

Resolution No.: 15-465
Introduced: January 13, 2004
Adopted: January 13, 2004

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

By: County Council

SUBJECT: APPLICATION NO. G-810 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Patricia A. Harris, Attorney for Applicants Washington Metropolitan Area Transit Authority (WMATA) and Twinbrook Commons, LLC, OPINION AND RESOLUTION ON APPLICATION

Tax Account Nos. 00080034, 02774040, 02774038 and 02774051

OPINION

Application No. G-810, filed on June 12, 2003, by Applicants Twinbrook Commons, LLC and the Washington Metropolitan Area Transit Authority (WMATA), requests reclassification from the R90/I-4 Zones to the TS-R Zone of 16.18 acres of land,¹ known as the Twinbrook Metro Property, Blocks A, 8, 9 and 24, Parcels A & B, Part of Parcel A, Part of Lots 3-8, Lot 13 and a portion of Lot 14, Spring Lake Park Subdivision. It is located adjacent to Twinbrook Metro Station, approximately 300 feet southeast of Halpine Road, and it is bounded by Twinbrook Parkway to the east, the CSX and Metrorail tracks to the west, Wicomico Avenue and Park Lawn Drive to the south and Ardennes Avenue to the north.

The property is part of a 26 acre tract owned by WMATA, which is a co-applicant here with Twinbrook Commons, L.L.C. The portion of this tract not covered by this zoning application is located within the City of Rockville.

The development proposal for the Montgomery County portion of the project calls for 1,114 rental units and 140,000 square feet of ground level retail, in addition to five garages to accommodate both

¹ The original application seeks rezoning of 16.32 acres, but this figure was corrected to 16.18 acres at the hearing and in the revised Identification Plat. Since that amount is less than specified in the application, Applicants do not fall afoul of Zoning Code §59-H-2.24, which prohibits modifications or amendments to the application which increase the area to be reclassified.

Metro's needs and the new residents. The Rockville portion of the project has not yet been submitted to the City of Rockville; however, Applicants' "current concept" for that part of the project "consists of 1.5 FAR of office use (approximately 610,000 square feet), ground floor retail (approximately 20,000 square feet) and 174 dwelling units in two buildings with heights of four to six stories."

The application for rezoning in Montgomery County was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) which, in a report dated September 19, 2003, recommended approval. The Montgomery County Planning Board considered the application on September 25, 2003 and, by a vote of 4 to 0, also recommended approval, praising the project as an outgrowth of the Twinbrook Metro Station Area Design Charrette. A public hearing was held on October 7, 2003, and the record, which was reopened to receive additional submissions, ultimately closed on December 22, 2003.

The subject property is irregularly shaped and consists of the 16.18 acres designated on the Development Plan as the "Net Lot Area."² This area to be rezoned includes 695,401 square feet of land owned by WMATA, 6,336 square feet of land proposed to be acquired from Montgomery County and 3,235 square feet of right-of-way proposed to be abandoned. The County's Chief Administrative Officer, Bruce Romer, authorized the inclusion of the specified County land and right-of-way in the rezoning application by letter dated December 1, 2003.

The subject property was classified under the R-60, R-90 and I-1 Zones in the 1954 Regional District zoning. In 1958, there was a Countywide comprehensive zoning, and the R-60, R-90 and I-1 Zones were confirmed. On October 10, 1978, Sectional Map Amendment G-123 rezoned the area to O-M and I-1 Zones. Finally, on November 9, 1993, Sectional Map Amendment G-706 rezoned the subject property to the current R-90 and I-4 Zones. Applicants note (and the Technical Staff confirms) that under

² The gross tract area of 16.51 acres (719,327 square feet) includes areas immediately adjacent to the site that were previously dedicated to the County for public rights-of-way. Those parts of the gross tract area are not included in this zoning application.

SMA G-706, the entire subject property should have been zoned R-90, but due to an apparent mapping error, a small portion (18,750 sq.ft.) was shown within the I-4 Zone.

The surrounding area encompasses all of the Twinbrook Sector Plan region described in the North Bethesda – Garrett Park Master Plan, and it is within walking distance of the Twinbrook Metro Station. The current land use and zoning pattern reflects a mix of uses located within three distinctly different areas. To the north is a residential area comprised of single-family homes and three-story townhouses which are in the city of Rockville. To the east and south of the subject property is a mix of office, laboratory and light industrial buildings which are in various zones -- I-1, I-4, C-O, and O-M. Buildings there generally range in height from one to eight stories. The dominant building in this area is the HHS headquarters located on Fisher's Lane. To the west of the subject property, across the CSX rail line, is the City of Rockville. The land uses include a hotel, office buildings, retail shops and automobile repair facilities. Buildings there also range in height from one to eight stories.

The Development Plan in the present case includes a Land Use Plan, labeled "Development Plan," that shows the location of site access points and public use spaces, as well as the locations and heights of proposed buildings, structures and parking garages. It also includes commitments made by the Applicants in textual form. The Development Plan is binding on the Applicants except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those used in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

Binding Elements

The binding elements here include the maximum number of residential units (1,114), the minimum percentage of residential units to be devoted to Moderately Priced Dwelling Units (12.5% of the 990 market-rate units, *i.e.*, 124 MPDU's), the maximum amount of floor area to be devoted to residential units (1,326,721 sq.ft., though current plans call for 1,226,721 sq.ft.), the maximum amount of

floor area to be devoted to retail (140,000 sq. ft.), the maximum building height (14 stories), the minimum number of parking spaces (2,624), the maximum density (1.90 FAR), the maximum number of non-MPDU residential units per acre (60/acre), the maximum total number of residential units per acre (67.5/acre), the minimum public use space (10%), the minimum active and passive recreational space (25%), a commitment to “enter into a site plan enforcement agreement providing for perpetual maintenance of open space areas and other areas used for recreational, common or quasi-public purposes,” and a commitment “to comply with all requirements of the Alternate Review Procedure for Metro Station Policy Areas.”

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

§59-D-1.61(a): consistency with master plan and other County policies.

The applicable Master Plan is the North Bethesda/Garrett Park Master Plan, approved and adopted in 1992. The Master Plan recommends “[m]ixed uses with a significant residential component . . . at Twinbrook [Metro Station].” The Plan also recommends rezoning property from commercial to residential. The Twinbrook Sector Plan, found on pages 41 through 51 of the Master Plan, is more specific. The Sector Plan’s objectives are to:

- Introduce a transit serviceable residential component into the Sector Plan area, and ensure its compatibility with the adjacent Twinbrook single-family residential community.
- Retain a significant portion of the Sector Plan area for light industrial incubator business development.
- Improve the urban environment of the Twinbrook area.

For the specific area Applicants seek to develop, the Sector Plan recommends:

Support[ing] development under the Transit Station-Residential (TS-R) Zone for the WMATA property at Twinbrook Metro station.

Applicants' Development Plan is in substantial compliance with the density and use requirements of the Twinbrook Sector Plan. The only ostensible discrepancy concerns the proposed total number of dwelling units per acre. The Sector Plan calls for a density of 60 dwelling units per acre, whereas the Development Plan calls for a total (*i.e.*, market priced plus MPDU's) of 67.5 dwelling units per acre. However, given that the proposed density of market priced units is 60 per acre, the Development Plan is consistent with the applicable standards contained in Zoning Code Section 59-C-8.42(c), which provides:

The density of development must not exceed the FAR or the dwelling units per acre allowed by the zone, except that the maximum density permitted may be increased to accommodate the construction of moderately priced dwelling units in accordance with chapter 25A.

In sum, the Development Plan is "on all fours" with the Master Plan and the Sector Plan. The Master Plan recommends "[m]ixed uses with a significant residential component . . . at Twinbrook [Metro Station]." The Sector Plan's objectives to introduce a transit serviceable residential component, to ensure its compatibility with the adjacent Twinbrook single-family residential community and to improve the urban environment of the Twinbrook area are being met. More specifically, as to the area Applicants seek to develop, the Sector Plan expressly supports development under the Transit Station-Residential (TS-R) Zone for the WMATA property at Twinbrook Metro station. In addition, the Master Plan's Urban Design Plan calls for Develop[ing] Fisher's Lane and Parklawn Drive between the HHS building and the Twinbrook Metro station to serve as major pedestrian routes [and]

Provid[ing] an urban open space and a convenience retail focus near the Twinbrook Metro station for the existing neighborhood to the north and the future transit-oriented residential units to the east.

This is precisely what Applicants have planned.

The General Plan "stresses the desirability of mixed uses" and "encourages housing plans that foster transit serviceability and proximity of affordable housing to transit." General Plan Refinement, Approved and Adopted 1993, p. 53. Thus, the Applicants' Development Plan fits exactly.

The County's Annual Growth Policy (AGP) and the Adequate Public Facilities Ordinance (APFO) provide for a review of the availability of adequate public facilities for any proposed development. The public facilities included are police, fire, health, water and sewer, schools and transportation.

Under the AGP, police, fire and health are assumed adequate unless the appropriate agency identifies a problem, which none has. Because the water and sewer services at the subject property are in category 1, they are also considered adequate under the AGP. Adequate water, sewer, electricity, gas and phone lines are available either on the subject site or in adjacent streets. With regard to schools, the AGP considers school capacity adequate in the Richard Montgomery Cluster. The only other significant consideration with respect to public facilities involves transportation.

With regard to transportation, Applicants' property is in a Metro Station policy area, and they are therefore entitled under the AGP to use the "Alternative Review Procedure for Metro Station Policy Area." The Alternative Review Procedure eliminates the requirement for determining whether Applicants meet the Policy Area Transportation Review (PATR) and the Local Area Transportation Review (LATR) standards, if the Applicants devise a plan to mitigate trips expected from the development by 50%, participate in the area's transportation management organization (TMO) and make payments towards transportation improvements. Under the 2004 AGP, these payments include an applicable development impact tax (without claiming any credits for transportation improvements) and annual contributions or taxes to fund the TMO's operating expenses.

Under Code §59-H-2.6, an applicant who is subject to the Alternative Review Procedure may satisfy its burden of proof by showing that it will meet the trip reduction requirements that the AGP prescribes and by including in the applicant's certified development plan a binding element that commits the applicant to comply with all the relevant requirements of the Alternative Review Procedure. Applicants' Development Plan includes the required binding element under General Note 12.

To satisfy the requirements of the alternative review procedure, Applicants put together a detailed Transportation Demand Management (TDM) Program. The TDM program consists of education and information, parking management, on-site construction and commuter assistance programs, all of which Applicants are committed to employing. The trip reduction effects of the Transportation Demand Management Program are predicted to result in a projected 59% reduction in a.m. peak hour trips and a projected 54.2% reduction in p.m. peak hour trips -- well above the 50% trip mitigation required by the Annual Growth Policy.

The District Council concludes that the proposed development plan would be in substantial compliance with the use and density indicated in the Master Plan and would not conflict with any other applicable county plan or policy.

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The requirements for the TS-R Zone are found in Code §59-C-8. The TS-R Zone is a “floating zone,” intended to be used in transit station development areas and in areas adjacent to central business districts, within 1,500 feet of a Metro transit station. Section 59-C-8.21(b) also specifies that TS-R Zones are intended for locations where multiple-family residential development already exists or where such development is recommended by an approved and adopted Master Plan. That is the case here.

The purposes of the TS-R Zone are set forth in Code §59-C-8.22:

- (a) To promote the effective use of the transit station development areas and access thereto;
- (b) To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;
- (c) To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and
- (d) To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or

development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.

The evidence amply demonstrates that the proposed development satisfies the purposes of the TS-R Zone. It will put 1,114 residential units and 140,000 square feet of ground floor retail within easy walking distance of a Metro station and will encourage the use of Metro by a variety of means, including, *inter alia*, pleasant pedestrian access, bicycle storage and economic incentives. Thus, the Development Plan directly addresses purposes (a) and (b). It also provides the range of densities suggested in purpose (c), including 14 story high-rises, an eight story apartment building and a number of four-to-six story apartment buildings.

The proposed project would certainly be characterized as the kind of “coordinated, harmonious and systematic” development called for in purpose (d). In designing their proposal, Applicants incorporated many ideas from the Twinbrook Metro Station Area Design Charrette which was conducted in September of 2000 to “develop a vision for the Twinbrook Metro Station Area.” Applicants have also taken steps to reduce possible “detrimental effects” to the surrounding neighborhood by keeping a tree lined open space buffer on the northwest border of the project closest to neighboring residences, by reducing the size of the buildings planned in that block, by rotating a parking facility 90 degrees, by moving bus routes away from nearby residences and by proposing to cut off through-traffic to the site at the intersection of Lewis Avenue and Halpine Road in Rockville.

Moreover, by committing to 12.5% moderately priced dwelling units, Applicants have insured that they will provide housing for persons of different economic levels. Finally, the proposed development will promote the “health, safety, morals and welfare of the present and future inhabitants of the regional district and the county” (*i.e.*, the public interest) by providing precisely the kind of mixed use residential development near a Metro Station that the Council determined was in the public interest when it created

the TS-R Zone and approved the applicable Master and Sector Plans. By providing a much higher density of residential facilities within easy walking distance of a Metro Station, residents will be encouraged to use public transportation, which is clearly in the public interest.

In sum, the proposed development is consistent with the intent and purposes of the TS-R Zone.

Zoning Code §59-C-8.25 requires that a proposed development in the TS-R Zone conform to “the facilities and amenities” of the Master and Sector Plans, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use. The proposed development meets all these tests.

Conformance with the Master and Sector Plans has been demonstrated. No easements or dedications are required by the Master Plan, and Applicants do not foresee granting any. Applicants have submitted a Circulation Plan, and the proposed circulation would be safe and efficient. The required open and recreational space is spelled out in Code §59-C-8.43, and Applicants’ proposal of 10% open space and 25% recreational space meets those requirements precisely. The Sector Plan calls for the type of mixed use development being proposed, with “transit-oriented residential units to the east” of the Metro station. Applicants have taken additional steps to help insure compatibility, such as tapering building heights down as they get closer to nearby residences, eliminating cut-through traffic on Lewis Avenue, rerouting the buses and maintaining a tree lined open space on the northwest side to provide a buffer for the neighbors.

The final issue raised by §59-C-8.25 is whether the area can accommodate the proposed use. Express County policy is to establish residential units in the immediate area of Metro stations in an effort to encourage the use of mass transportation. From a zoning perspective, the area can accommodate the intended use, and the concerns of some neighbors about excess traffic in the immediate neighborhood should be dealt with by the Planning Board at future proceedings, such as site plan review.

Section 59-C-8.4 prescribes development standards, which are set forth below, juxtaposed against what Applicants will be providing:

§59-C-8.4. Development standards.

	Required/ Permitted	Provided
59-C-8.41 Minimum Area		
Minimum area required for any development (in square feet)	18,000 s.f.	704,972 s.f.
59-C-8.42 Density of Development		
Density of development shall not exceed any of the following:		
(a) Floor area ratio	2.5	1.9
(b) Dwelling units per acre	150	60 for market rate units 67.5 total, including MPDU's
59-C-8.43 Open Space		
(a) Minimum percentage of net area devoted to public use space	10	10
(b) Minimum percentage of net area devoted to active and passive recreational space	25	25
Total minimum open space requirement (percent)	35	35

As is evident from the chart, Applicants have met all the development standards.

It is clear that the proposed development was planned with safety, convenience and amenities in mind. The convenience of living within easy walking distance of a Metro station is obvious, and having ground level retail establishments in the neighborhood is also a great convenience. The "augmented streetscape," the presence of ground level retail and the pleasant open spaces will make this development a very pedestrian-friendly place, which will encourage people to be outdoors, meeting their neighbors and looking around. This fact alone increases safety.

The area surrounding the subject site consists of three distinct neighborhoods, the "Rockville Pike corridor" to the west, residences to the north and offices to the east and south. Applicants see the subject

project as “an opportunity to link the three distinct neighborhoods together,” with a mixed use development that will enhance the community around it and provide new amenities and residential opportunities for local employees.

Two local citizens associations, the Twinbrook Citizens Association and the Cambridge Walk II Homeowners Association, are generally supportive of the project. Concerns about the proposed density and height of buildings raised by two community residents at the hearing on this matter may be addressed by the Planning Board at Site Plan Review.

Based on the preponderance of the evidence, the District Council concludes that the development proposed on the subject property would be compatible with and would not adversely affect the character of adjacent development.

The proposed development would be consistent with the purposes and applicable standards of the TS-R Zone and would maximize the safety, amenities and convenience of the residents.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The District Council concludes that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

§59-D-1.61(d): preservation of natural features

In order to avoid the flooding that occurred during the construction of the Metro site, Applicants will construct a sediment control basin on site, where runoff from the disturbed area will go. There will be redundant measures in order to make sure that flooding does not occur. As required by the Montgomery County Department of Permitting Services, Applicants will submit a sediment control plan prior to construction, and that plan will show the temporary measures that will be employed to make sure that adjacent properties aren't damaged by erosion or flooding during the construction process.

The entire site is classified as a “landscaped/developed area,” and there are no significant or specimen trees on the site. Applicants are in the process of conducting a flood plain analysis for the site and a utility master plan. A final sediment control plan will be prepared to ensure that erosion is controlled. Trees along the north property line will be preserved, and there will be significant landscaping included as part of the overall construction. There are no forests or wetlands on the site. Approximately 2.5 acres of tree canopy will be provided. The Applicants will comply with any Forest Conservation or water resource protection requirements that are determined to apply at site plan review.

The District Council concludes that Applicants have demonstrated the environmental controls required by the Code.

§59-D-1.61(e): common area maintenance.

The property is owned by WMATA. Upon development, Co-Applicant, Twinbrook Commons, L.L.C. will sign a long-term ground lease for the subject property.

Applicants have certified on their Development Plan, Exhibit 65, that “at the time of site plan review, the Applicants . . . will enter into a site plan development agreement providing for perpetual maintenance of open space areas and other areas used for recreational, common or quasi-public purposes.”

The District Council finds that Applicants have sufficiently demonstrated both ownership of the property and their commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The District Council also must consider the relationship of the present application to the public interest. The subject application would be in substantial compliance with the applicable master plan, and is recommended for approval by the Planning Board and its Technical Staff. Moreover, the

preponderance of the evidence indicates that the proposed development would be adequately served by and would not adversely affect public facilities in the area.

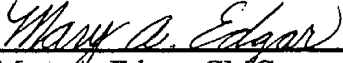
For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

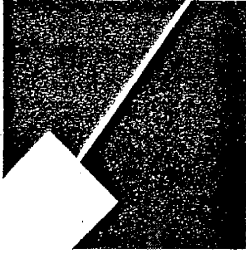
The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-810, filed on June 12, 2003, by Applicants Twinbrook Commons, LLC and the Washington Metropolitan Area Transit Authority (WMATA), for the reclassification from the R90/I-4 Zones to the TS-R Zone of 16.18 acres of land, known as the Twinbrook Metro Property, Blocks A, 8, 9 and 24, Parcels A & B, Part of Parcel A, Part of Lots 3-8, Lot 13 and a portion of Lot 14, Spring Lake Park Subdivision, is hereby approved in the amount requested, and the Development Plan submitted in conjunction therewith is also approved, subject to the specifications of the Land Use Plan labeled "Development Plan," Ex. 65, which forms its central component; provided, however, that within 10 days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Development Plan, Ex. 65, for certification by the hearing examiner under the provisions of §59-D-1.64.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Clerk of the Council



Action: Approved Staff Recommendation
 Motion of Comm. Perdue, seconded by
 Comm. Bryant with a vote of 4-0;
 Comms. Berlage, Bryant, Perdue, and
 Robinson voting in favor; Comm.
 Wellington absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-04054

NAME OF PLAN: TWINBROOK COMMONS

On 01/28/04, TWINBROOK COMMONS, LLC submitted an application for the approval of a preliminary plan of subdivision of property in the TS-R zone. The application proposed to create 1 lot on 16.61348 acres of land. The application was designated Preliminary Plan 1-04054. On 05/06/04, Preliminary Plan 1-04054 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-04054 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-04054.

Approval, Subject to the Following Conditions:

- 1) Approval under this preliminary plan is limited to 1,114 dwelling units (690 high rise and 424 garden apts.) and 140,000 gross square feet of retail
- 2) Compliance with the conditions of approval of the Transportation Planning memorandum dated April 28, 2004
- 3) Compliance with the conditions of approval for the preliminary forest conservation plan. The applicant must satisfy all conditions prior to recording of plat(s) or MCDPS issuance of sediment and erosion control permits. Final forest conservation plan will be required at Site Plan
- 4) All road rights-of-way shown on the approved preliminary plan shall be dedicated, by the applicant, to the full width mandated by the Master Plan unless otherwise designated on the preliminary plan
- 5) All road right-of ways shown on the approved preliminary plan shall be constructed, by the applicant, to the full width mandated by the Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan, "To Be Constructed By _____" are excluded from this condition
- 6) Compliance with the conditions of approval of the MCDPS stormwater management approval dated April 26, 2004
- 7) Compliance with the conditions of approval of the MCDPWT letter dated, April 19, 2004

- 8) Final approval of the number and location of buildings, dwelling units, on-site parking, site circulation, sidewalks, and bikepaths will be determined at site plan
- 9) A landscape and lighting plan must be submitted as part of the site plan application for review and approval by technical staff
- 10) Final number of MPDU's as per condition # 7 above to be determined at the time of site plan
- 11) This preliminary plan will remain valid for a 12-year extended validity period beginning from the approval date (the date of mailing of the Planning Board opinion). The phasing schedule will be as follows:
 - a. Phase I: expires 37 months from the approval date – 20,000 square feet of retail and 250 residential units
 - b. Phase II: expires 73 months from the approval date – 30,000 square feet of retail and 250 residential units
 - c. Phase III: expires 109 months from the approval date – 40,000 square feet of retail and 250 residential units
 - d. Phase IV: expires 145 months from the approval date – 50,000 square feet of retail and 364 residential units
- 12) Other necessary easements