if fifty (50) percent of the entire subdivision has received building permits and the developer submits a letter of intent to develop the remainder by a specified date;

(ii) Until July 25, 2001, for a preliminary plan of subdivision that allows nonresidential development which was approved on or after January 1, 1982, but before July 25, 1989; and

(iii) For no less than 5 and no more than 12 years, as determined by the Planning Board at the time of subdivision, for projects approved on or after October 19, 1999.

(iv) The determination of adequate public facilities for a preliminary plan of subdivision that allows nonresidential development may be extended by the Planning Board beyond the validity periods in (i), (ii) and (iii) if:

(A) At least forth percent (40%) of the approved development has been built, is under construction, or building permits have been issued, such that the cumulative amount of development will meet or exceed the percentage requirement of this paragraph;

(B) All of the infrastructure required by the conditions of the original preliminary plan approval has been constructed or payments for construction have been made; and

(C) The development is an "active" project as demonstrated by at least 10 percent of the project having been completed within the last four years before an extension request is made, or at least 5 percent of the project having been completed within the last 4 years before an extension request is made, if 60 percent of the project has been built or is under construction.

(v) For development projects consisting of more than one preliminary plan, the requirements in (iv) (A) through (C) above apply to the combined project. A project consists of more than one preliminary plan if the properties covered by the preliminary plans of subdivision are contiguous and:

(A) were owned or controlled by the same applicant at the time of subdivision, and approved contemporaneously, or

(B) were owned or controlled by different applicants at the time of subdivision, but covered by a single comprehensive design plan approved by the Planning Board.

(vi) Submittal and Review Requirements.

(A) A new development schedule or phasing plan for completion of the project must be submitted to the Planning Board for approval;

(B) No additional development beyond the amount approved in the determination of adequate public facilities for the preliminary plan of subdivision may be proposed or approved;

(C) No additional public improvements or other conditions beyond those required for the original preliminary plan may be required by the Planning Board; and

(D) If the preliminary plan is for a development project located in an area that is subject to a moratorium under the Annual Growth Policy, a traffic mitigation program must be in place, or the project must otherwise be subject to existing traffic mitigation requirements of the Code.

(E) An application for an extension must be filed before the expiration of the validity period for which the extension is requested.

(vii) The length of the extension of the validity period allowed under (iv) above must be based on the approved new development schedule under (vi) (A) above, but must not exceed 2 ½ years for projects up to 150,000 square feet, or 6 years for projects 150,000 square feet or greater. The extension expires if the development is not proceeding in accordance with the phasing plan, unless a revision to the schedule or phasing plan is approved by the Planning Board.

(viii) An amendment to the new development schedule approved under subsection (vi) (A) may be approved by the Planning Board if documentation is provided to show financing has been secured for either: (1) completion of at least one new building in the next stage of the amended development schedule; or (2) completion of infrastructure required to serve the next stage of the amended development schedule.

(4) Paragraph (2) of this subsection does not apply to:

(i) Proposed development that is exclusively residential on a lot or parcel recorded before July 25, 1989, or otherwise recorded in conformance with a preliminary plan of subdivision approved before that date;

(ii) Proposed development that is otherwise exempted from the requirement for adequate public facilities for preliminary plan of subdivision approval under this chapter or other law; and

(iii) Proposed nonresidential development on a lot or parcel recorded before January 1, 1982, or otherwise in conformance with a preliminary plan of subdivision approved before January 1, 1982, if it is registered and otherwise satisfies the requirements of article IV of chapter 8. On or after July 25, 2001, a new adequate public facilities determination is required.

(5) If a new adequate public facilities determination is required under this subsection, the procedures set forth in section 8-34 apply. (Mont. Co. Code 1965, § 104-9; Ord. No. 10-47, § 2; Ord. No. 10-60, § 2; Ord. No. 10-73, § 1; Ord. No. 10-78, § 3; Ord. No. 11-53, § 2; Ord. No. 13-65, § 1; Ord. No. 14-8, § 1.)

**Editor's note**-The above section is cited in Waters Landing Ltd. Partnership v. Montgomery County, 337 Md. 15, 650 A.2d 712 (1994); is described in Donohoe Construction Company, Inc. V. Montgomery County Council, 567 F.2d 603 (4th Cir. 1977); and is cited in Logan v. Town of Somerset, 271 Md. 42, 314 A.2d 436 (1974).

SEP 29 2004

September 29, 2004

**C. Robert Dalrymple**  
301.961.5208  
[bdalrymple@linowes-law.com](mailto:bdalrymple@linowes-law.com)

**Via: Hand Delivery**

The Honorable Derick P. Berlage, Chairman  
and Members of the Montgomery  
County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Silo Inn Property - APFO

Dear Mr. Berlage:

It is my understanding from your legal staff that the Planning Board will be discussing the referenced property in closed session on Thursday, September 30, 2004. Specifically, it is our understanding that the Planning Board will be discussing whether the Board (and the Planning Staff) will honor the attached February 24, 2003 counter-signed letter from Malcolm Shaneman relating to the application of the County's Adequate Public Facility Ordinance ("APFO") to commercial development on the Silo Inn property. The owners of the property, in reliance upon this previous M-NCPPC APFO determination, have proceeded with plans to develop the property with a small commercial center, and there is absolutely no legal or rational position that the Planning Board or Planning Staff could take to now preclude this development from occurring.

We have previously outlined the history of this property and the efforts to develop the property with a commercial center (in the context of the Olney Master Plan), so I will not repeat all of the background or the inequities that have occurred over the last several months relative to the development of the property. For purposes of this discussion, however, it is important to note that this property was approved as part of the same preliminary plan approval for the Burka-Goldman Tract (1-89086, the "Preliminary Plan"), which allows for approximately 32,500 s.f. of commercial uses then existing on the property (at that time, Silo Inn and Mrs. T's Restaurants, etc.). A transportation memorandum, dated June 13, 1990 and made a part of that Preliminary Plan record, also referenced these existing improvements. The July 6, 1990 Preliminary Plan opinion also specifically referenced approval of the existing 32,500 s.f. of

The Honorable Derick P. Berlage

September 29, 2004

Page 2

commercial uses for the overall subdivision, but noted that any expansion above this amount would require further APFO review. The 32,500 s.f. of permitted commercial development on the property was also noted in the September 3, 1991 APFO Agreement between the property owner and the Planning Board. The possibility of reconstructing the existing 32,500 s.f. of commercial development as a new commercial center was also known at the time of Preliminary Plan approval, and this same commercial development was part of a Consent Agreement dated September 13, 1995 (which your staff has a copy of), which acknowledged that the then existing commercial structures would be demolished and replaced with new commercial structures (and in return the property owner would restore the Higgins Tavern, a resource identified on the Locational Atlas of Historical Resources). This Consent Agreement between the Planning Board, HPC and the property owner was a negotiated resolution to efforts on the part of the property owner to demolish the Higgins Tavern, and the Consent Agreement facilitated not only the restoration of the historic resource but also the redevelopment of the property with new commercial development replacing the existing 32,500 s.f. of the development, all approved by the Preliminary Plan.

There were certain APFO requirements imposed upon the developers of the Burka-Goldman Tract as part of subdivision approval, and the road improvements for the entire subdivision were completed before any of the residential development was permitted (as per the terms of the Preliminary Plan and the APFO Agreement). With the completion of the road improvements for this subdivision, APFO approval for the entire subdivision, including the 32,500 s.f. of commercial development, was validated for the entire subdivision. It is wholly inappropriate to now question whether or not the entire subdivision, including the ability to redevelop 32,500 s.f. of commercial development which is the subject of all of the above-referenced agreements, has APFO approval. Finding a new APFO determination to be required would be in total disregard of the validation of the APFO approval for the entire subdivision through implementation of all conditions of approval.

Furthermore, notwithstanding that the APFO "recapture" provisions under Chapter 8 of the Montgomery County Code (for non-residential development) do not apply to this project regardless (as the APFO approvals were validated as set forth above), even if the "recapture" provisions of Chapter 8 did apply, they would not be relevant to the redevelopment of the 32,500 s.f. of commercial development on this property. Pursuant to Chapter 8-30(b)(i) and 8-31(a), a new adequate public facility determination is not necessary for this commercial development since it is not considered "development" as defined therein.

The Honorable Derick P. Berlage  
September 29, 2004  
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For purposes of determining timely adequate public facilities pursuant to Chapter 8, Section 8-30(b)(i) defines "development" as follows:

"Development means proposed work to construct, enlarge, or alter a building for which a building permit is required. It does not include renovation or reconstruction of an existing structure if gross floor area does not increase by more than 5,000 s.f." [emphasis added]

There is no sunset within that definition on replacing existing structures. Accordingly, the reconstruction of the 32,500 s.f. of commercial development on this property is not considered "development" as defined in Chapter 8, since the reconstruction is replacing structures that existed and it does not exceed the previous floor area by 5,000 s.f. Chapter 50-20 of the Subdivision Regulation adopts the terms pursuant to Chapter 8 of the County Code.

In short: 1) the 32,500 s.f. of commercial development on the property existed at the time of Preliminary Plan and APFO approval; 2) the development capacity was validated with the road improvements made in connection with the entire Burka-Goldman subdivision tract; 3) this development was always assumed to exist on the site and to be served by public facilities, even if replacement structures, as evidenced by all of the referenced agreements above; and 4) a new APFO finding required for development pursuant to Chapter 8 is simply not applicable to the facts and circumstances of this property. That the Planning Board (and Staff) are now even considering not honoring a previous determination made by Staff relative to the validity of APFO approval for this commercial development on the Silo Inn Property is not only unlawful and irrational, but it also causes one to find these actions suspect in light of the recommendations of the Staff and Board in the pending Olney Master Plan Amendment. While I state this as being suspect, I do not believe for a minute that the Board or the Staff would purposely misconstrue previous determinations made by Staff, well-supported by the facts and laws relative to this discussion, in order to further their positions relative to a pending master plan. As you know, the most immediately impacted residential community to the Silo Inn property strongly advocates the commercial development of this property, as has long been envisioned for this property. This was overwhelmingly demonstrated by the public testimony during the County Council's recent public hearing on the Olney Master Plan, where representatives of the Victoria Springs Home Owners Association invited this commercial development as "IMBY's" (In My Back Yard) as opposed to residential. We are simply trying to implement that which has been in place for many years, and we hope that the Board will not be a hindrance to these efforts.

The Honorable Derick P. Berlage  
September 29, 2004  
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We are available to answer any questions which you may have, and please advise us when you have confirmed M-NCPPC's previous determination that APFO is satisfied as to this proposed commercial redevelopment, a determination upon which extreme reliance was placed by the owners in pursuing the purchase and development of this property.

Sincerely,

**LINOWES AND BLOCHER LLP**



C. Robert Dairymple



Anne C. Martin

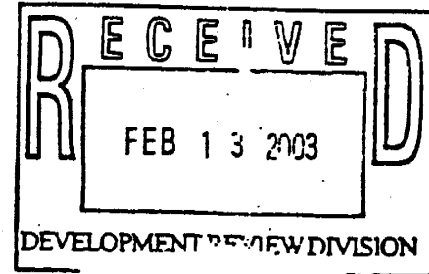
Enclosure

cc: Tariq El-Baba, Esq. (hand delivered)  
Charles Loehr (hand delivered)  
Marc Solomon  
Joseph Hoffman, Esq.  
Anne Martin, Esq.

February 5, 2003

C. Robert Dalrymple  
301.650.7008  
crd@linowes-law.com

Mr. Malcolm Shaneman  
Development Review Division  
Maryland-National Capital Park and  
Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910



Re: Maisel - Hollins / Silo Inn Parcel

Dear Mr. Shaneman:

I know that you have had several discussions with Harvey Maisel regarding his proposed redevelopment of the commercially zoned property formerly the location of The Silo Inn and Mr. T's Restaurants, with the adjacent parking facility on the residential ground. As you know, this property was included in the larger subdivision and site planning which occurred for the entire Burka - Goldman tract (Preliminary Plan 1-89086 and Site Plan Review No. 8-90034). The purpose of this letter is to confirm that which I understand you have agreed to with Mr. Maisel relating to the application of the APFO to Mr. Maisel's intentions to construct the commercial improvements on the subject property envisioned in the approved plans. In sum, because this property and improvements were included within the APFO review approved with the larger Burka-Goldman project and all of the conditions of the APFO applied to the overall project have been fulfilled through the build-out of the remainder of the project, the conditions applicable to the subject property (i.e., the commercial parcel) relating to APFO are also deemed to have been satisfied. Thus, as we understand it, no further APFO review will be required for this commercial property in conjunction with obtaining building permits in accordance with the previously approved plans.

Mr. Maisel has indicated that I (at your suggestion) should send you this confirmatory letter for acknowledgement of the content herein. Please let me know if there are any problems with this. Thanks for your assistance and cooperation. If you have any questions concerning this or disagree with the conclusions I have set forth, please let me know at your earliest convenience. Thank you.



LINOWES AND BLOCHER LLP

Mr. Malcolm Shaneman

February 5, 2003

Page 2

Sincerely,

LINOWES AND BLOCHER LLP




C. Robert Dalrymple

CRD:pi

cc: Mr. Harvey Maisel

ACKNOWLEDGED AND AGREED TO:



Mr. Shaneman

Title: Supervisor

Date: 2/24/03